

# CRNA Scope of Practice in Missouri

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*Does a CRNA in Missouri, who has already been ordered by a physician to provide anesthesia services, need additional specific orders to administer “controlled substances” as part of those services?*

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If you are a CRNA in Missouri working in a non-medically directed setting, you may have been made aware of a recent letter that the Missouri Hospital Association (MHA) sent out to hospitals and pharmacists regarding CRNA administration of “controlled substances” as part of providing anesthesia services. The letter explained that although they were aware that there were contradictory interpretations regarding this issue, MHA encouraged hospitals to follow Bureau of Narcotics and Dangerous Drugs (BNDD) guidance until further “official” legal clarification could be made by the Missouri Department of Health and Senior Services (DHSS).

## Background:

The issue regarding “controlled substance administration” stems from the BNDD assertions that; “all controlled substances must have a written physician order”. This assertion can be traced back to their misinterpretation of the collaborative practice and prescriptive authority statute, §334.104.5<sup>1</sup>. BNDD incorrectly asserts that since CRNAs are “excluded” from collaborative practice agreements and prescriptive authority, they cannot administer controlled substances without a physician order/protocol “authorizing” the CRNA to do so. This interpretation of Section 334.104 is misplaced. In fact, this statute clearly provides for the exemption of CRNA APRNs, *with respect to drugs*, from the limitations placed on the authority of all other advanced practice nurses. There is a very real difference between the exemption from the limitations on drug authority for CRNAs set out in §334.104 and the exclusion BNDD incorrectly reads into the statute. The interpretation by BNDD associated with §334.104.5 is a major departure from what has been past practices in the administration of controlled substances by CRNAs. The MoANA and the AANA have refuted these assertions by BNDD consistently.

## Practice Issue in Question:

BNDD has taken the position that Missouri CRNAs are not within their scope of practice to administer controlled substances to a patient undergoing a surgical procedure without a specific physician order or physician signed protocol for each patient and each instance controlled substances are administered. This includes instances where the CRNAs were first “ordered” by physicians to provide “anesthesia services” for surgery. When asked to clarify, BNDD stated that the supervising physician signature on the anesthesia record

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<sup>1</sup> §334.104.5, RSMo Notwithstanding anything to the contrary in this section, a registered nurse who has graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor and has been certified or is eligible for certification by the Council on Certification of Nurse Anesthetists **shall be permitted to provide anesthesia services** without a collaborative practice arrangement provided that he or she is under the supervision of an anesthesiologist or other physician, dentist, or podiatrist who is immediately available if needed.

was not sufficient to authorize the CRNA to obtain and administer the controlled substances throughout the procedure and added “controlled substances” were not inherently included in the physician order for “anesthesia services”, stating it required a separate, specific order. In fact, they added, CRNAs administering controlled substances intraoperatively without a physician signed protocol or order for each instance the meds were given could, in their opinion, be considered as committing an illegal act (felony) with far reaching consequence including increasing liability exposure for the facility, supervising physician, and the CRNA.

Upon MoANA’s discovery of BNDD’s position, multiple meetings were held by MoANA’s Board of Directors, the AANA, MHA, BNDD, and legal counsel in an attempt to solve this gross misinterpretation of statute without success. MoANA was then strongly advised to formally seek official legal clarification from DHSS.

Although legal counsel for the AANA and the state of Missouri both strongly refute BNDD’s interpretation, it effectively stands until DHSS (the department that oversees BNDD) officially administers its legal clarification. Until clarification is issued, the **Wisconsin Physician Services (WPS)** will utilize the BNDD interpretation as outlined as the official interpretation. WPS is the administrative contractor for CMS (Medicare and Medicaid) and is responsible for reviewing and evaluating reimbursement of claims for anesthesia services. This means, if you are a CRNA in Missouri and you have billed Medicare for services, you must have a protocol or physician orders in place on every patient for every instance in which controlled substances were administered. Without these orders/protocols you won’t be reimbursed for services, recoupments will be made, time-consuming audits will ensue, and you risk losing the ability to participate as a provider.

## Why does this matter?

- A. Legal Clarification-** None of us wants to break the law, lose our license, or be the reason a medical malpractice claim is settled instead of litigated due to “illegal practices”.
- B. CMS Reimbursement and Impact on CRNA services**
  - Many hospitals and CRNAs thought that as long as there was a physician signature on the anesthesia record, this signified that the patient was supervised while receiving “anesthesia services” and the medications including “controlled substances” were authorized. According to BNDD’s interpretation, a physician signature on the anesthesia record does not authorize the CRNA to legally administer the controlled substances.
  - BNDD's interpretation has resulted in Medicare payment denial for anesthesia services performed by non-medically directed CRNAs in more than ten ASCs here in Missouri. This interpretation has been the catalyst for Medicare to initiate time-consuming audits of more than 800 patient claims this past year, recouping thousands of dollars, and literally crippling anesthesia providers from providing care. It is important to note, no other state has had this issue and many states do not have prescriptive authority for the CRNAs.
  - CRNAs do not have prescriptive authority in Missouri because they do not “prescribe” when providing anesthesia services--they “administer” medications upon a doctor's order for "anesthesia services". CRNAs are not excluded from prescriptive authority--they are exempted when providing “anesthesia services”. BNDD is misinterpreting this provision in statute and then applying it inappropriately to other provisions.
  - Physicians may not want to work where they must oversee highly complex controlled substance protocols. CRNAs don’t want to work in situations where their ability to practice safely is crippled by unnecessary restrictions. Hospitals don’t want to be exposed

to the ridiculous notion of “felonious” conditions; all of which lends itself to decreased patient access to care. The potential for this to spread to neighboring states is frightening.

**What can we do now as a CRNA in Missouri:** The AANA and MoANA believe this interpretation to be grossly inaccurate and that these “orders and/or protocols” are unnecessary, burdensome, unsafe and decrease patient access to care. MoANA has submitted a formal request to DHSS for clarification of the interpretation and included a well-reasoned legal opinion obtained by MoANA’s attorney supporting its assertions. We are now awaiting a response. In the meantime

1. Be informed and understand your legal scope of practice so that you can offer well-educated responses when questioned by facility directors, surgeons, and pharmacists.
2. Take a moment to read the letter written by the Missouri Hospital Association and the accompanying legal opinion set forth by Tom Rynard, legal counsel to MoANA.
3. Until official clarification has been released by DHSS, make sure the facilities have implemented physician signed orders/protocols for every patient receiving controlled substances administered by the CRNA.
4. If you need more information and further clarification please feel free to contact any of the following:

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