

REPORT OF THE LEGISLATIVE RESEARCH COMMISSION
TO THE 1971 GENERAL ASSEMBLY

New Categories of Health Manpower:
Physician's Assistants

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New Categories of Health Manpower: Physician's Assistants

Introduction

As part of its study of health manpower under Resolution 55, the Health Committee of the Legislative Research Commission gave particular attention to the newly developing categories and types of health manpower, especially the physician's assistants programs. Accordingly, two public hearings were conducted on this subject and portions of other public hearings were given over to the subject. Considerable information was obtained about the need for persons who are trained to serve as assistants to physicians and the utilization of such persons. Testimony was received from educators, practicing physicians, practicing physician's assistants, nurses, government employees and others.

Background

The physician's assistant is trained to perform certain well defined tasks and functions. He learns to take patient histories, do physical examinations, biopsies, lumbar punctures, and other procedures ordinarily performed by a medical doctor. He is trained to monitor vital signs, give medications and keep progress records and other procedures usually performed by nurses. He is also taught to operate certain diagnostic and therapeutic instruments, such as electrocardiographs, respirators, cardiac monitors, as well as carry out extensive laboratory studies commonly done by technicians.

The status of the physician's assistant can best be described as that of an intermediate level professional with extensive

technical capabilities. He provides the physician with many services which free the physician from those tasks which do not demand his level of education, training and background for more valuable services. In a state that is low in its ratio of doctors to population, the physician's assistant may help provide more physician hours more quickly to more of our citizens. He may help to free from 30 to 90 percent of the physician's time, according to testimony, allowing him to spend more time with more complicated cases and procedures.

Although there is a wide variety of physician's assistants programs throughout the country, the two programs in North Carolina, at Duke and Bowman Gray, cover a period of twenty-four months. For acceptance into the program the student must have at least a high school diploma and one year's work in the health field. There are nine months of academic training and fifteen months of clinical training in which the student rotates through the traditional medical fields. Even though the primary objective of the program is to fulfill the needs of the first line community physician or the community hospital, he can function in every segment of medical practice.

Definition of the legal status of this new type of personnel is of prime importance in their future utilization. The Committee was concerned with ways to encourage the physician's assistant programs and to assure graduates of a legally authorized role on the health team.

Under the existing licensure framework, new types of personnel may perform independent functions only if they are authorized to do so by a licensing statute or by some other explicit exception to

the Medical Practice Act. If the proposed functions of new personnel are solely dependent, to be performed only under the supervision of a physician, then it is possible that custom and usage within the medical profession may eventually provide legal sanction. Under such circumstances it is assumed that the safety of the patient is protected by the physician's professional training. Although relying on custom and usage may eventually answer the question, it poses certain inherent uncertainties and needless vulnerability for the individual physician and physician's assistant, should action be taken against them.

Even if professional assistants become widely used and accepted, the very existence of other licensure laws poses an additional danger in civil litigation. In addition to the fact that the physician does not have the presumption of competence on his side when he delegates to unlicensed personnel, at least one court has actually indulged a presumption against a physician who made such a delegation. In addition, and aside from the question of civil liability, if the physician delegates to an unlicensed assistant those tasks which could be considered as within the "practice of medicine," the assistant may be prosecuted criminally for the unlicensed practice of medicine, and the delegating physician may be similarly prosecuted for aiding and abetting.

The sum total of these problems has a significant impact in impeding the utilization and usefulness of this new category of health personnel. In view of the uncertainties inherent in the current situation, those associated with such programs have sought to clarify the legal position of such assistants, and have held a number of conferences for this purpose. The conferences have been attended by representatives from the legal profession both within

and outside the state, the organized professions of medicine and nursing, educational institutions, etc., in order to reach a consensus as to the optimal method of solution. The House of Delegates of the Medical Society of the State of North Carolina, recognizing such a need, passed a resolution at its 1970 meeting authorizing its Legislative Committee to work with such groups and the North Carolina Legislative Research Commission in developing such statutes.

