



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by THOMAS C. HORNE ATTORNEY GENERAL May 4, 2011	No. I11-001 (R08-024) Re: The Acceptance of Standing Orders Under A.R.S. § 32-2811 by Persons Certified by the Medical Radiologic Technology Board of Examiners
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To: Shanna Farish, Executive Director
Medical Radiologic Technology Board of Examiners

Questions Presented

1. May a person certified by the Medical Radiologic Technology Board of Examiners (“MRTBE”) accept standing orders to use ionizing radiation on patients presenting with particular conditions or a set of symptoms, or must he or she only accept specific orders from a licensed practitioner for each individual patient?
2. Could a technologist be guilty of unprofessional conduct if a patient receives unnecessary radiation due to inadequate, redundant, or erroneous orders?

Summary Answer

Persons certified by the MRTBE may accept standing orders from licensed practitioners for particular conditions or symptoms and apply ionizing radiation to patients presenting with such conditions or symptoms and do not need an order from a licensed practitioner for each

specific patient.¹ In general, as long as certified individuals faithfully adhere to an order and act within the scope of the law under which they are licensed, there is no statutory basis for concluding that the technologist committed unprofessional conduct if a patient receives unnecessary radiation due to inadequate, redundant, or erroneous orders.

Background

In 1977, the Arizona Legislature established the MRTBE Board and provisions governing persons certified to work in radiology. 1977 Ariz. Sess. Laws, ch. 145, § 10. Sections 32-2801 to 32-2843 of the Arizona Revised Statutes (“A.R.S.”) require the MRTBE Board to ensure the adequate training and qualifications of persons operating x-ray equipment and limit the actions of certificate holders in order to protect Arizonans from the harmful effects of excessive and improper radiation.

There are multiple types of certificates. Section 32-2801(10) defines “practical technologist in podiatry certificate” as a certificate issued to “a person . . . who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.”² Section 32-2801(12) defines a “practical technologist in radiology certificate” as a certificate issued to “a person . . . who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.” Section 32-2801(15) defines a “radiologic technology certificate” as a certificate issued to “a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.”

¹ This Opinion concerns the ability of those certified by the Board to accept standing orders and does not address whether licensed practitioners may issue standing orders under their own statutes.

² Section 32-2801(8) defines “licensed practitioner” as “a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, podiatry, chiropractic or naturopathic medicine in this state.”

A “radiologic technologist” is a person who holds a radiologic technology certificate that allows him or her “to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.” A.R.S. § 32-2801(13). Section 32-2811(A) states 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.” Subsection B of A.R.S. § 32-2811 states:

A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating *in each particular case at the direction of a licensed practitioner*. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under which the practitioner is licensed. The provisions of the technologist’s certificate govern the extent of application of ionizing radiation.

(Emphasis added.). Section 32-2801(5) defines “direction” as “responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.” A certificate may be revoked if the holder “[h]as applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.” A.R.S. § 32-2821(A)(9).

Analysis

I. Standing Orders Versus Specific Orders for Individual Patients.

As noted above, A.R.S. § 32-2811(B) states that persons certified by the MRTBE may use ionizing radiation “only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner.” You have asked whether this statute allows a certificate holder to accept standing orders to use ionizing radiation on a patient presenting with a specific condition or set of symptoms and without receiving orders from a licensed practitioner with regard to a specific patient. In other words, is the phrase “in each

particular case” limited to orders for a particular individual, or does it include orders for a particular condition or set of symptoms? If it is limited to orders for a particular patient, then A.R.S. § 32-2811(B) would preclude a certificate holder from accepting standing orders for x-rays. On the other hand, if “in each particular case” includes a specific condition or set of symptoms, A.R.S. § 32-2811(B) would allow a certificate holder to accept standing orders for x-rays.

