

Florida Nurse Practitioner **SCOPE**



Volume I Issue I

A Publication of the Florida Nurses Association

November 2004

New Publication for FNA Nurse Practitioners

Paula Massey, RN
FNA Executive Director

The Florida Nurses Association is proud to announce this new publication with the goal of educating ARNP's about our history, our goals and our plans for the future. We also hope to highlight the work of ARNP's past, present and future as it relates to practice, advocacy, and achievements on a global and individual basis. We will seek your input as we work to make this a valuable communication and public relations tool for the great Florida ARNP's who have helped make advanced practice what it is today.

We thought it only fitting in this issue that we review the history of the evolution of the ARNP in Florida with those of you who may not know. This, our inaugural issue will go to all ARNP's in the state but subsequent issues will go to members only. We hope that the story will inspire many more of you to work together with a strength of purpose to reach the lofty but achievable goals before us. As we were the first state to celebrate Nurses Week, we were also a groundbreaking state to establish Florida Nurse Practitioner Week. We hope each year to promote increased activities during this week in recognition of Advanced Practice Nursing and what it contributes to the overall health of our state. You will find information on joining the Association later in this issue.

We wish you a Happy Nurse Practitioner Week and hope that you will read the contents of this newsletter and understand the importance of belonging to your professional association and presenting a unified front in the work that lies in front of us.

It has been quite a journey....

Barbara Lumpkin, RN
FNA Associate Executive Director



It seems like only yesterday when we first proposed a scope of Practice for Advanced Practice Nurses in Florida. The initial proposal was put forward in 1977 and in 1979 a definition of Advanced Registered Nurse Practitioners, with title protection for A.R.N.P., was added to the

Florida Nurse Practice Act. Florida was on the cutting edge of actually passing legislation regulating Advanced Practice in statute. Much of the language first adopted in 1979 remains in the current statute today, including the definition and purpose of the Joint Committee of the Board of Medicine and the Board of Nursing. Many who initially review

the Statute interpret the role of the Joint Committee as having some regulatory authority over the practice of ARNPs in Florida, but this is not true. The sole purpose of the Joint Committee is to identify those additional Medical Acts not already specified in the practice act that can be performed by Advanced Registered Nurse Practitioners in Florida. There is specific language authorizing the Board of Nursing to

develop rules to implement the decisions made by the Joint Committee as well as any provisions that regulate or implement appropriate general supervision by licensed physicians (MDs, DO's, and Dentists) through protocol agreements. In addition the Board of Medicine and the Board of Nursing are required to adopt identical rules regulating protocols and supervision.



Milestone: ARNPs Granted Authority to Prescribe Legend Drugs

The Joint Committee actually was first convened in December of 1987 to discuss authorizing ARNPs to prescribe legend drugs. At this meeting, without much opposition or discussion, the Joint Committee authorized ARNPs to prescribe legend drugs in accordance with a protocol agreement between the ARNP and his/her supervising/collaborating physician. It was at this meeting that the Secretary of the Department of Professional Regulation put forward a motion to require annual filing of protocols with the Department. It is important to note that the intent of this action was for record keeping purposes, not for review or critique.

By the spring of 1988, rules implementing the Joint Committee's decision to authorize ARNPs to prescribe non-controlled drugs were in place and ARNPs throughout the state began to prescribe legend drugs under a protocol agreement. Since that time there have been very few complaints filed with the Board of Nursing regarding the competency of ARNP's prescribing practices.

FNA Fights Medical Societies' Opposition To Advanced Practice

In 1983 and 1984, the Florida Medical Association proposed and lobbied very heavily for passage of a bill that would have limited physician's supervisory relationship to only two Advanced Registered Nurse Practitioners. We are proud to say that FNA was successful in defeating this proposal. If passed this would have had serious consequences on the nurse practitioner's ability to provide care, particularly in certain areas of the state that are so dependent on ARNPs for primary health care.

Next the Board of Medicine, in early 1984, promulgated a rule that limited physicians to having a supervisory relationship with only two ARNPs, and once again FNA along with the Florida Association of Nurse Anesthetists (FANA) challenged this rule. In addition the Board of Nursing took a very strong stance in opposition to the Board of Medicine's efforts to regulate Nurse Practitioners through rulemaking. It was because of nursing's unified opposition and the legal efforts of FNA, FANA, and the Board of Nursing, that we were successful in defeating this Board of Medicine's rule.

