
Analysis of a Proposal to Modify the Regulation of Physician Assistants

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 98-19
November 1998

THE AUDITOR
STATE OF HAWAII

OVERVIEW

Analysis of a Proposal to Modify the Regulation of Physician Assistants

Report No. 98-19, November 1998

Summary

This study was conducted in response to House Concurrent Resolution No. 14, House Draft 1, Senate Draft 1 of the 1998 Regular Session which requested the State Auditor to conduct an analysis of the probable effects of the proposed regulatory changes for physician assistants contained in Senate Bill No. 3234 (1998). S.B. No. 3234, *Relating to Physician Assistants*, proposes to change the terminology from “certification” to “licensure” for persons authorized to perform services as physician assistants. Although the proposal was generally supported by the medical community, the Department of Public Safety’s Narcotics Enforcement Division expressed concern over the possible expansion of prescriptive authority to physician assistants.

We found that physician assistants are, in effect, already licensed by the State of Hawaii. The Department of Commerce and Consumer Affairs and the Board of Medical Examiners currently treat physician assistants as being licensed. That being the case, a change in statutory terminology will have minimal fiscal and operational impact on the department and its division charged with issuing and renewing physician assistant certificates. In addition, the use of “licensure” is supported by all stakeholders and national trends point to a shift to that term for physician assistants. We also believe that “licensing” more accurately reflects the regulatory intent than does “certification.”

Changing to the term “licensure” will allow physician assistants to prescribe and dispense controlled substances. Although the Board of Medical Examiners’ administrative rules give supervising physicians the authorization to allow physician assistants to prescribe, dispense, and administer medications including controlled substances, the Uniform Controlled Substances Act (Chapter 329, HRS) excludes physician assistants from prescribing controlled substances. Under Chapter 329, only individual practitioners who are *licensed* and registered with the Department of Public Safety may write prescriptions for controlled substances (emphasis added). The Department of Public Safety’s Narcotics Enforcement Division does not interpret physician assistants as being *licensed* practitioners and will not register them as persons authorized to prescribe controlled substances.

We also found that changing the regulatory nomenclature for physician assistants from certified to licensed will have little to no effect on the public’s health, safety, or welfare. As evidenced by the few complaints made against physician assistants, it appears that the safeguards currently implemented by statute or administrative rules are sufficient to ensure consumer protection. First, physician assistants must meet state and national criteria to practice medicine. Physician assistants cannot legally practice medicine independently of physician supervision and will continue to work within the scopes of practice allowed by their supervising physicians. In



addition, physician assistants will be subject to state and national registration requirements if given the authority to prescribe controlled substances. Lastly, a change in nomenclature will not result in a negative financial impact to consumers in the form of higher health insurance costs.

Recommendations and Response

We recommend that Sections 453-5.3 and 453-5.4, Hawaii Revised Statutes, be amended as proposed in S.B. No. 3234 (1998) to require each person practicing medicine under the supervision of a physician to be licensed, rather than certified, as a physician assistant.

We transmitted a draft of this study to the Department of Commerce and Consumer Affairs; however, the department did not submit a written response.

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Submitted by

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Foreword

This study was conducted in response to House Concurrent Resolution No. 14, House Draft 1, Senate Draft 1 of the 1998 Regular Session which requested the State Auditor to conduct an analysis of the probable effects of the proposed regulatory changes for physician assistants contained in Senate Bill No. 3234 (1998). S.B. No. 3234, *Relating to Physician Assistants*, proposes to change the terminology from “certification” to “licensure” for persons authorized to perform services as physician assistants.

We wish to express our appreciation for the cooperation and assistance extended to us by the Department of Commerce and Consumer Affairs, Board of Medical Examiners, and organizations and individuals knowledgeable about the occupation whom we contacted during the course of our analysis.

