September 6, 2011

Mr. Patrick Kelly Farr, Jr.
Deputy Secretary of State
Interim Division Director
Secretary of State, Professional Licensing Boards Division
Georgia Board of Nursing
237 Coliseum Drive
Macon, GA 31217

RE: Rule for Clinical Nurse Specialist - Proposed Rule 410-12-.06

Dear Mr. Farr:

The Medical Association of Georgia ("MAG") is a professional association comprised of physicians licensed to practice medicine in the State of Georgia and represents the interests of Georgia physicians. MAG's mission is to enhance patient care and the health of the public by advancing the art and science of medicine. As such, MAG has a vital interest in the Georgia Board of Nursing's rules governing clinical nurse specialists.

MAG offers the following suggestion to the proposed rule:

410-12-.06 Rule for Clinical Nurse Specialists

MAG suggests striking the following language in Section (2) Scope and Standards of Practice for the Clinical Nurse Specialist:

The clinical nurse specialist ("CNS") is an advanced practice registered nurse who provides a full range of nursing services from health promotion to illness rehabilitation. As a primary health care provider, the clinical nurse specialist provides clinical supervision, consultation and liaison services. The clinical nurse specialist must practice in accordance with the current standards of the national certifying organizations listed in Rule 410-12-.12 by which the clinical nurse specialists are currently certified.
Rationale: MAG has obtained the attached legal opinion from Richard D. Sanders of The Sanders Law Firm, P.C. As stated in the opinion, the use of the term “primary health care provider” implies treating and diagnosing common medical conditions that can only be governed by Georgia’s Medical Practice Act. The use of the term “primary health care provider” is inappropriate in this rule as it implies delegating authority for the practice of medicine which only the Composite Board of Medical Examiners has the authority to regulate.

The terms “clinical supervision, consultation and liaison services” in the rule are vague and not clearly defined. The rule is not clear as to whom the CNS supervises and who is consulting the CNS. A CNS is a member of a health care team that provides primary care services at the direction of the physician. These health care teams are physician led. The proposed language implies that a CNS is the leader of this health care team.

In summary, the proposed rule goes beyond the statutory authority granted to the Georgia Board of Nursing. Pursuant to statute, the Georgia Board of Nursing has the authority to adopt rules related to the practice of nursing. As written, this rule authorizes the CNS to engage in the practice of medicine, which only the Composite Board of Medical Examiners is allowed to regulate.

MAG appreciates the opportunity to provide comments on these important rules and intends to have a representative present at the hearing in the event members of the Board have questions or concerns.

Sincerely,

Donald J. Palmisano, Jr., J.D.
Executive Director/CEO

/djp

enclosure
August 29, 2011

VIA ELECTRONIC MAIL

Donald J. Palmisano, Jr.
Executive Director and Chief Executive Officer
Medical Association of Georgia
1849 The Exchange
Suite 200
Atlanta, GA 30339

RE: Opinion on Rule 410-12-.06 – Rules For Clinical Nurse Specialist

Dear Donald,

This letter includes our commentary on the Georgia Board of Nursing’s proposed Ga. Comp. R. & Regs. 410-12-.06 regarding Clinical Nurse Specialists (the “Rule”) as counsel for the Medical Association of Georgia.

Background Facts

The Georgia Board of Nursing has proposed the Rule, which would authorize the designation “Clinical Nurse Specialist” (“CNS”) as an advanced practice authorization of the Georgia Board of Nursing.

The Rule defines a CNS as a “registered professional nurse who has graduated from a program of graduate study and supervised practice; who holds a master’s degree or other graduate degree from an approved nursing education program; who holds a national board certification in his or her area of specialty; and is authorized to practice as an advanced practice registered nurse by the Board.”

The Rule defines the scope of the CNS as providing “a full range of nursing services from health promotion to illness rehabilitation.” Specifically, the Rule states “[a]s a primary health care provider, the clinical nurse specialist provides clinical supervision, consultation and liaison services.”

1 Ga. R. & Regs. 410-12.06(1)
2 Ga. R. & Regs. 410-12.06(2)
3 Id.
Legal Background

The Georgia General Assembly statutorily defines and regulates various professions, such as medicine and nursing, and delegates authority to administer and enforce the articles to certain boards. The Assembly “cannot confer on any person or body the power to determine what the law shall be,” but “can grant authority to some administrative board to adopt rules, bylaws or ordinances for its government, or to carry out a particular purpose.”

Georgia Medical Practice Act

The Georgia Medical Practice Act (the “MPA”) defines the “practice of medicine” as “to hold oneself out to the public as being engaged in the diagnosis of disease, defects, or injuries of human beings; or the suggestion, recommendation, or prescribing of any form of treatment for the intended palliation, relief, or cure of any physical, mental, or functional ailment or defect of any person with the intention of receiving therefore, either directly or indirectly, any fee, gift, or compensation whatsoever; or the maintenance of an office for the reception, examination, and treatment of persons suffering from disease, defect, or injury of body or mind ...”

The MPA grants the Composite Board of Medical Examiners the exclusive power “to adopt, amend, and repeal such rules and regulations in accordance with this chapter necessary for the proper administration and enforcement of this chapter.”

Georgia Registered Professional Nurse Practice Act

The Georgia Board of Nursing is authorized to “draft, amend, repeal and enforce such rules as it deems necessary for the administration and enforcement of this article in the protection of public health, safety, and welfare” and to “enact rules and regulations for advanced practice registered nurses in performing acts as authorized in Code Section 43-34-25”.

An “advanced nursing practice” means practice by a registered nurse who meets those educational, practice, certification requirements, or any combination of such requirements[...] and includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialist in psychiatric/mental health, and others recognized by the board.”

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5 O.C.G.A. § 43-34-21(3).
6 O.C.G.A. § 43-34-5(c)(1).
7 O.C.G.A. § 43-26-5(a).
8 O.C.G.A. § 43-26-3(1).
Analysis

Acting as a primary health care provider is the practice of medicine. According to the National Institutes of Health, some of the roles of a “primary care provider” are to “provide preventative care” and to “identify and treat common medical conditions.” Identifying and treating common medical conditions clearly qualifies as “being engaged in the diagnosis of disease, defects, or injuries of human beings” under Georgia’s MPA.

The Georgia General Assembly has delegated the authority to regulate the practice of medicine to the Composite Board of Medical Examiners and, therefore, only the Composite Board of Medical Examiners may confer the authority to act as a “primary health care provider.”

The Georgia Board of Nursing is not authorized to adopt rules related to the practice of medicine. To the contrary, the Board of Nursing is only authorized to adopt rules related to the practice of “nursing.”

Further, the Georgia General Assembly defined nursing in a team member role, not as a primary health care provider. An advanced practice nurse, such as a nurse practitioner, works under a nurse protocol with a physician. Therefore, that advance practice nurse is a member of the team that provides primary health care services, but he or she is not the provider.

CONCLUSION

Based on the foregoing, the Georgia General Assembly has not granted the Board of Nursing the authority to designate a CNS as a “primary health care provider.” The Board of Nursing does not have the statutory authority to adopt the Rule as drafted as it relates to the practice of medicine; only the Composite Board of Medical Examiners has such authority.

Please let me know if you have any questions or comments about this analysis.

Sincerely,

THE SANDERS LAW FIRM, P.C.

Richard D. Sanders

RDS/kl