



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>April 26, 2017</p>	<p>No. I17-002 (R16-019)</p> <p>Re: whether Arizona Administrative Code Rule 4-19-508(B)(3) authorizes a registered nurse practitioner to order and interpret radiographic tests</p>
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To: Joey Ridenour  
Arizona State Board of Nursing

**Questions Presented**

Is Arizona Administrative Code (A.A.C.) Rule 4-19-508(B)(3), in which the Arizona State Board of Nursing authorized registered nurse practitioners to order and interpret radiographic tests (x-rays), consistent with Arizona law?

**Summary Answer**

Yes. A.A.C. R4-19-508(B)(3) is consistent with Arizona law because (1) the “use” of x-rays does not include “ordering” or “interpreting” x-ray images and (2) the Nursing Board has licensed RNPs to order and interpret x-ray images.

**Background**

The Arizona Radiation Regulatory Agency (ARRA) “regulate[s] the use, storage and disposal of sources of radiation” in the State. A.R.S. § 30-654. Under this regulatory authority, the Medical Radiologic Technology Board of Examiners (MRTB), a division of ARRA,

administers the radiologic technologist (RT) certification process. A.R.S. § 322803(A). RT certificate holders are allowed “to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.” A.R.S. § 32-2801(18). In lay terms, this means that ARRA licenses the use of x-ray machines in the health care context. However, Arizona law also contains a broad exception to this licensing authority: dentists, physician assistants, chiropodists, veterinarians and those “licensed in this state to practice medicine, surgery, osteopathy, chiropractic or naturopathic medicine” do not need “to obtain any other license for the use of a diagnostic X-ray machine, but these persons are governed by their own licensing acts.” A.R.S. § 30-672(D).

Responsible for regulating the practice of nursing in Arizona, the Arizona State Board of Nursing (Nursing Board) is authorized to “adopt rules establishing those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician.” A.R.S. § 32-1606(B)(12). Pursuant to this authority, a rule adopted in 1987 by the Nursing Board authorizes a registered nurse practitioner (RNP) to “[o]rder and interpret laboratory, radiographic, and other diagnostic tests.” A.A.C. R4-19-508(B)(3). RNPs are registered nurses who have completed an advanced nurse practitioner education program and have “an expanded scope of practice within a specialty area that includes . . . diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances.” A.R.S. § 32-1601(20)(d) and (v).

Arizona law provides that “[n]o person may use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.” A.R.S. § 32-2811(A). ARRA believes that the administrative rule’s authorization for

RNPs to “[o]rder and interpret . . . radiographic . . . tests” without obtaining an RT certificate is contrary to Arizona law for two reasons. First, ARRA contends that persons prohibited to “use ionizing radiation” under Arizona law are necessarily prohibited from ordering and interpreting x-ray images. Second, ARRA contends that only those professions explicitly named in Section 30-672(D) qualify as exempt “licensed providers” and RNPs are not expressly listed.

### Analysis

#### **A. “Use,” In A.R.S. § 32-2811(A), Does Not Include “Order” or “Interpret”**

Courts interpret statutes by looking first to the plain language of the law as the best indicator of the legislature’s intent. *Premier Physicians Grp, PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9 (2016). Words and phrases should be given their commonly accepted meanings unless a special definition is given or the context requires otherwise. *State v. Cox*, 217 Ariz. 353, 356 ¶ 20 (2016); *see also* A.R.S. § 1-213 (“Words and phrases shall be construed according to the common and approved use of the language.”). Courts “seek to harmonize statutory provisions and avoid interpretations that result in contradictory provisions”. *Navarro*, 240 Ariz. at 195 ¶ 9.

The primary text at issue is the statutory limitation on who may “use” x-ray equipment. *See* A.R.S. § 32-2811(A) (no “person may *use ionizing radiation on a human being*.”). In general, the word “use” primarily signifies a direct physical manipulation of an object (“use a hammer”), but it can also indicate a more nebulous benefit derived from an object (“use a surrogate”). The statutory context indicates that the text refers to a direct form of “use,” specifically the physical act of applying ionizing radiation to a human being with an x-ray device.

