I am not an attorney
I don’t play an attorney on TV
I did not stay at a Holiday Inn last night
Don’t ever say in a court of law “well Art told me”
My opinion is just that my opinion
None of what I am about to say constitutes legal advise
THIS IS THOUGHTFUL
“Let the master answer”- The physician/hospital assumes responsibility for the wrongful actions of another healthcare professional if two conditions are met:

▪ The action was within the scope of practice of the healthcare professional; and

▪ The injury to the patient was not a result of negligence on the part of the health care professional
SCOPE OF PRACTICE

Scope of practice is defined by three entities:

- The professional association
- The licensure board
- The employing health care institution
THE FIRST STEP IS ADMITTING THERE IS A PROBLEM
CALIFORNIA SCOPE OF PRACTICE

§ 3702. Practice of respiratory care; Components; "Respiratory care protocols" Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions,
CALIFORNIA SCOPE OF PRACTICE

and includes all of the following: (a) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient. (b) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician and surgeon.
(c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and (1) determination of whether such signs, symptoms, reactions, behavior or general response exhibits abnormal characteristics; (2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician and surgeon or the initiation of emergency procedures.
CALIFORNIA SCOPE OF PRACTICE

(d) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols;.
collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.  (e) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care. "Respiratory care protocols" as used in this section means policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners
FALSE ADVERTISING
“Practice of respiratory care” defined. “Practice of respiratory care” includes:

1. Therapeutic and diagnostic use of medical gases, humidity and aerosols and the maintenance of associated apparatus;
2. The administration of drugs and medications to the cardiopulmonary system;
3. The provision of ventilatory assistance and control;
4. Postural drainage and percussion, breathing exercises and other respiratory rehabilitation procedures;
5. Cardiopulmonary resuscitation and maintenance of natural airways and the insertion and maintenance of artificial airways;
6. Carrying out the written orders of a physician, physician assistant, certified registered nurse anesthetist or an advanced practice registered nurse relating to respiratory care;

7. Techniques for testing to assist in diagnosis, monitoring, treatment and research related to respiratory care, including the measurement of ventilatory volumes, pressures and flows, collection of blood and other specimens, testing of pulmonary functions and hemodynamic and other related physiological monitoring of the cardiopulmonary system; and

8. Training relating to the practice of respiratory care.

(Added to NRS by 2001, 758; A 2013, 2070)
NRS 630.023  “Practitioner of respiratory care” defined. “Practitioner of respiratory care” means a person who is:

1. Certified to engage in the practice of respiratory care by the National Board for Respiratory Care or its successor organization; and

2. Licensed by the Board.

(Added to NRS by 2001, 758)

NRS 630.024  “Respiratory care” defined. “Respiratory care” means the treatment, management, diagnostic testing, control and care of persons with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes inhalation and respiratory therapy.

(Added to NRS by 2001, 758)
WHAT DOES THAT MEAN?
WHAT DOES THAT MEAN?

Ask yourself four questions:

- Is this procedure within my training?
- Have I demonstrated the skills necessary to perform this procedure?
- Does the institution I work for allow me to do this procedure?
- Is this procedure protected by any other professions scope of practice?
CIVIL (PRIVATE) LAW

Between two or more individuals or organizations

- Plaintiff brings the complaint
- Defendant is the individual accused of wrong doing
- Remedies can include actual damages either current or future and punitive damages
- Preponderance of evidence
- Deep pockets principle
PUBLIC LAW

Criminal
- Criminal encompasses acts against the safety or welfare of the public
- Punishable with fine or imprisonment
- Seldom used in health care

Administrative
- Regulatory agencies
- Fines and revocation, suspension or restriction of licensee
KIND OF DEFEATS THE PURPOSE