Even though it took place over twenty years ago this legal challenge resulted in nearly fifty thousand dollars in legal fees for the Florida Nurses Association. Since this successful challenge of the rule, neither the Florida Medical Association nor the Board of Medicine, has tried to limit the number of ARNPs that a physician can supervise. However the issue of supervision has been an ever hovering issue, especially as we put forward proposals to prescribe controlled substances and authorize ARNPs to provide more services.

ARNP Legislative Task Force Formed

In the spring of 1993 ARNP members of the Florida Nurses Association formed a coalition with the Florida Association of Nurse Anesthetists and the Florida Chapter of the American College of Nurse Midwives to unify efforts and work together to remove restrictions on ARNP practice. The three organizations formed the ARNP Legislative Task Force. This Task Force is still in existence today and continues to identify emerging issues affecting advanced practice. Each year the members meet to develop the legislative strategies for the upcoming year and plan the public relations campaigns to educate the public and legislators about the valuable role of ARNPs.

Opposition to ARNP Task Force's Sponsored Bills Begins

As more states across the country amended Nurse Practice Acts for the purpose of regulating Advanced Nursing Practice it seemed that some were authorizing Nurse Practitioners to practice independent of physician supervision or collaboration. It is true that some western states with many rural or sparsely populated areas were recognizing Nurse Practitioners as primary care providers, but a review of state Nurse Practice Acts done by FNA practice legal counsel, Cynthia Mikos, reveals that most states still require some degree of supervision by medical doctors. However our Task Force made the decision that first year to seek legislation that removed all required supervision by or collaboration with a physician. Even though our sponsors, Representative Elaine Gordon and Senator Patsy Kurth, were both well respected for their knowledge of healthcare issues it created quite a furor. When the bill was published the medical societies went ballistic and sent urgent notices to all their members telling them that Nurse Practitioners were planning to replace physicians as a way to curb health care costs. This message went out to physicians at the same time that they were receiving notices that HMOs and PPOs were cutting their level of reimbursement meaning, that their pocketbooks were being squeezed by public and private third party payers. Physicians stormed Tallahassee to rant and rail about how the public would be harmed by allowing Nurse Practitioners to practice without supervision by a physician. Needless to say even though we had two well respected legislators as our sponsors the bill was defeated in the House Health Care Committee early in the 1994 legislative session. After this experience and the tone of the debate it was quite clear to us that independent practice for ARNPs in Florida would not be possible in the near future.

In 1995, members of the ARNP Task Force decided on another approach by focusing on seeking the authority to prescribe controlled substances. In addition to being able to prescribe the most

appropriate medication, the ability to get a Federal Drug Enforcement Agency (DEA) Number would lead to ARNP prescriptions being tracked like all other prescribing practitioners. This would also provide added consumer protection because the prescriptions would be properly labeled with the name of the actual prescribing practitioner. Even though the Federal Drug Administration (FDA) discourages use of the DEA number as a billing and tracking number it became a very common practice among pharmacy chains. In other words it became a way for most pharmacies and retail drug chains, as well as insurers and all third party payers, to process payment and other business related activities rather than assuring that only designated practitioners prescribe legend drugs.

Again Representative Elaine Gordon and Senator Patsy Kurth agreed to sponsor our bill, this time focusing on ARNPs ability to prescribe controlled substances. So during the 1995 legislative session, we were now blind sided by the massive opposition to our bill by the Florida Pharmacy Association. Even though NPs in many states must prescribe in accordance with a protocol or collaborative practice agreement, the Florida Pharmacy Association argued that a pharmacist would be subject to criminal prosecution if he/she dispensed a prescription for a controlled substance without actually seeing the protocol between the physician and the ARNP. With the medical societies still clamoring that we were still seeking independent practice and arousing their members to lobby against our bill, they were now joined by the Florida Pharmacy Association in mounting opposition among their members. Once again we experienced early defeat of our bill and therefore our goal to provide authority for ARNPs to prescribe controlled substances.

Minimum Graduate RN Education Becomes An Issue

During the struggles of seeing our bills defeated in 1994 and 1995, we were constantly reminded that Nurse Practitioners do not require a master's degree, and that in fact many had only a few months of training beyond the generic nursing education required for licensure as a Registered Nurse. Therefore, in 1996 we proposed language to require nurse practitioners to have a graduate degree in nursing starting in 1998 for Nurse Practitioners and in 2000 for Certified Registered Nurse Anesthetists. Since the Florida Chapter of the American College of Nurse Midwives was opposed to requiring a graduate degree for Certified Nurse Midwives (CNM) we agreed to exempt CNMs from the graduate degree requirement. In addition to passing amendments to the Nurse Practice Act requiring a Master Degree for ARNPs, we added language in the practice act that authorized ARNPs to order physical and occupational therapies, and laboratory tests.