Context affirms the adoption of the primary—direct-physical-manipulation—meaning of “use” for at least three reasons. First, a conflict between the administrative rule and the statute

exists only if “use” includes “order” and “interpret.” This serves the Legislature’s intent to keep radiation regulations from inappropriately or unnecessarily interfering with the use of x-ray technology in the practice of medicine. *See* A.R.S. § 32-2811(C) (“Nothing in this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.”) The Legislature empowered both the Nursing Board and ARRA to effectively regulate their respective fields without either board encroaching on the other.

Second, it would be absurd to read the statute to say no person (other than a licensed practitioner) may “interpret” an x-ray image without ARRA approval given the fact that ARRA provides no certification entitling *anyone* to interpret an x-ray image. Indeed, radiologist assistants—advanced RTs who possess additional training beyond what is required to obtain an RT certificate—are specifically prohibited from interpreting x-ray images. A.R.S. § 32 2819(E).

Third, including “order” in the meaning of “use” would also be unworkable. Subsection B of § 32-2811 says that an RT can only apply radiation “while operating in each particular case at the direction of a licensed practitioner.” In other words, an RT who may “use” x-ray equipment must be ordered to take an x-ray image before doing so. But if “use” includes “order” then the holder of a certificate under § 32-2811(A) would already be authorized to order an x-ray. It would be absurd to conclude that the legislature would authorize the holder of a certificate to “order” x-rays but to take x-rays only when ordered by someone else to do so.

**B. RNPs are Licensed Practitioners Under A.R.S. § 32-2811(A)**

Under Arizona law, a RNP is a licensed registered nurse who is certified, has completed an approved nurse practitioner education program, and has an expanded scope of practice. A.R.S. §§ 32-1601(19–20). RNPs’ broad scope of practice is circumscribed by a Nursing Board

empowered to “establish[] those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician.” A.R.S. § 32-1606(B)(12).

ARRA’s authority to regulate radiation does not reach so far as to interfere with the use of x-ray technology in the provision of health care. *See* A.R.S. § 32-2811(C) (“Nothing in this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.”) Dentists, physician assistants, chiropodists, veterinarians and those “licensed in this state to practice medicine, surgery, osteopathy, chiropractic or naturopathic medicine” do not need “to obtain any other license for the use of an X-ray machine, but these persons are governed by their own licensing acts.” A.R.S. § 30-672(D). ARRA is neither competent nor authorized to dictate to a licensed medical professional when it may be necessary to order an x-ray examination or how to interpret an x-ray image. Instead, licensed medical professionals, including RNPs, are “governed by their own licensing acts.” *Id.* Here, the Nursing Board’s rule allowing licensed RNPs to order and interpret x-rays exempts RNPs from ARRA’s regulatory purview.

ARRA points to a 1982 attorney general opinion that concluded that a RNP’s authority to administer medications and treatment was not sufficient to authorize RNPs to order and interpret x-rays. *Op. Ariz. Att’y Gen. I82-034 (1982)*. After analyzing the governing statutes for the nursing profession, Attorney General Corbin concluded that “the ability to administer medications and treatment” was not “sufficient authorization to order and interpret radiographs.”

*Id.* at 3. However, the next sentence turns the applicability of this conclusion on its head:

Further, inasmuch as the Board has not promulgated any rules that would otherwise permit professional nurse practitioners to order or interpret radiography examinations, they may not engage in these activities.

*Id.* In 1987 the Nursing Board promulgated A.A.C. R4-19-508(B)(3) and “otherwise permit[ed]” RNPs to order and interpret x-rays. RNPs, governed as they are by their own licensing acts, are

now permitted to order and interpret radiographic tests. Nothing in the previous opinion of this office conflicts with this conclusion.

**Conclusion**

For the reasons stated above, the Nursing Board's regulation R4-19-508(B)(3), authorizing RNPs to order and interpret x-rays, is consistent with Arizona law.

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