Consideration of Alternatives

The most obvious means of regularizing physician's assistants is to license them in a manner similar to the licensure of other health personnel. This would alleviate some of the dangers of civil and criminal liability, and enhance the status of physician's assistants as an occupational category. It could also protect the public through the specification of minimum qualifications. This is, however, felt to be an unwise solution. This solution would tend to fragment health care delivery by creating other licensed interests and creating jurisdictional disputes within the health care field. Licensure would also freeze the role of assistants at a level which may later become outmoded or unrealistic, and impede occupational mobility by imposing rigid, specific requirements. Other approaches considered include: (1) licensing of the users of physician's assistants; (2) establishing a committee on health manpower innovations responsible for approval of programs; and (3) enacting a statute authorizing general delegations and establishing registration.

After considerable discussion, the last of the above suggestions was felt to be the most appropriate. Four states currently have

general statutory provisions authorizing delegation of functions to be performed under supervision. These statutory provisions are framed as exceptions from the medical practice acts of the states. Under such an exception it would be for the individual physician to determine what his assistant can or cannot do, upon consideration of his needs and the particular qualifications of his assistant. The physician would assume the responsibility for such delegation, and the fact that an improper delegation would continue to be a cause for action against the physician would inject caution into the actual delegation practices of the individual physician.

From the standpoint of the public, this approach, by removing the fear of unwarranted civil and criminal liability, would likely encourage the development and effective use of this new type of personnel which is so badly needed, in view of the existing physician shortage. Public protection should be assured by the physician's continued liability in instances of actual negligence, and the knowledge that if he does not, in fact, exercise direction or supervision, he will not benefit from the exception's protection at all.

Findings

The hearings and documents submitted in connection with this study on health manpower produced a convincing amount of evidence that the physician's assistant promises to be a valuable addition to the health care team in North Carolina and elsewhere. The on-going programs at Duke and Bowman Gray for training physician's assistants have been successful pioneering efforts and have attracted considerable national attention. Both are worthy of commendation and consideration for State support. Testimony from

practicing physicians who have employed physician's assistants produced confirmation of their usefulness in extending the physician's hands and legs in delivering quality medical care. The physician's assistants who appeared at the hearings exhibited a confident and professional manner in describing their experiences and in asking for clarification of their legal status. The Medical Society of North Carolina endorses this health manpower development and the proposals for its legal support. The Board of Medical Examiners has been involved along with other interested parties in the formulation of appropriate legislation. Most nurses do not seem to consider physician's assistants as a competing group but rather as another helper in the big task of providing health care for all the people. Therefore, the following recommendations are made.

Recommendations

(1) The Development of new types of health manpower, such as the graduates of the physician's assistant programs at Duke University Medical School and Bowman Gray Medical School, is recognized as a valuable contribution to the improvement of health care in North Carolina. Therefore, these types of efforts and innovations in the training of new health workers is encouraged and should be given support and assistance by all state agencies, including appropriate cooperation in utilizing or permitting utilization of the functions and services offered by all new health manpower categories as they develop.

(2) The legal status of persons serving the function of an assistant to a physician, and particularly those persons who are graduates of physician's assistant programs, should be clarified

by amending the Medical Practice Act to authorize the general delegation by a licensed physician of acts, tasks or functions to a qualified assistant and to permit such assistants to register with the Board of Medical Examiners as persons approved as assistants. Enactment of the bill included in Appendix A would accomplish this recommendation. The draft Rules and Regulations in Appendix B, which are proposed for adoption by the Board of Medical Examiners, would appear to be the type of action that would implement the recommended legislation.

