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ATTORNEY GENERAL OF TEXAS

September 5, 2019

Sherif Zaafran, M.D.
President
Texas Medical Board
Post Office Box 2018
Austin, Texas 78768-2018

Opinion No. KP-0266

Re: Regulatory authority over the administration
of anesthesia when delegated by a physician to a
nurse anesthetist (RQ-0278-KP)

Dear Dr. Zaafran:

You ask multiple questions regarding the regulation of a physician who delegates the administration of anesthesia to a nurse anesthetist.¹ This office previously addressed similar questions in Attorney General Opinion JC-0117, responding to a request from the Board of Nurse Examiners. *See* Tex. Att’y Gen. Op. No. JC-0117 (1999) at 10. The relevant law has not changed significantly in the intervening twenty years, but your questions differ to some extent from those raised in the prior opinion. We therefore consider the law in light of your specific questions.

You first ask: “Is providing anesthesia the practice of medicine?” Request Letter at 1. Title 3, subtitle B of the Occupations Code, titled the “Medical Practice Act,” governs the practice of medicine in Texas. *See generally* TEX. OCC. CODE §§ 151.001–170.003; *see id.* § 151.001 (defining Title 3, subtitle B of the Occupations Code as “the Medical Practice Act”). Subsection 151.002(a)(13) of the Occupations Code defines “practicing medicine” as “the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions” *Id.* § 151.002(a)(13). Anesthesiology is commonly understood as the “branch of medicine concerned with the control of acute or chronic pain” *TABER’S CYCLOPEDIA MED. DICTIONARY* 113 (20th ed. 2005). Furthermore, chapter 162 of the Occupations Code, titled “Regulation of Practice of Medicine,” includes a subchapter devoted to the provision of anesthesia in an outpatient setting, suggesting that the Legislature understood the practice of medicine to encompass providing and administering anesthesia. *See* TEX. OCC. CODE §§ 162.101–.107; *see also Denton Reg’l Med. Ctr. v. LaCroix*, 947 S.W.2d 941, 943 (Tex. App.—Fort Worth 1997, pet. dism’d by agr.) (finding that “the practice of anesthesia is a specialized practice of medicine by a physician”).

Yet, as recognized in previous opinions from this office, the scope of practice between regulated professions sometimes overlaps. *See, e.g.,* Tex. Att’y Gen. Op. Nos. KP-0082 (2016) at 1 (recognizing practices of physical therapy and acupuncture sometimes overlap); DM-443 (1997) at 1–3 (recognizing the same regarding practices of physical therapy and medicine). The

¹*See* Letter from Sherif Zaafran, M.D., President, Tex. Med. Bd., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Mar. 26, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

Legislature expressly excluded from the Medical Practice Act other licensed health care professionals “engaged strictly” in the scope of their licensed professions. *See* TEX. OCC. CODE § 151.052(a)(1)–(7). Relevant to your question, subsection 151.052(a)(4) provides that the Medical Practice Act does not apply to “a registered nurse or licensed vocational nurse engaged strictly in the practice of nursing in accordance with the applicable licensing acts and other laws of this state.” *Id.* § 151.052(a)(4).

The Legislature defines “professional nursing” as:

[T]he performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves:

...
(G) the performance of an act delegated by a physician under Section ... 157.058

Id. § 301.002(2)(G). Subsection 157.058(a) authorizes a physician in a licensed hospital or ambulatory surgical center to “delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician.” *Id.* § 157.058(a); *see also id.* §§ 301.601–607 (providing standards for anesthesia services provided by a certified registered nurse anesthetist in an outpatient setting). When delegated that authority, “the nurse anesthetist may select, obtain, and administer those drugs and apply the medical devices appropriate to accomplish the order and maintain the patient within a sound physiological status.” *Id.* § 157.058(c). Thus, pursuant to subsection 301.002(2)(G), when a certified registered nurse anesthetist administers anesthesia pursuant to a physician’s delegation, such act falls within the scope of professional nursing, not the practice of medicine.² *See* Tex. Att’y Gen. Op. No. JC-0117 (1999) at 5 (recognizing that selection and administration of anesthesia is within the scope of practice of professional nursing when those tasks are delegated by a physician).

