

Resume: Conference on Ethical and Legal Implications  
Of Health Manpower Innovations,  
Duke University,  
March 31, April 1, 1968

The meeting convened with a statement that the Conference was intended to cover health manpower innovations in general, though the Duke Physician's Assistant Program would be used as a specific example of problems which might arise. In order to acquaint the conferees with the Duke program, the background and the nature of the program was presented briefly. Other similar programs were cited, including some of the new experimental programs involving an expanded role for nurses. Dr. Ernest Furgurson briefly reviewed the impact of a physician's assistant in a private practice setting in eastern North Carolina.

The second session began with a presentation of the evaluative plans for the Physician's Assistant Program. Evaluation of the reaction of patients and physicians, evaluation of technical competence, and evaluation of economic impact are all parts of this projected study. After this presentation, there was a general discussion concerned with insuring objectivity and adequacy of the evaluative process. It was agreed that the evaluation must eventually include not only the above items, but also the effect of the physician's assistant on the quality of medical care as evaluated by some form of medical audit.

The next portion of the program was concerned with ethical ques-

tions raised by health manpower innovations. At present we have no way of introducing new members into the health care team within an organized framework of development. It was pointed out that mechanisms have been established for the introduction of new drugs and for new clinical procedures. These mechanisms have evolved gradually under the impetus of granting agencies such as the Public Health Service and the American Heart Association. The mechanism generally involves a committee of people who are not involved in the experiment but who have knowledge so as to offer valid opinions. These individuals are given complete information about the experiment, they discuss the proposal and assure themselves that the patient's rights in the proposed experiment are protected fully and that all safeguards possible are used. This committee is organized under some unit of authority such as the dean of a medical school. The committee is given complete information in written form, and in most cases it periodically receives follow-up reports.

A similar mechanism was proposed for the health manpower area. It would be the responsibility of any group who wished to initiate a program of training a new category to submit their proposal in writing to such a committee which would act as a representative of the public. The committee would consider the manpower innovation, its objectives, its curriculum, its faculty and its facilities. The committee would also receive periodic follow-up reports with evaluations of those

utilizing the manpower category. It was suggested that this committee also be organized under some unit of organizational structure, and it was felt best to involve the practicing professions very directly. It was proposed that this committee be set up as a substructure of an official board such as the Board of Medical Examiners. This committee could have representation from nursing, from hospital administration and from other organized elements within the health care professions. The committee could report in turn to the various elements of the Health Care System regarding their decisions and also regarding followings of trainees.

The advantages of this system are: innovations could be carried out under an organized framework, successful innovations could be perpetuated and unsuccessful experiments could be eliminated. Such a mechanism was felt practical for a wide variety of manpower innovations, including new categories such as the physician's assistant, new roles for established categories such as nurses, and other groups not yet considered. It was conceded that any system likely to be devised could be subject to abuse, but that abuse could be reduced to a minimum by full visibility and full reporting plus the involvement of all professions involved.

The question of licensing of new health manpower categories was raised. It was generally felt that formal licensing of each new health manpower category was likely to lead to more complications than solutions.

Current licensing arrangements tend to fragment and disjoint the medical care delivery process rather than unify it. The question of licensing the producers of various assistants was discussed. This is to an extent contained in the above suggestion. Still another system might be to license the physician or the group of physicians who wish to use various new forms of health manpower. The ability of a physician to supervise, the professional integrity of the physician, and his ability to utilize such individuals would be considered in this licensing process.

There was a considerable amount of discussion of the obligation of those who train new manpower categories to the individuals trained. There is also an ethical obligation to a person who comes into such a program to the extent that he is allowed to progress and advance in the future. Such a path is not clearly delineated for the physician's assistant at the present time, though most felt that this was necessary. The recognition of prior training and the ability to apply this as credit toward the granting of more advanced degree is a major problem which required cooperation of all professions involved. It was agreed that degrees are probably not necessary for most tasks, but it was also conceded that a degree might be advantageous for the individual since it has become almost the lowest common denominator of educational experience.

There was some discussion of the effects of new manpower categories on insurance costs in the professional liability area. No problems have

thus far been encountered and in no case has the employment of a physician's assistant raised the cost of professional liability insurance. There was general agreement that these experiments in new health manpower categories should be carried out in areas of the country where malpractice suits were less common and North Carolina appears to be optimal in this regard.

The current legal climate was next explored. There were some divergent opinions among the group. On the one hand, there were those who felt that medicine has a great deal of latitude to innovate in this area, and that there is no realistic basis for fear since such penal and civil actions were so rare. On the other hand, many felt that there were substantial legal and related impediments to the use of new physician manpower and that this does constitute a real deterrent. Dr. Edward Forgotson reviewed this problem in some detail. The situation is quite different with regard to independent and dependent assistants. An independent assistant, one who is working separate from the physician, is allowed to practice only under specific exceptions to the Medical Practice Act. There is no latitude for practice outside this statutory exception. On the other hand, a dependent assistant—one working under the authority, supervision and responsibility of the physician—the situation is more fluid. In general, dependent assistants are allowed by the law if their use is usual and customary in the community in which employed. There are exceptions to this however, and one case was cited

in which a nonlicensed nurse was held liable (in a malpractice action), the evidence being her lack of proper license. Thus the potential does exist for suits to be brought based on nothing more than delegation of authority to unlicensed personnel.

Dr. Forgotson summarized the steps which will be necessary to accomplish the above recommendations as follows:

1. License new health manpower categories and programs as experiments on a state level using a mechanism similar to those now existing for new clinical investigation and new drugs.
2. To license the physician or the institution which uses the assistants under the above program.
3. To study the ethical underpinnings which will ultimately be codified into law.
4. Develop a draft of a legal regulatory program which covers enforcement powers, recording powers, and other matters which should be incorporated into the law.

In discussing the above proposal there was general agreement that such a program would be a wise one and that it had a high probability of being accepted by both the Medical Society and the Nurses' Association. This must be presented to these bodies and explained carefully. The constitution of the special committee within the Board of Medical Examiners must be examined closely so that proper representation is established. It is felt that with the proper background of information and exchange, such a program might be accomplished in this state via the state legislature in the spring of 1969. This would be accomplished, hopefully, with the active help of the Medical Society of the State of

North Carolina, the North Carolina Nurses' Association, and the North Carolina Hospital Association.

It was agreed that the bodies involved would be approached with such a proposal and an attempt would be made to present a resolution to the North Carolina Legislature in 1969 authorizing the establishment of such a mechanism as presented above.

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