Appendix A

Draft Bill Relating to Assistants to Physicians

Draft Bill Relating to Assistants to Physicians

Note: G.S. 90-18 of the North Carolina General Statutes, after prescribing the penalty for the unlicensed practice of medicine, reads:

Any person shall be regarded as practicing medicine or surgery within the meaning of this article who shall diagnose or attempt to diagnose, treat, or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person: Provided, that the following cases shall not come within the definition above recited:

Then follow thirteen exceptions. The proposed bill would be exception (14) to this definition of the practice of medicine, as follows:

A BILL TO BE ENTITLED AN ACT TO MAKE AN EXCEPTION TO THE MEDICAL PRACTICE ACT, RELATING TO ASSISTANTS TO PHYSICIANS

The General Assembly of North Carolina do enact:

Section 1. G.S. 90-18, as it appears in the 1965 Replacement Volume 2C of the General Statutes, is hereby amended by adding a new subsection (14) to read as follows:

"(14) Any act, task or function performed by an assistant to a person licensed as a physician by the Board of Medical Examiners provided that

- (a) such assistant is approved by the Board as one qualified by training or experience to function as an assistant to a 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."

Sec. 2. G.S. 90-15 is hereby amended by adding at the end thereof a new paragraph as follows:

"For the issuance of an approval of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."

Sec. 3. Nothing in this Act shall be construed to 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.

Sec. 4. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 5. This act shall become effective upon ratification.

Appendix B

Proposed Rules and Regulations of the
North Carolina Board of Medical Examiners

The following are recommended rules and regulations according to which the proposal contained in the bill in Appendix A could be administered:

Proposed Rules and Regulations of the
North Carolina Board of Medical Examiners

Rule I
Definitions

Section 1. The term "Board" as herein used refers to the Board of Medical Examiners of North Carolina.

Section 2. The term "Secretary" as herein used refers to the Secretary of the Board of Medical Examiners of North Carolina.

Section 3. The term "assistant to a physician" as herein used refers to auxiliary, paramedical personnel who are functioning in a dependent relationship with a physician licensed by the Board and who are performing tasks or combinations of tasks traditionally performed by the physician himself. Examples of such tasks would include history taking, physical examination, and treatment, such as the application of a cast. The regulations are not intended to cover or in any way prejudice the activities of assistants not engaged in direct patient contact or the performance of assistants with tasks well-defined by statute or recognized custom of medical practice.

Section 4. The term "applicant" as used herein refers to the assistant upon whose behalf an application is submitted.

Rule II
Application for Approval

Section 1. Application for approval of an assistant must be made upon forms supplied by the Board and must be submitted by the physician with whom the assistant will work and who will assume responsibility for the assistant's performance.

Section 2. Application forms submitted to the Board by the physician must be complete in every detail. Every supporting document required by the application form must be submitted with each application.

Section 3. If for any reason an assistant discontinues working at the direction and under the supervision of the physician who submitted the application under which the assistant is approved, such assistant shall so inform the Board and his approval shall terminate until such time as a new application is submitted by the same or another physician and is approved by the Board.

Rule III
Requirements for Approval

Section 1. Before being approved by the Board to perform as an assistant to a physician, an applicant shall:

- (1) Be of good moral character and have satisfied the requirements of Rule IV hereof;
- (2) Demonstrate in one of the following ways his competence to perform at the direction and under the supervision of a physician tasks traditionally performed by the physician himself:
 - (a) By giving evidence that he has successfully completed a training program recognized by the Board under Rule V hereof;
 - (b) By standing and passing an equivalency exam administered by a training program recognized by the Board under Rule V hereof;
 - (c) By standing and passing an exam administered by the Board;
- (3) Pay a fee of \$_____.

Section 2. Initial approval may be denied for any of the reasons set forth in Rule VI Section 1 hereof as grounds for termination of approval, as well as for failure to satisfy the Board of the qualifications cited in Section 1 of this Rule.

Section 3. Whenever the Board determines that an applicant has failed to satisfy the Board that he should be approved, the Board shall immediately notify such applicant of its decision and indicate in what respect the applicant has so failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the Secretary of the Board at Raleigh, N. C., within 10 days after receipt of the Board's decision, stating the reasons for such request. The Board shall within 20 days of receipt of such request notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his qualifications for approval shall be upon the applicant. Following such hearing, the Board shall determine on the basis of these regulations whether the applicant is qualified to be approved, and this decision of the Board shall be final as to that application.