Strategy Intended To Lay Groundwork For Future Legislation

During the 1996 session of the Florida Legislature, when we realized that getting authority to prescribe controlled substances was not possible, we agreed to an amendment that called for a legislative mandated study. This Task Force was made up of representatives of the Florida Nurses Association, a representative of the Florida Medical Association and the Florida Osteopathic Medical Association, a representative of the Florida Hospital Association, and a representative of the Florida Pharmacy Association. The Task Force presented the results of their study to the Legislature in January of 1997.

To this day FNA distributes this Report to legislators on the health care committees as the Report clearly shows that there is no public safety concern indicating that Advanced Registered Nurse Practitioners should not be authorized to prescribe controlled substances. We use this Report, now seven years old, because it demonstrates that the trend is for more states to authorize NPs to

prescribe controlled substances. And further more, those states who do restrict prescribing schedule III, IV, and V, allow NPs to prescribe schedule II drugs. When the report was completed there were only thirty-seven states where NPs could prescribe controlled substances, whereas now there are forty-four.

During the 1997 legislative session Representative Elaine Bloom from Miami and Senator Mandy Dawson from Ft. Lauderdale filed a bill for the 1997 legislative session that called for implementation of the recommendations identified in the Report. In addition each member of the legislature received a copy of the Report as specified in the 1996 legislation that mandated the study. Those recommendations were:

Step 1. Provide the appropriate statutory and/or rule changes under Chapter 893 Florida Statutes (Drug Enforcement Administration) and other actions necessary to allow advanced registered nurse practitioners to file for an application to prescribe controlled substances. Approval of such application should include but not be limited to the following:

- a. Satisfactory completion of course requirements which include the prescribing of controlled substances, as determined appropriate by
 1. by a multidisciplinary committee of the Board of Nursing or other joint committee as deemed appropriate by the legislature.
- b. Documentation of experience prescribing non-controlled substances, by a multidisciplinary committee of the Board of Nursing.

Step 2: Provide the appropriate statutory and/or rule changes and other actions as necessary

- a. To grant ARNPs in Florida with an approved application to prescribe controlled substances prescribe controlled substances under a protocol with a physician licensed under Chapter 458 (M.D.), 459 (D.O.), or 466 (Dentist) Florida Statutes.
- b. To allow ARNPs in the state of Florida with an approved application to prescribe controlled substances to make application to the U.S. Department of Justice, Drug Enforcement Administration (DEA) for issuance of a DEA number.

Step 3. Provide the appropriate changes to the database and tracking systems of the Department of Health and the Agency for Health Care Administration to collect and analyze data relating to the prescribing of controlled substances.

Efforts Continued To Change DEA Law In Spite Of Medicine's Opposition

From 1997 through the 2001 legislative sessions, the bills we had filed to authorize Nurse Practitioners to prescribe controlled substances included the recommendations of the 1997 Report. Each year we worked very hard to educate legislators about how Nurse Practitioners are educated and we did gain many supporters, but the extreme opposition of the Medical Association continued. It is important to note that organized medicine consistently gives huge contributions to both political parties and many candidates. When the Medical Associations make an endorsement with contributions they demand that those candidates, if elected, oppose any expansion of practice for non-physician providers. Even though we make compelling arguments many legislators admit that they made a commitment before they really had learned all sides of the issue. We continued to have significant opposition from the Pharmacy Association until 2000, when

we sensed that their new leadership was perhaps more willing to consider ARNPs as qualified prescribing practitioners.

In 1999 we added the support of newly elected Governor Jeb Bush, who was very vocal and public in his support of our efforts to authorize Nurse Practitioners to prescribe controlled substances. Still each year we faced questions of how much actual collaboration there is between nurse practitioners and the physicians ARNPs work with so the seeds of doubt, nourished by these questions raised by the medical association lobbyists, continued to lead to the defeat of our proposals.

