



Memorandum

TO: CDC Members

FROM: Michael J. Arnold, Legislative Advocate
Kristian E. Foy, Legal Counsel

DATE: April 14, 2003

SUBJECT: CNA Lawsuit Challenging LVN Regulations – Injunction Denied

We are pleased to report that the Sacramento Superior Court has reaffirmed its tentative decision to deny the California Nurses Association's request for a preliminary injunction to stop the application of the new LVN regulations which became effective on February 28, 2003. In the tentative ruling issued by the Sacramento Superior Court, the court stated as follows:

“The application for preliminary injunction is denied. The plaintiff has not established a probability of success on the merits.”

On April 14, 2003, the Superior Court reaffirmed its preliminary decision, as noted above.

The CNA, during oral comments on their request for a preliminary injunction, stated that they would be pursuing an appeal of the Court's decision to deny the preliminary injunction. Such an appeal may be difficult to achieve. However, the CNA also has the right to continue to pursue their court case. Their case will ultimately be heard in the Sacramento County Superior Court. We have no information relative to the timing for the next steps in this judicial proceeding.

However, it is important that the court has already rejected the CNA arguments on two occasions. CNA originally asked for a Temporary Restraining Order (TRO) and was rejected by the Court. Then they requested the preliminary injunction which has also been rejected by the court. This is generally a good sign that they will not be successful with their ultimate lawsuit on the merits.

LVN's May Continue to Be Used Unless and Until the Court Reverses its Decision

For those dialysis clinics currently utilizing LVNs, the Court has affirmed the ability for you to continue to use them in the fashions permitted by the new LVN regulations. For those considering the use of LVNs in the future, you will want to consult with your legal counsel relative to the potential that the CNA will ultimately prevail in their lawsuit to overturn the LVN regulations.

Please let us know if you have questions or need further information of any kind.