Section 4. In hearings held pursuant to this rule the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions.

Section 5. Upon being satisfied that the assistant should be approved, the Board shall send a notice of approval to the physician who submitted the application.

Rule IV
Moral Character

Section 1. Every applicant shall be of good moral character, and the applicant shall have the burden of proving that he is possessed of good moral character.

Section 2. All information furnished to the Board by an applicant, and all answers and questions upon forms furnished by the Board, shall be deemed material and such forms and information shall be and become a permanent record of the Board.

Section 3. All investigations in reference to the moral character of an applicant may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence need be observed.

Section 4. Every applicant may be required to appear before the Board to be examined about any matter pertaining to his moral character.

Rule V
Requirements for Recognition of Training Programs

Section 1. Application for recognition of a training program by the Board shall be made by letter and supporting documents from the director of the program and must demonstrate to the satisfaction of the Board that such program fulfills the requirements set forth in Sections 2 through 8 of this Rule.

Section 2. The training program must be sponsored by a college or university with appropriate arrangements for the clinical training of its students, such as a hospital maintaining a teaching program. There must be evidence that the program has education as its primary orientation and objective.

Section 3. The program must be under the supervision of a qualified director, who has at his disposal the resources of competent personnel adequately trained in the administration and operation of educational programs.

Section 4. Adequate space, light, and modern equipment must be provided for all necessary teaching functions. A library, containing up-to-date textbooks, scientific periodicals, and reference material pertaining to clinical medicine, its underlying scientific disciplines, and its specialties, shall be readily accessible to students and faculty.

Section 5. The curriculum must provide adequate instruction in the basic sciences underlying medical practice to provide the trainee with an understanding of the nature of disease processes and symptoms, abnormal laboratory tests, drug actions, etc. This must be combined

with instruction, observation and participation in history taking, physical examination, therapeutic procedures, etc. This should be in sufficient depth to enable the graduate to integrate and organize historical and physical findings. The didactic instruction shall follow a planned and progressive outline and shall include an appropriate mixture of classroom lectures, textbook assignments, discussions, demonstrations and similar activities. Instruction shall include practical instruction and clinical experience under qualified supervision sufficient to provide understanding of and skill in performing those clinical functions which the assistant may be asked to perform. There must be sufficient evaluative procedures to assure adequate evidence of competence. Although the student may concentrate his effort and his interest in a particular specialty of medicine, the program must insure that he possesses a broad general understanding of medical practice and therapeutic techniques.

Section 6. Although some variation may be possible for the individual student, dependent on aptitude, previous education, and experience, the curriculum shall be designed to require two or more academic years for completion.

Section 7. The program must have a faculty competent to teach the didactic and clinical material which comprises the curriculum. The faculty shall include at least one instructor who is a graduate of medicine, licensed to practice in the location of the school, and whose training and experience enable him to properly supervise progress and teaching in clinical subjects. He shall be in attendance for sufficient time to insure proper exposure of the student to clinical teaching and practice. The program may utilize instructors other than physicians, but sufficient exposure to clinical medicine must be provided to insure understanding of the patient, his problem, and the diagnostic and therapeutic responses to this problem.

Section 8. The program must through appropriate entrance requirements insure that candidates accepted for training possess 1) an ability to use written and spoken language in effective communication with physicians, patients, and others, 2) quantification skills to insure proper calculation and interpretation of tests, 3) behavioral characteristics of honesty and dependability, and 4) high ethical and moral standards, in order to safeguard the interests of patients and others.