Board of Nursing Agrees To Study Issue of Supervision

In the summer of 2002, FNA asked the Florida Board of Nursing if they would convene a multidisciplinary ad hoc committee to look at the issue of supervision and make some recommendations on how supervision might be better defined in the rules or the practice act without putting added barriers or restrictions on the practice of ARNPs in Florida. Board Chair, Dr. Pam Chally and ARNP member, Kerri Hockett established the Committee that met in December of 2002. The committee members were:

Keri Hockett, ARNP member of the Board of Nursing
Michele Bednarzyk, ARNP Chair Northeast Regional ARNP Group, Jacksonville
Sharon Koch-Parrish, Ph.D. ARNP Chair FNA Practice council
Linda Brown, ARNP Member Board of Lee Memorial Health System
Deborah Saylor, ARNP CNO Holy Cross Hospital, Ft. Lauderdale
Nancy Ross, Ph.D. ARNP Director of Nursing Education, University of Tampa
Camille Caldwell, ARNP, Regional Liaison American Academy of Nurse Practitioners
Thomas McMicken, M.D. Family Practice Physician, Bartow, Member Florida Academy
June Leland, M.D. James Haley V.A. Medical Center

That Committee made the following recommendations that are now included in the bills the Florida Nurses Association had filed in 2003 and 2004 and that we plan to file in 2005.

Require that the supervising physician be the holder of an unrestricted Florida License to practice medicine under Florida Chapters 458 or 459 and that the primary practice site of the physician is in Florida. Clarify that only CRNAs may practice under supervision of a Dentist licensed under Florida Chapter 466.

Require a meeting between the ARNP and the supervising physician at least quarterly for quality assurance and the Board of Nursing will by rule devise a method and number of cases to be reviewed.

Go forward with rules developed in 2002 that clarify that only protocols for delegated medical acts, not advanced nursing acts, need to be filed with the Department/Board and that the filing be required only with biennial renewal of license or when any changes in the protocols are made.

Clarify that the current rule and definition of supervision found in FAC 46 B9-4.001, which permits consultation/communication by telephonic device be maintained as is.

To immediately address continuing competency concerns, initiate promulgation of a rule to require that ARNPs meet thirty hours of continuing education during each biennial renewal period. The committee actually supports ARNPs having an additional 16 hours making it a requirement of forty hours for license renewals but to go beyond thirty requires a statutory change.

Require certification by a recognized National Certifying Organization such as AANC for initial certification and renewals for

ARNPs in Florida. (Current ARNPs would be grand mothered in so that they would not have to meet this requirement.)

Gaining Support From Other Health Professional Groups

Even though our recent bills have continued to meet intense opposition from the medical associations we have gained the support of significant other associations and groups. The Florida Pharmacy Association now supports our efforts and the Florida Chapter of the AARP has added their name to the list of supporters. The Florida Health Care Association representing Skilled Nursing Facilities also supports our bill along with the Florida Association of Homes for the Aging. Last year the Florida Pain Initiative joined the other groups in support of our bill and now we hope to gain the support of Hospices for our 2005 legislation.

Preparations For The 2005 Legislative Session

Since the close of the 2004 legislative session we at FNA have traveled many miles and spent many weekends attending political events, walking with candidates, and meeting with those we know will be in leadership positions during the 2005 legislative session. We have met with Senate President Designate, Senator Tom Lee from Brandon several times. On one of these occasions, it was at an event hosted by our lobbyists, Bob Levy and Associates and we actually sat at the lunch table with Senator Lee and had his undivided attention for over an hour. We traveled to Panama City to meet with Speaker of the House Designate, Representative Alan Bense to discuss ARNPs and other health issues with him in detail. In addition FNA has been present at events he has sponsored over the summer and fall to raise money for House of Representatives incumbents and candidates.

In addition to FNA's efforts to be visible at most political events, we have carefully monitored Board of Medicine meetings, Board of Nursing meetings and have worked in concert with the Florida Association of Nurse Anesthetists to educate legislators, agency representatives and other officials about the true impact of the Fourth District Court of Appeals Ruling in the Ortiz Case.

In July we traveled to Naples to be at the first ever joint meeting of the Board of Nursing and Board of Medicine. We reported to our members that this meeting was professional and cordial, yet the very next day the Board of Medicine voted to initiate work on a rule to address appropriate supervision of ARNPs by physicians! This just reinforces why it is so important that FNA participate in meetings and events that may impact our goals.

It has been a very busy election year but we are hopeful that the 2005 and 2006 legislative sessions will be much more positive for the nursing profession and for the people of this state. Health care will be a major priority issue with our state's financial resources stretched and the health care needs of our citizens expanding.

