

*Public Discipline for Physician Failure to Adequately  
Supervise CRNAs North Carolina Medical Board Advisory Opinion*

Recently, I picked up a newsletter designed for healthcare lawyers. The lead story was, “Physicians Must Supervise CRNAs Providing Anesthesia in Office-Based Procedures.” It is such a simple concept that it hardly seems necessary to devote an entire article to the issue. Unfortunately, it is not quite as simple as it might sound. For years the North Carolina Medical Board and the North Carolina Board of Nursing have debated, negotiated and finally litigated the scope of practice of CRNAs and the responsibility of both the nurse and the physician when performing office-based procedures.

In 1992, the Board of Nursing proposed nurse anesthesia Rule 226. The proposed rule expanded the scope of practice for the CRNA from one in which the nurse anesthetist worked under the supervision of a physician to one in which the CRNA worked in collaboration with the physician. The Medical Board objected and issued a series of rulings that it believed that many of the proposals in Rule 226 constituted the practice of medicine. Despite their objections, the Board of Nursing adopted Rule 226 with an effective date of July 1, 1993. The matter went to litigation, however, and on September 21, 1994, the parties entered a Consent Order. As a result of the Consent Order, Rule 226 was amended and included a provision that prevented the CRNA from prescribing a medical treatment regimen or making a medical diagnosis except under the supervision of a licensed physician. Effectively, the amendment added statutorily required supervision language while leaving intact the collaboration language. While the Consent Order appeared to settle the issue between the Board of Nursing and the Medical Board, each Board interpreted the Consent Order differently.

In December 1999, the Attorney General issued an opinion stating that “anesthesia care largely constitutes diagnosis of, or prescription of medical treatment for a human ailment, thus constituting the practice of medicine.” Subsequently, the Medical Board became aware of the increasing number of physicians doing office-based surgery. Recognizing the need for guidelines to assure an appropriate standard of care, the Medical Board issued a Position Statement on office-based procedures in 2003.<sup>1</sup> During the same year, the Medical Board issued charges against a surgeon for practicing below the minimum standard of medical practice for failing to adequately supervise a CRNA in his office. The CRNA, without an order from the physician, administered 2ccs of Fentanyl to a postoperative patient. The patient suffered respiratory depression, cardiac arrest, and died after being transported to the hospital. The Board believed and the physician agreed that the administration of a controlled substance to a patient was the practice of medicine. The physician and the Medical Board entered a consent order concluding that the physician should have known that the nurse was engaged in the unauthorized practice of medicine. His license to practice medicine was suspended for one year, however, the suspension was stayed subject to the physician complying with specific terms and conditions. Those terms and conditions follow closely the Position Statement issued by the Medical Board.

When the Medical Board issued its Position Statement, the Board of Nursing brought a lawsuit against the Medical Board. It argued that the Board’s Position Statement exceeded the parameters of the Consent Order the parties had entered in 1994 and asked the court to grant its motion to enforce the Consent Order against the North Carolina Medical Board. On April 25, 2005, the North Carolina Court of Appeals handed down a decision in the case of *N.C. Med.*

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<sup>1</sup> A copy of the North Carolina Medical Board Position Statement addressing Office Based Procedures can be found at <http://www.ncmedboard.org/Clients/NCBOM/Public/PublicMedia/office.pdf>. (Last viewed April 17, 2006).

*Soc'y v. N.C. Bd. of Nursing*, 169 N.C. App. 1, 610 S.E.2d 722 (2005) in favor of the Medical Board. The Court held that the Medical Board had the authority to advise licensees of the standard of care in medical practice in order to protect the public interest.

As a consequence of the Court's ruling, if a physician performs office procedures above a Level 1, he or she should comply with the Position Statement. The Medical Board clearly states that it is expected that the licensee who follows the Position Statement will not be subject to disciplinary action by the Board. The Position Statement provides a succinct outline of the written policies and procedures which the physician must implement. I recommend that you pull the statement from the Medical Board's website and review it thoroughly. If your practice is not in compliance, you should develop an immediate plan for developing the appropriate policies and procedures.