Under Arizona law, a court’s primary goal in interpreting a statute is “to fulfill the intent of the legislature that wrote it.” *Bilke v. Arizona*, 206 Ariz. 462, 464, ¶11, 80 P.3d 269, 271 (2003) (quoting *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993)). Arizona courts seek to “determine legislative intent by reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute’s context, subject matter, historical background, effects and consequences, and spirit and purpose.” *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). When the Legislature defines a term in a statute, one should apply that definition. *In re Andrew C.*, 215 Ariz. 366, 368, ¶15, 160 P.3d 687, 689 (App. 2007). When the Legislature does not offer its own definition or it appears from the context that the Legislature did not intend a special meaning, one gives words their ordinary meaning. *Mid Kan. Fed. Sav. & Loan Ass’n of Wichita v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991). If the language of a statute is clear and unambiguous, there is no need to resort to methods of statutory interpretation. *State v. Harrod*, 218 Ariz. 268, 277, ¶28, 183 P.3d 519, 528 (2008). Statutory language is ambiguous where it “allows for more than one rational interpretation.” *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 201, ¶3, 150 P.3d 773, 774 (App. 2007) (internal quotations omitted).

The Legislature has not defined the meaning of the word “case” as it is used in A.R.S. § 32-2811(B). “Case” is defined elsewhere as “an instance of disease or injury” but also as a “patient.” *Merriam-Webster’s Collegiate Dictionary* 191 (11th ed. 2008); *Simpson v. Owens*, 207 Ariz. 261, 273, ¶35, 85 P.3d 478, 490 (App. 2004) (noting that, in construing statutes, courts may reference well-known and reputable dictionaries). The first definition—an instance of disease or injury—indicates that “case” is not always tied to a particular person but instead includes a general medical condition that could afflict multiple human beings. The second definition—patient—would, however, tie “case” to a particular individual. Because “case” has multiple meanings and its definitions allow for more than one rational interpretation, one must apply statutory interpretation principles to discern the legislative intent behind the language in A.R.S. § 32-2811(B).

The first sentence of A.R.S. § 32-2811(B) states in its entirety, “A person holding a certificate may use ionizing radiation on *human beings* only for diagnostic or therapeutic purposes while operating in each particular *case* at the direction of a licensed practitioner.” (Emphasis added.) While the first part of the sentence talks about limiting the use of ionizing radiation on “human beings” to diagnostic or therapeutic purposes, the second part of the sentence states that ionizing radiation may be performed for each particular “case” directed by a practitioner. If the Legislature intended to limit the performance of x-rays to situations where the licensed practitioner’s order specifically names the patient, the statute could easily have been written to specify that the direction should be for a particular “human being” or “patient.” Instead, however, the Legislature used two different terms in the same sentence—a *human being* may receive the ionizing radiation and a licensed practitioner may issue orders for a particular *case*. Thus, reading “in each particular case” in the context of the full sentence suggests that

“case” is not limited to an individual human being or patient, but may also include “an instance of disease or injury.” As a result, the language of A.R.S. § 32-2811(B), “in each particular case” does not preclude the use of standing orders.³

II. No Statutory Basis for Unprofessional Conduct

Generally, if a patient receives unnecessary radiation because of inadequate, redundant, or erroneous orders, there is no statutory basis for imputing unprofessional conduct to a certified individual who faithfully adheres to an order within the scope of the law under which they are licensed.⁴ The statutes do not specifically identify any situation in which a certificate holder could be found guilty of unprofessional conduct for faithfully following an inadequate, redundant, or erroneous order. *See* A.R.S. § 32-2801(18) (unethical professional conduct); A.R.S. § 32-2811 (prohibitions and limitations); A.R.S. § 32-2821(A) (regulations for revocation or suspension of certificate; other disciplines); and A.R.S. § 32-2822 (unlawful acts). Because there is no statutory criterion for unprofessional conduct when a person acting within the scope of the law under which they are licensed faithfully follows an order, there is no statutory basis for a finding of unprofessional conduct if a patient receives unnecessary radiation due to an inadequate, redundant, or erroneous order.

Conclusion

A.R.S. § 32-2811(B) does not prevent persons certified by the MRTBE Board from accepting standing orders applicable to a particular condition or set of symptoms and then using ionizing radiation without specific orders for each individual patient. There is no statutory basis

³ A review of legislative history does not shed any additional light on the meaning of the language in A.R.S. § 32-2811(B).

⁴ Theoretically, there may be a circumstance where the order is so facially deficient that compliance could constitute unprofessional conduct.

for imputing unprofessional conduct to a certified person when that individual faithfully adheres to orders and acts within the scope of the law under which he or she is licensed.

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