Continuing a Proud Legacy of Advocacy

Bonnie C. Sklaren, MSN, ARNP
Chair, ARNP Legislative Task Force

The year 1993 found Nurse Practitioners in Florida and around the country optimistic, idealistic, excited and on the move. The Clinton administration was moving its Health Care Agenda, there were 36 million people in America who were uninsured or underinsured and NPs were to be part of the solution to increase access to health care.

The Florida Nurses Association formed a coalition with the Florida Association of Nurse Anesthetists and the Florida Chapter of the American College of Nurse Midwives to bring the Nurse

Practitioners in the State together to address ways to remove barriers to our practice, hence the "birth" of the ARNP Legislative Task Force. Many hours were spent in meetings and conference calls to reach consensus on a logo for the task force, on legislative content and agreement on ways to raise money. It became clear to us early on if we were to have any success, we would need to work together and we would need to raise a lot of money. We did both.

The money was used to print and disseminate information about NP practice to policy makers, consumers and other health care providers; we hired a lobbyist, Bob Levy, to work with Barbara Lumpkin and we worked to educate our NP colleagues on the importance of political activism as a means to help move our agenda. More recently we engaged a professional public relations firm to help with marketing and media exposure.

Does this sound familiar? Not much has changed in terms of what we are doing and what we need to continue doing. You can see from the article by Barbara Lumpkin in this newsletter, how much we have accomplished and the amount of hard work, dedication and commitment it takes to make things happen.

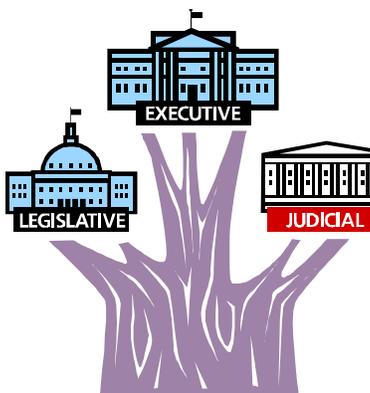
Here we are in 2004, health care is still a hot political topic, now there are more than 46 million people in America who are uninsured or underinsured and NPs remain a viable solution to improving access to care. We must continue to work together, continue our fund raising efforts and political activism to help assure our place in the health care delivery arena.

We still face the challenge of obtaining prescriptive authority for controlled substances while assuring legislative attempts to restrict our practice are defeated. We need all of you to participate and help in any and all ways you can. We need money and we need volunteers to meet with their legislators to educate them about our scope of practice and to help with campaigns. We need NPs to write letters to newspaper editors when appropriate, to meet with editorial boards to discuss our issues and maximize our presence in the media. No one can nor

would be interested in participating in all of these events. The key is to do what you feel comfortable with and encourage your colleagues to do the same. One thing we can all do is donate to the cause. FNA administers The ARNP Legislative Task Force's dedicated bank account where contributions are deposited and expenditures tracked. Individual checks and checks from the regional groups can be made payable to the ARNP Legislative Task Force. Groups can raise money during dinner meetings – have raffles, pass the hat, collect all loose change, every penny counts. I encourage each of you to send a check today, it is an investment in your professional future.

If you have never worked in a political campaign, this election year is a great time to start. It is easy and can actually be fun to walk with the candidate of your choice, contribute to the campaign fund, make telephone calls, hold signs, work the polls. Nurses have a great deal of credibility with the public and gain credibility with the legislators when they are willing to support campaigns.

We appreciate everything you have and will do to help promote our profession and support our efforts to support you



Summary of 2004 Legislative Session

Barbara Lumpkin, RN
Associate Executive Director

During the 2004 Legislative Session we were able to get terrific sponsors to file our four ARNP bills and we passed two out of the four. So the 2004 session was successful. As we prepare our strategic plan for the 2005 legislative session it is important to take a moment to review last year's victories and challenges.

HB 103, sponsored by Representative John Quinones along with the Senate companion bill, sponsored by Senator Mike Fasano, sailed through all committees and was one of the first bills signed by the Governor early in the session. This is the bill that states that pharmacists are to assume that prescriptions written by ARNPs and PAs are valid. It also requires that prescription labels include the name of the actual prescribing practitioner.

We know that some pharmacies have yet to change their procedures to comply with this new law. If you know of pharmacies that still require pharmacists to place the name of your supervising physician on prescriptions please let us know the name and address of the pharmacy.

