DUKE PHYSICIAN'S ASSOCIATE PROGRAM

informational pamphlet series

Legal Status and Insurance

DUKE UNIVERSITY
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INFORMATIONAL PAMPHLET SERIES

P.A. LEGAL STATUS AND INSURANCE

Any program designed to educate a new type of health care personnel, such as the Duke University Physician's Associate Program, must be concerned with all relevant legal issues. This concern is dictated by the necessity of assimilating the new personnel into the well-established array of legislative regulations governing the practice of medicine.

Many seemingly peripheral issues—legal definition, licensure and means of control—are thus as important to the ultimate success of the concept as the educational program itself. It is also crucial for those interested in employing a physician's associate, establishing a similar program, or becoming a physician's associate to be aware of the legal particulars affecting their locale.

LEGAL DEFINITION

The physician's associate is the most highly educated and extensively experienced type of physician's assistant, and is prepared to assume many of the diagnostic, therapeutic and administrative responsibilities traditionally performed by the physician. According to the National Academy of Sciences, the physician's associate, or the Type A physician's assistant, "is distinguished by his ability to integrate and interpret findings on the basis of general medical knowledge and to exercise a degree of independent judgment." Physician's assistants, through a unique one-to-one relationship with a licensed physician, provide their services under the responsible supervision and direction of a particular physician. The extent to which a physician's assistant may participate in the physician's practice is determined by the supervising physician in accordance with the physician's assistant's education, knowledge, ability and motivation.

Key to the legal definition of both the physician's associate and other types of physician's assistants is the fact that they are all physician-dependent. That is, physician's assistants function only under the supervision and guidance of a physician, who is ultimately responsible for their actions.

Other personnel working for physicians function in a similar relationship. Everyone from the registered nurse to the receptionist is included under the well-established precedents and laws which require the employing physician to assume responsibility for the actions of his employees. These workers, in performing various tasks for the physician, are acting—theoretically and legally—as extensions of the physician and under his control. The physician, therefore, must assume full responsibility for their work.

Unlike the registered nurse or the receptionist, however, the physician's assistant cannot be primarily responsible to an institution. When either a registered nurse or receptionist is employed by an institution, they become responsible to the institution, which consequently assumes responsibility for their actions. The physician's assistant, however, must always be responsible to a physician and have a physician responsible for his actions, regardless of who pays his salary or where he works. Therefore, while the registered nurse or receptionist *may* be physician-dependent, physician's assistants of all types *must* be physician-dependent.

LEGAL RECOGNITION

Initially, legal sanction for the utilization of physician's assistants came in a 1966 advisory opinion issued by the North Carolina Attorney General. He stated that the performance of the projected physician-supervised activities would not contravene the intent of the existing medical and nursing practice acts of the state.

While this opinion opened the door for the utilization of physician's assistants in North Carolina, it was advisory only and did not resolve all legal questions in North Carolina. It clearly had no application to other states. In order for physician's assistants to function professionally and legally, there was an obvious need for a more dependable means of accommodation with a national application.

In an effort to draft model legislation that could appropriately accommodate physician's assistants, a study sponsored by the Department of Health, Education, and Welfare was conducted in 1969 by the Department of Community Health Sciences of Duke University.

During the early phases of the study five alternative courses of action were considered: (1) maintaining the status quo (i.e., doing nothing), (2) licensing physician's assistants, (3) enacting a general statue authorizing supervised delegation by physicians, (4) special licensing of physicians to utilize physician's assistants and (5) establishing a Committee on Health Manpower Innovations to control the development and utilization of all new personnel.

After much discussion it was decided that enacting a general statue authorizing supervised delegation by physicians in the form of an exception to a state's medical practice act would be the best policy. Such an exception would make it clear that the physician remained ultimately responsible for the activities of his assistant. The physician could then delegate tasks traditionally performed exclusively by him to the physician's assistant.