Section 9. To retain its recognition by the Board, a recognized program shall:

- 1) make available to the Board yearly summaries of case loads and educational activities done by clinical affiliates, including volume of outpatient visits, number of inpatients, and the operating budget;
- 2) maintain a satisfactory record of the entrance qualifications and evaluations of all work done by each student, which shall be available to the Board;
- 3) notify the Board in writing of any major changes in the curriculum or a change in the directorship of the program.

Section 10. Recognition of a program may be withdrawn when, in the opinion of the Board, the program fails to maintain the educational standards described above. When a program has not been in operation for a period of two consecutive years, recognition will automatically be withdrawn. Withdrawal of recognition from a program will in no way affect the status of an assistant who graduated from such program while it was recognized and who has been approved by the Board.

Rule VI
Termination of Approval

Section 1. The approval of an assistant shall be terminated by the Board when, after due notice and a hearing in accordance with the provisions of this Rule, it shall find:

- a) that the assistant has held himself out or permitted another to represent him as a licensed physician;
- b) that the assistant has in fact performed otherwise than at the direction and under the supervision of a physician licensed by the Board;
- c) that the assistant has been delegated and performed a task or tasks beyond his competence;
- d) that the assistant is an habitual user of intoxicants or drugs to such an extent that he is unable safely to perform as an assistant to the physician;
- e) that the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;
- f) that the assistant has been adjudicated a mental incompetent or whose mental condition renders him unable safely to perform as an assistant to a physician; or
- g) that the assistant has failed to comply with any of the provisions of Rule VII hereof.

Section 2. Before the Board shall terminate approval granted by it to an assistant, it will give to the assistant a written notice indicating the general nature of the charges, accusation or complaint preferred against him and stating that the assistant will be given an opportunity to be heard concerning such charges or complaints at a time and place stated in such notice, or to be thereafter fixed by the Board, and shall hold a public hearing within a reasonable time. The burden of satisfying the Board that the charges or complaints are unfounded shall be upon the assistant. Following such hearing, the Board shall determine on the basis of these regulations whether the approval of the assistant shall be terminated.

Section 3. In hearings held pursuant to this Rule the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil action.

Rule VII
Method of Performance

Section 1. An assistant must clearly identify himself as an assistant to a physician, a physician's assistant, or by some other appropriate designation in order to insure that he is not mistaken for a licensed physician. This may be accomplished, for example, by the wearing of an appropriate nametag.

Section 2. The assistant must generally function in reasonable proximity to the physician. If he is to perform duties away from the responsible physician, such physician must clearly specify to the Board those circumstances which would justify this action and the written policies established to protect the patient.

Section 3. The assistant must be prepared to demonstrate upon request, to a member of the Board or to other persons designated by the Board, his ability to perform those tasks assigned to him by his responsible physician.

Appendix C

Material on File with the
Legislative Research Commission

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Legislative Research Commission

- (1) Remarks on the physician's assistant concept by E. Harvey Estes, Jr., M.D., Chairman, Department of Community Health Sciences, Duke University Medical Center
- (2) "Physician's Assistant Program", Department of Community Health Sciences, Duke University Medical Center, Presented by Carl Fasser
- (3) Statement of J. Elliott Dixon, M.D.
- (4) Statement of Stephen L. Joyner, physician's assistant to Dr. Dixon.
- (5) Statement by Ernest H. Ferguson, M.D.
- (6) "Augmentation of Physicians' Services by a Physician's Assistant by Leland Powers, M.D., Director, Division of Allied Health Programs, Bowman Gray School of Medicine
- (7) "Report to the Legislative Research Commission on Physician's Assistants", by C. G. Pickard, Jr., M.D., School of Medicine, University of North Carolina
- (8) "On New Roles and Responsibilities for the Registered Nurse", by Lucy H. Conant, Dean, School of Nursing, University of North Carolina
- (9) Statement by Edgar T. Beddingfield, Jr., M.D., President, Medical Society of the State of North Carolina
- (10) "Legal Considerations Regarding the Family Nurse Practitioner", a memorandum by David G. Warren, Institute of Government