SB 1430, sponsored by Senator Victor Crist with the House companion bill filed by Representative Yolly Roberson, was also passed without much, if any opposition or debate. The bill authorizes ARNPs to perform employment physicals on FDLE and other law enforcement officers.

In addition to being successful in getting two bills passed and signed by the Governor we mounted a good defense and got two onerous bills defeated.

HB 367, filed by Representative Shelly Vana at the request of the Florida Society of Dermatologists, was a bill that would have severely restricted ARNPs and PAs who work with Dermatologists. The bill required that patients, on an initial visit to a Dermatology Practice would be seen by a Dermatologist. Also any existing patient who presented with a new problem would have to be seen by the dermatologist. Actually Senator Fasano supported our efforts to get the Senate bill filed by Dr. Peaden amended so that it would not have restricted ARNPs or PA's, but that bill after being amended, was stalled. In the House we appreciate very much the support of Health Care Committee Chair Frank Farkas in getting this bill stalled in his committee. We anticipate that a similar bill will be filed this year and we are ready to mount significant opposition when it appears.

HB 1561, Sponsored by Representative Stacey Ritter, was filed at the request of the Florida Academy of Family Practice Physicians. The bill was very confusing to read, due in part to the multiple definitions for a "physician practice" versus a "satellite practice site". The crux of the bill would have required that a supervising physician be "on site" 30% of the time in a location where ARNPs or PAs provide services. Fortunately there wasn't a Senate companion and the bill did not progress after one committee workshop on the bill.

In preparation for the upcoming legislative session, we requested a meeting with the Florida Academy of Family Practice Physicians with the purpose of addressing their concerns and reaching agreement on less restrictive language for ARNPs and PAs in the statute. Dr. Mary Tittle, PhD, ARNP, FNA President; Bonnie Sklaren, ARNP Chair of the ARNP Legislative Task Force; Vicky Stone-Gale, ARNP, Chair of the ARNP Focus Group; Paula Massey, RN, FNA Executive Director and myself met with the immediate Past President, their President-Elect, and their Executive Vice President in August. The meeting was very productive and both parties agreed to continue meeting in an effort to try to resolve these concerns. We agreed to

convene the next meeting within the month but mother nature stepped in with four hurricanes in Florida and did delay this intent. A follow-up meeting will be held before the end of the year.

While we did not get our prescribing bill passed in 2004 we did gain the support of several members of the Senate Health Care Committee and that in itself is tremendous progress. We are optimistic that we will be successful in getting our bill passed during the 2005 session. With membership and local lobbying efforts of all ARNPs in Florida our chances of success are greatly enhanced.

Rest assured Bob Levy and his staff, FNA members, and your FNA staff are traveling the state, educating legislators, candidates, and legislative staff members about Advanced Registered Nurse Practitioners. We are seeking early support from legislators and legislative leaders, including Senate President Designate Senator Tom Lee and House Speaker Designate, Representative Alan Bense for our prescribing bill during the 2005 session.

**ASK THE ACCOUNTANT
C&L VALUE ADVISORS, LLC**
Jolene Loos, CPA



ARE YOU MAXIMIZING YOUR AUTOMOBILE EXPENSE DEDUCTION?

One of the big mysteries for health care professionals seems to be how much they can deduct for the business use of their car, how they

calculate that deduction and should they buy or lease their car. This article will attempt to answer those and other questions.

HOW DO I KEEP TRACK OF MY BUSINESS MILEAGE?

The nice part about the IRS regulations regarding this aspect of auto usage is that you don't have to do it to claim the deduction on your return. But, if audited, you do have to be able to reconstruct how you



came up with the amounts. I believe this is a very simple calculation for most health care professionals. Most health care professionals have the same routine on a weekly basis. You go to your office, then stop at one or more hospitals, then back to the office and home. Everything from the first stop at the office to the last stop at the office is

considered business mileage. On top of that you go to business meetings with drug reps, other health care professionals, your accountant, your lawyer, and other individuals who relate to the running of your practice. So, if you can figure out what this normal routine is, and if you know how many total miles you drove the car during the year, then it's relatively easy to figure the business usage.

WHAT'S THE EASIEST WAY TO GET THE DEDUCTION?

The easiest way to receive a tax benefit from the use of your car is to take the business mileage calculated based on the above rules and multiply it by the current IRS allowable rate. That rate for 2003 was 36 cents per mile and for 2004 it is 37.5 cents per mile.

IS THERE A WAY I CAN GET A LARGER DEDUCTION?