It was also recommended that the Board on Medical Examiners, or another responsible body, oversee the utilization of physician's assistants. With such a group acting as overseers, minimum standards for physician's assistants can be maintained, guidelines can be established

for their work, and the consumer can be better assured of quality. This monitoring might take one of the following forms: examining the physician, judging his competence to supervise, requiring a job description for the position to be filled and/or requiring credentials of the person filling the position.

The idea that such legislation should take the form of an exception to a state's medical practice act has received national support and many states have passed such exceptions—more are doing so all the time. Meanwhile, the ever-growing numbers and types of physician's assistants and physician's assistant programs are helping to establish custom and usage in those states that have yet to pass specific legislation.

LEGISLATION

The laws enacted by Iowa, New York and North Carolina illustrate three laws that establish recognition and control of the physician's assistant, yet avoid the constraints and limitations of licensure. The Iowa and New York laws provide a great deal of regulation through legislation separate from their medical practice act. The North Carolina legislation is a simple exception to the medical practice act.

The Iowa law, modeled after the California law, begins by defining relevant terms. It then states that the State Board of Medical Examiners "shall issue certificates of approval for programs for the education and training of physician's assistants which meet Board standards." Under this law it is up to the Board, within designated limitations to "formulate guidelines for the consideration of applications by a licensed physician to supervise physician's assistants."

The law also creates a committee of qualified individuals to act in an advisory capacity to the board. This advisory committee is required to submit a report and recommendations to the governor and general assembly within a specified period.

Paragraphs on regulations, the right to delegate, and limitations on physician's assistants' performance make up the final sections of the bill. Regulations, according to the bill, "shall be designed to encourage the utilization of physician's assistants in a manner that is consistent with the provision of quality health care and medical services. . . through better utilization of available physicians..."

The paragraph concerning the right to delegate states "nothing in this Act shall affect or limit a physician's existing right to delegate various medical tasks to aides, assistants or others acting under his supervision and direction" who are not specifically qualified as physician's assistants.

Finally, the act says physician's assistants cannot prescribe lenses for the correction of vision or measure the

visual power or efficiency of the human eye. Limiting conditions of this nature have been included by several state legislatures as a result of strong optometrists' lobbies.

The New York legislation covers all of the issues mentioned above except those concerning regulations and the right of delegation. However, unlike Iowa the New York law is in the form of two amendments to the health laws and one amendment to an education law. The first two amendments establish the legitimate utilization of physician's assistants and provide the authority for establishing a veteran's manpower center. The amendment to the education law outlines the procedure for qualification, registration and continued certification of physician's assistants. The other significant difference between the two legislative mechanisms is that New York delegates official responsibility for the approval of programs, the registration of physician's assistants and the administration of equivalency examinations to the Commissions of Education, while Iowa delegates such functions to the Board of Medical Examiners.

The proposed model legislation enacted by North Carolina varies significantly from these two acts. It simply and concisely provides for the utilization of physician's assistants: Section 1 G.S. 90-18 (The Medical Practice Act) is hereby amended by adding a new subdivision to be designated subdivision (13) and to read as follows:

(13) Any act, task or function performed as an assistant to a person licensed as a physician by the Board of Medical Examiners when

a. such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. the services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved, and registered;

provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

PROFESSIONAL LIABILITY INSURANCE

The Insurance Service Office, formerly the Insurance Rating Board of New York established a rating code (Code 9711) for physicians' and surgeons' who have graduated from university-based training programs. Graduate assistants from any type of university-sponsored program can procure liability insurance that covers their activities when they are performing under the responsible supervision of a licensed physician. Similarly, a code (Code 9710H) was established to permit supervising physicians to obtain additional coverage for the vicarious liability assumed in using an assistant.

Rates, of course, vary from state to state, but for his independent coverage the assistant pays approximately 50 percent of the fee paid by his supervising physician for similar coverage. The physician generally pays an additional nominal fee for protection to cover his voluntary assumption of increased vicarious liability.

MORE INFORMATION

More information concerning the legal status of physician's assistants in your state can best be obtained from local attorneys.