

RESOLUTION 005

Employment Relations

July 17, 2007 the CSBME proposed an amendment to Ga.Comp.R.&Regs. 360-3-.02 relating to PAs that included in the definition of “unprofessional conduct” a physician being employed by a PA the physician supervises in the provision of medical tasks or patient services. However, the proposed amendment contained an exception to the prohibition if the physician can establish:

- the arrangement specifically mandates that the physician exercises independent judgment and control in the practice of medicine;
 - the physician’s actions while engaging in the practice of medicine are not, under any circumstances, subject to the control of the PA; and
 - the policies and procedures implemented prevent the exertion of undue influence by the employing PA.
- **Physician Employment by a PA the Physician Supervises in the Execution of Delegated Medical Acts Presents an Inherent and Irresolvable Conflict of Interest that Places Patient Care in Jeopardy.**
 - AMA policies state, “...it is important to recognize that sufficiently large incentives can create an untenable position for physicians”; “physicians should avoid reimbursement systems that, if disclosed to patients, could negatively impact the patient-physician relationship.”; and “Some models of medical practice result in an inappropriate restriction of the physician’s ability to practice quality medicine.” *AMA Policy, E-8.054 Financial Incentives and the Practice of Medicine; and AMA Policy, H-275.937 Patient/Physician Relationship and Medical Licensing.*
 - Allowing a physician to be employed by one he/she is responsible for supervising places a physician in the precarious position of having to choose between quality patient care on the one hand and his/her livelihood on the other when the physician’s judgment conflicts with that of his/her employer. When a physician is an employee of one he/she is charged with supervising, the financial incentives are of such a magnitude that the physician is placed in an untenable position that jeopardizes patient care.
 - A physician being an employee of one he/she is charged with supervising, if disclosed to patients, will create doubt in the minds of patients as to whose interests the physician is serving. Such doubt weakens the trust necessary in the patient-physician relationship thereby negatively impacting such relationships.
 - Employers have the authority to control the manner and method of work. In the matter at hand, the “work” is the practice of medicine. Because a PA employing a physician would have the authority to control the physician’s practice of

medicine, such employment arrangements have a high likelihood of resulting in the physician's inability to practice quality medicine.

- **Physician Employment By a PA the Physician Supervises in the Execution of Delegated Medical Acts Conflicts with Georgia Law (and most state laws)**
 - PAs are required to be *licensed to a primary supervising* physician who has the primary *responsibility for supervising* the practice of the PA. [emphasis added] O.C.G.A. §43-34-102(8). (For additionally authority the physician is responsible for the acts of, and supervises, the PA, see also, O.C.G.A. §43-34-102(5); 43-34-103(a); 43-34-103(d); and 43-34-103(e.1)(1)).
 - Georgia Law defines “Primary Supervising Physician”, in part, as the physician “...who has the primary responsibility for *supervising* the practice of that physician’s assistant.” [emphasis added] O.C.G.A. §43-34-102(8). Black’s Law Dictionary, Eighth Edition, defines “Supervisor” as “One having *authority* over others.” [emphasis added].
 - Georgia law defines an employer as one that has the “right to *control* the time, manner, and method of executing the work...”[emphasis added] Federated Mut. Implement & Hdwe, Ins. Co. v. Elliott, 88 Ga. App. 266 (1953); O.C.G.A. §34-2-2(1).
 - **A PA, as an employer of a supervising physician, has the authority to control the manner and method of work. The work in this instance is the practice of medicine. The duties incumbent on a physician in his/her statutory role as supervisor of a PA cannot be reconciled with the authority of a PA as the physician’s employer to control the manner and method of work. Therefore, a physician cannot execute his/her statutory duties as a supervisor and simultaneously be the supervisee’s employee. As a result, a physician that chooses to be employed by a PA he/she is charged with supervising must abandon his/her statutory duty to supervise the PA.**