In most cases if you calculate actual expenses versus the mileage deduction then you benefit from a higher deduction, especially if you are leasing a car or have recently purchased a high end model. This is especially true if you buy a car weighing over 6,000 pounds as these vehicles do not qualify for the reduced depreciation method on luxury vehicles and therefore receive a larger tax deduction.

WHAT IF I'M AN EMPLOYEE OF A CORPORATION?

Talk to your employer about setting up an accountable reimbursement plan. For most health care professionals they don't receive any benefit from the deductions on their personal return when they are an employee of a corporation. However, with some relatively simple calculations your employer can reimburse you for the amount you would be able to deduct on your return. This is also beneficial to you and the employer if this is paid as part of your bonus as neither of you have to pay Social Security or Medicare taxes on this payment.

SHOULD I BUY OR LEASE MY CAR?

My first question to my clients when they ask me this is, "How long are you going to keep the car?" The question of purchasing or leasing is totally driven by economic benefit and can be addressed with some quick calculations. However, a rule of thumb is that if you only keep cars for two to three years and then trade in for a new model you are better off leasing in most instances.

I hope this has helped to answer some of your questions. If you would like more information or assistance with another topic relative to your practice, please contact me at:

Jolene T. Loos, CPA
C&L Value Advisors, LLC
4805 West Laurel Street, Suite 100
Tampa FL 33607
813.286.7373
Fax: 813.289.1959
jloos@clvalue.com
www.clvalue.com

Jolene Loos is a partner with C&L Value Advisors, LLC. She has been practicing as a CPA in the Tampa Bay Area since 1976 specializing in the health care profession. The firm's services include financial statement preparation, business and personal tax preparation and planning, and small business consulting.

ADVANCED PRACTICE WITHIN THE LAW



This article is the first in a series addressing legal issues facing advanced registered nurse practitioners ("ARNPS") in Florida. The author, Cynthia A. Mikos, is a nurse attorney certified in health law by The Florida Bar who represents nurse practitioners, certified registered nurse anesthetists ("CRNA") and nurse midwives in her legal

practice. The information shared in this column is for the purpose of general education and is not legal advice. Readers are encouraged to engage a lawyer familiar with the subject of their question to answer any specific inquiry they may have.

Victor Ortiz v. Florida Board of Medicine: A Case Affecting All ARNPs

Cynthia A. Mikos, Esq.

For approximately five (5) years, a battle has raged between CRNAs and anesthesiologists regarding the administration of general anesthesia in physician office settings. The latest development in the conflict is a July 2004 ruling from the appellate court in the case, *Victor Ortiz v. Florida Board of Medicine*, 2004 WL 1621440, 29 Fla. L. Weekly D676. The decision once again invalidated the portion of the Board of Medicine's office surgery rule requiring same specialty on-site supervision of CRNAs administering anesthesia during level III surgery in a physician's office. The ongoing debate is not definitively resolved because the Board of Medicine intends to contest the ruling or seek alternative methods to accomplish its goals as described more fully below.

The struggle of the CRNAs is instructive for all advanced practice nurses in Florida because it represents the first time that Florida physicians successfully mandated same specialty, on-site supervision of advanced practice nurses through rulemaking by the Board of Medicine. Historically, by statute, ARNPs have been subject to "general supervision" by a physician in accordance with practice protocols filed with the respective licensing boards. General supervision requires physician availability in person or by a communication device, such as a telephone, not on-site supervision.ⁱ The supervision must be "appropriate for prudent health care providers under similar circumstances" but same specialty supervision is not required.ⁱⁱ

A heated debate arose in 2000 when the Board of Medicine, as part of a major revision to the office surgery rules, imposed a requirement that physicians could be disciplined if CRNAs were not directly supervised by an anesthesiologist, rather than a surgeon, during level III surgeries in an office setting. The proposed rule was hotly contested by multiple professional associations including the Florida Nurses Association ("FNA") and the Florida Association of Nurse Anesthetists ("FANA") which argued, among other things, that the Board of Medicine was attempting to regulate the practice of advanced nursing, a duty reserved to the Board of Nursing or to the Joint Committee, which consists of members from both the nursing and medical boards. The rule was initially deemed invalid by an Administrative Law Judge ("ALJ") who held the Board of Medicine lacked competent and substantial evidence to demonstrate the need for the change. However, on appeal, the First District Court of Appeal in Tallahassee overturned the ALJ's decision based on the standard of review used by the ALJ, and reinstated the rule. The rule took effect in April 2002, and CRNAs were forced out of many office surgery practices across the state.