You also ask whether the Texas Medical Board possesses regulatory authority over a physician’s decision to delegate the providing and administration of anesthesia to a certified registered nurse anesthetist. Request Letter at 1. Opinion JC-0117 addressed whether section 157.058 requires a physician to directly supervise a certified registered nurse anesthetist’s provision of anesthesia and concluded that a physician is not required to do so. *Tex. Att’y Gen. Op. No. JC-0117 (1999) at 7.* In contrast, you ask not about the supervisory role a physician

²Briefing submitted on behalf of the Texas Medical Association and the Texas Society of Anesthesiologists takes a position consistent with this conclusion. *See* Brief from Gerald Ray Callas, M.D., President, Tex. Soc’y of Anesthesiologists & Douglas W. Curran, M.D., President, Tex. Med. Ass’n, to Virginia K. Hoelscher, Chair, Op. Comm. at 6 (Apr. 24, 2019) (on file with the Op. Comm.).

exercises over a certified registered nurse anesthetist to whom the doctor has made a delegation but about the regulatory role the Texas Medical Board exercises over the physician's decision to delegate. Request Letter at 1.

As discussed above, the Legislature provides clear authority for a physician to delegate the administration of anesthesia in certain circumstances:

- (a) In a licensed hospital or ambulatory surgical center, a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician.
- (b) The physician's order for anesthesia or anesthesia-related services is not required to specify a drug, dose, or administration technique.
- (c) Pursuant to the physician's order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the medical devices appropriate to accomplish the order and maintain the patient within a sound physiological status.
- (d) This section shall be liberally construed to permit the full use of safe and effective medication orders to use the skills and services of certified registered nurse anesthetists.

TEX. OCC. CODE § 157.058. Furthermore, section 157.060 of the Occupations Code limits a physician's liability "for an act of [an] . . . advanced practice registered nurse solely because the physician signed a standing medical order [and a] standing delegation order . . . authorizing the . . . advanced practice registered nurse to administer, provide, prescribe, or order a drug or device." *Id.* § 157.060. However, that limitation on liability does not apply if "the physician has reason to believe the . . . advanced practice registered nurse lacked the competency to perform the act." *Id.* The Legislature authorized the Texas Medical Board to "take disciplinary action" against a physician who delegates professional medical acts to a person whom the physician knows or should know is unqualified to perform the acts. *See id.* §§ 164.051(a), .052(a)(5), .053(a)(9). Thus, the Medical Board possesses regulatory authority over a physician's decision to delegate the providing and administration of anesthesia to a certified registered nurse anesthetist.

In your final question, you ask whether a certified registered nurse anesthetist has "independent authority to administer anesthesia without delegation by a physician." Request Letter at 1. As discussed above, "professional nursing" includes the administration of anesthesia when delegated by a physician pursuant to section 157.058 of the Occupations Code. TEX. OCC. CODE § 301.002(2)(G). The Legislature's definition specifically excludes from the scope of nursing the "acts of medical diagnosis or the prescription of therapeutic or corrective measures," and no other provision within the Nurse Practice Act provides authority otherwise. *Id.*

§ 301.002(2). Thus, a certified registered nurse anesthetist does not possess independent authority to administer anesthesia without delegation by a physician. *See* Tex. Att’y Gen. Op. No. JC-0117 (1999) at 1 (“[T]he practice of professional nursing includes the selection and administration of anesthesia and the care of an anesthetized patient by a CRNA, but only when those tasks are delegated by a physician.”).

S U M M A R Y

The practice of medicine includes the provision of anesthesia by a licensed physician. However, pursuant to subsection 301.002(2)(G) of the Occupations Code, when a certified registered nurse anesthetist administers anesthesia pursuant to a physician's delegation, such act falls within the scope of professional nursing.

The Legislature authorized the Texas Medical Board to take disciplinary action against a physician who delegates professional medical acts to a person whom the physician knows or should know is unqualified to perform the acts. Thus, the Board possesses regulatory authority over a physician's decision to delegate the providing and administration of anesthesia to a certified registered nurse anesthetist.

A certified registered nurse anesthetist does not possess independent authority to administer anesthesia without delegation by a physician.

Very truly yours,



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