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Duke University Medical Center

DURHAM, NORTH CAROLINA

DEPARTMENT OF COMMUNITY
HEALTH SCIENCES

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TELEPHONE 919-684-6127

Dr. Thomas D. Kinney
Committee on Medical Education
Medical Society of the State of North Carolina
Duke Medical Center
Durham, North Carolina

Dear Dr. Kinney:

Enclosed is a copy of the second draft of the legislative proposal regarding the legal status of physician's assistants. In this draft I have incorporated several changes suggested by those among whom the first draft was circulated. I have also attempted to answer in the text certain questions which were raised by some of you who reviewed the first draft. I greatly appreciated the responses to the first draft and will welcome your comments on and criticisms of this revision.

We are planning to hold a second-- and hopefully final-- conference to discuss this proposal on Sunday, March 1, 1970, from 2:00 p.m. to 5:00 p.m., on the eighth floor of the Hilton Inn here in Durham. I would like to take this opportunity to invite you to attend this meeting and participate in the discussion. It would be most helpful to us if you could indicate on the enclosed postcard whether you will be able to attend, as we are trying to get some idea of the number of people to expect. The October conference was most valuable to us in giving an indication of the direction we should take in this project. I am sure this meeting will be equally helpful as we seek to refine this proposal and to insure that it reflects the opinion of concerned North Carolinians as to the best approach to this problem. I do hope that you will be able to join us.

Again, I did appreciate the responses I received to the first draft. I would be grateful if you could respond to this revision as soon as possible so that I might work on any further changes and explanations prior to the March 1 meeting.

Very truly yours,

Martha D. Ballenger

(Mrs.) Martha D. Ballenger

The responses to the first draft of the legislative proposal indicated approval of the general approach of the statute and in most cases of the wording. Several changes have been made in preparing the second draft to incorporate suggestions made by those who reviewed the first draft. In the text I have attempted to explain these changes as well as answer certain other questions raised by reviewers.

To refresh your memory, the proposal is for an exception to the North Carolina Medical Practice Act. The first draft read as follows:

Any act or acts performed at the direction and under the supervision of a licensed physician by a person currently approved by the Board of Medical Examiners as one qualified to function as a physician's assistant.

The second draft reads:

Any act, task or function performed at the direction and under the supervision of a licensed physician by a person approved by the Board of Medical Examiners as one qualified to function as a physician's assistant when the said act, task or function is performed in accordance with rules and regulations promulgated by the Board.

The major change is the addition of the final clause: "when the said act, task or function is performed in accordance with rules and regulations promulgated by the Board." This would not charge the Board with defining a scope of activity for the assistant; the responsibility for determining what the assistant can and cannot do would still rest with the individual physician, who is best able to determine the capabilities and limitations of his particular assistant. Rather, this clause would require the Board to consider what safeguards should surround an assistant's performance and to promulgate rules accordingly. An example of a rule which might be adopted under this clause is one requiring that the patient be adequately apprised of the assistant's status, as by an identifying name tag.

This provision would also allow the Board to cope with other questions which might arise with the operation of the statute. For example, the degree and nature of direction and supervision required of the physician is not specified in the statute. In recognition of the variety of tasks which could be delegated and the diverse capabilities of the individual assistants, it was felt that specificity would be unwise. The intent of the proposal is that the required degree and nature of direction and supervision should be that appropriate to the particular situation and circumstances. While immediate oversight by the physician may be necessary when complex procedures are to be performed, general instructions and subsequent review by the physician may be sufficient for routine duties. Further definition of these terms - either to broaden or to restrict their meaning - would render the proposed statute inappropriate for a variety of situations, and it is felt that physicians themselves must give the terms meaning in relation to particular circumstances. As long as there is no further definition, questions - should they arise - may have to be resolved in court, quite likely on the basis of expert testimony as to what type of supervision was appropriate to the circumstances. It may become apparent after experience with assistants, however, that some guidelines can be drawn with respect to certain typical situations. Such guidelines could be embodied in rules and regulations promulgated under this final clause.

The other changes are minor. First, "any act or acts" was changed to read "any act, task or function." It was pointed out that in legislation the singular includes the plural, and "acts" was therefore deemed unnecessary. The words "task or function" were added on the suggestion that "act" might not be construed to cover parts of the assistant's performance, such as evaluating certain initial physical data to determine what additional studies should be made for the physician's information. "Act, task or function" more nearly

encompasses the range of duties which might be delegated to the assistant. Second, the word "currently" was omitted from the phrase "person currently approved" because it was felt to be unnecessary. If a person has been granted Board approval and has subsequently had that approval rescinded, he is no longer a "person approved by the Board" and would not enjoy the protection afforded by this statute. "Currently," therefore, was excess verbiage.

It should be emphasized that persons other than program graduates will be eligible for approval under a statute such as this. It has been suggested that changing the reference from "physician's assistant" to "physician's trained assistant" might make this more apparent because the latter designation is not as readily associated with program trainees as is "physician's assistant" alone. However, the majority of persons consulted about this felt that by adding "trained" the emphasis on program graduates might in fact be strengthened and that leaving merely the descriptive name "physician's assistant" would more clearly evidence a desire to allow non-graduates, otherwise qualified, to be approved and gain the statute's protection.

It may also be noted that the statute does not strictly require an employment relationship between the physician and the assistant. Rather, to be protected the assistant must be approved and must be acting under the direction and supervision of a licensed physician. It is conceivable that the assistant's salary could be paid by a hospital, if he in fact functions as a physician's assistant, under a physician's responsibility. In such a situation the employing hospital (master) would have protection against vicarious civil liability for acts of the assistant (servant) to the same extent as would an employing physician. It should be reiterated that as far as civil liability is concerned, this proposal does no more than preclude the drawing of an inference of negligence from the failure to be licensed alone. From the criminal standpoint, to the extent that this statute would prevent an assistant's conviction for unlicensed practice

of medicine, it would also protect the hospital, like the physician, from aiding and abetting charges.

The manner in which and the criteria upon which assistants will be approved would, under the proposed statute, be determined by the Board of Medical Examiners. It has been suggested that perhaps the Board would evaluate the various programs and approve graduates of those it finds satisfactory, while considering others on an individual basis. Within the last month both the AMA and the AAMC have begun work on educational guidelines for this type of program, and it is hoped that an accreditation mechanism will be operational in the near future. Such accreditation could greatly reduce the Board's work with respect to program graduates, who are likely to constitute a majority of those applying for approval.

Your comments on and criticisms of the above revision would be most appreciated. I would be grateful if these could be sent to me prior to the March 1 meeting so that I might make necessary changes before that time.