Approximately one (1) year later, an individual CRNA, Victor Ortiz, filed a second challenge to the office surgery rule. Ortiz raised an argument that was not ruled on in the previous case. Ortiz argued that the Board of Medicine exceeded its authority when it implemented the same specialty supervision requirement. More specifically, he argued that the Board's rulemaking authority was limited by Section 458.303 of the Medical Practice Act which expressly precludes the Board of Medicine from interpreting the grounds for discipline against physicians in such a way as to prohibit any service rendered by a registered nurse under the direct supervision and control of a licensed physician. The administrative law judge ruled against Ortiz, and upheld the rule. Ortiz then appealed the ALJ's decision to the Fourth District Court of Appeal in West Palm Beach. The Fourth District Court agreed with Ortiz, and found the rule to be invalid. It specifically held that CRNAs were registered nurses and that the Board exceeded its rulemaking authority

when it adopted a requirement that a CRNA's supervising physician must be an anesthesiologist. The court noted that under the Nurse Practice Act, a CRNA may be supervised by any licensed physician. The court also concluded that the Board of Medicine cannot restrict the practice of CRNAs indirectly through the discipline of physicians when it cannot restrict CRNAs directly. The court further noted that the Joint Committee, not the Board of Medicine, was charged with setting levels of physician supervision of CRNAs.

The Board of Medicine has expressed concern about the ruling in the *Ortiz* case and explored options for overturning the decision. The primary fear appears to be a possible interpretation that the case would permit a physician to delegate the administration of general anesthesia to a registered nurse who is not certified as a CRNA. Others argue that such alarm is unwarranted because the Nurse Practice Act prohibits nurses from practicing outside their scope and the Board of Nursing would not permit such acts. Nevertheless, the Board of Medicine remains uncomfortable with the ruling. The Board of Medicine voted at its October 2004 meeting to seek a discretionary review by the Florida Supreme Court, which is granted in only a small percentage of cases. Similarly, the Board elected to explore possible rulemaking to clarify that a nurse supervised by a physician must act within his or her scope of practice. Lastly, the Board opted to seek legislation to change the statutory provision that the court relied on to invalidate the rule. Neither FNA nor FANA is opposed to clarifying in rule that nurses must be practicing within the scope of their practice act. However, both associations want the *Ortiz* decision to stand and will oppose imposition of same specialty supervision. All ARNP's should monitor the progress of this situation as it continues to unfold due to the potential long term ramifications on the practice of all advanced practice nurses.

¹ The provision in Florida's Nurse Practice Act, Section 464.003, Florida Statutes should not be confused with payer requirements where in order to receive reimbursement for certain services, the ARNP may be required to be directly supervised.

¹ See 64 B9-4.010 Florida Administrative Code.

We would love to have your opinion!

Our goal is to see this publication be a useful resource for you. Do you have questions or issues you would like to see covered? Let us know by faxing us the form below or emailing us at govt@floridanurse.org

Dear Scope Editor,

I would like to see articles on the following topic(s):

1. _____

2. _____

3. _____

Fax to: 407-896-9042

The Florida Nurses Association needs your voice and your support to ensure better ARNP practice and better care for the citizens of Florida. Go online at www.floridanurse.org to join today. You can pay the entire amount, you can pay in two installments or you can sign up for our Automatic Monthly Withdrawal from your checking account at an affordable \$21 per month. You can also contact us at the number below and we would be happy to mail an application if you are not online!



P. O. Box 536985
Orlando, FL 32853
(407) 896-3261
(407)896-9042
info@floridanurse.org
www.floridanurse.org

**ARNP Legislative Task Force
Donor Form**

The ARNP Legislative Task Force is the backbone of the advocacy work we do for the ARNP's of Florida. Many advances would not be possible without the resources provided by ARNP's who have contributed over the years.

Both the work and the need is ongoing.

Help make a difference for the future of Advance Practice.
DONATE TODAY!

Name _____
Address _____
Phone _____
Fax _____
Email _____

Yes! I would like to donate to the Future of ARNP Practice

_____ Check enclosed _____ Credit Card

Credit Card # _____

Expiration Date _____ Security Code _____

Signature _____

Florida Nurses Association
P.O. Box 536985
Orlando, FL. 32853-6985
(407)896-9042 -Fax

Nurse Practitioner Week

November 9-15, 2004

Advanced Practice and Advocacy-The Power of Compassion