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State Auditor

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Chapter 1

Introduction

Pursuant to House Concurrent Resolution No. 14, House Draft 1, Senate Draft 1 of the 1998 Regular Session, the State Auditor conducted an analysis of the probable effects of the proposed regulatory changes for physician assistants contained in Senate Bill No. 3234 (1998). S.B. 3234 is included as Appendix A.

S.B. 3234, *Relating to Physician Assistants*, proposes to change the terminology from certification to licensure for persons authorized to perform services as physician assistants. Although the proposal was generally supported by the medical community, the Department of Public Safety's Narcotics Enforcement Division expressed concern over the possible expansion of prescriptive authority to physician assistants. The bill gives physician assistants full prescriptive powers including controlled substances. The narcotics division testified against allowing physician assistants to have prescriptive powers without the direct and physical presence of their monitoring physicians.

Background

The physician assistant profession developed in the mid-1960s in response to a shortage and uneven distribution of primary care physicians. Physician assistants are now considered essential members of the primary care workforce nationwide. According to the U.S. Bureau of Labor Statistics, the occupation of physician assistants is among the 20 occupations projected to grow the fastest through the year 2006. The past 20 years have already shown remarkable growth. In 1980, there were approximately 9,500 employed physician assistants in the United States. In 1993, there were over 23,000 practicing physician assistants. By 1996, about 64,000 physician assistants were employed. Their integration into American medicine is confirmed by the growing demand for their services in the health care marketplace and by recent strides in achieving full legal, professional, and health payer acceptance of their occupation.

However, unlike national trends, the number of certified physician assistants in Hawaii has decreased over the past several years. In 1992, there were about 66 certified physician assistants. By 1998, six years later, only 51 certified physician assistants are in Hawaii.

Definition of licensure and certification

The Council on Licensure, Enforcement and Regulation (CLEAR), a national organization whose mission is to improve the quality and understanding of professional and occupational regulation, defines *licensing* as “a process by which a government agency grants individuals

permission to engage in a specified profession or occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety and welfare will be reasonably protected."¹ Section 436B-2, Hawaii Revised Statutes (HRS), defines license as "the permission to engage in a profession or vocation granted by the applicable licensing authority to a person who has satisfied every requirement for licensure." Once a profession obtains licensure status, it is illegal for anyone who does not hold a valid license to practice that profession or occupation. Licensure is often referred to as the *right-to-practice* form of regulation.

According to CLEAR, *certification* is a form of regulation that grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who meet the qualifications may legally use the designated title. Non-certified individuals may still offer similar services to the public as long as they do not describe themselves as being "certified" or use a specific title. Certification is referred to as a *right-to-title* form of regulation.

History of Chapter 453, HRS

Physician assistants have been regulated under Chapter 453, HRS, since 1984. In our January 1984 report, *Sunset Evaluation Report: Medicine and Surgery*, Report No. 84-5, we found that the Board of Medical Examiners' failure to adopt rules governing the medical education and training of physician assistants permitted the unregulated practice of medicine. We recommended that Chapter 453, HRS, be amended to establish a mandatory licensing program for physician assistants and to authorize only certified and licensed health care professionals to practice medicine under the direction and control of physicians.

During the 1984 legislative session, S.B. 1744 was introduced to require the licensing of a person who provides services within the practice of medicine under the supervision of a physician. After hearing testimony on the bill, the Senate Committee on Consumer Protection and Commerce amended the bill to change the word "license" to "certification." The committee noted that licensing an individual to practice medicine implied that an individual may practice independently of any supervision. The bill was signed into law as Act 168 and codified as Section 453-5.3, HRS.

Physician assistants

Physician assistants are formally trained to provide diagnostic, therapeutic, and preventive health care services under the direction and supervision of a physician. Physician assistants must attend a nationally recognized physician assistant program which generally lasts two years. Programs are taught in a school of allied health, an academy health center, a medical school, or a four-year college. Most programs require applicants to have two years of college and some work experience in the health care field. Many physician assistants have at least a bachelor's

degree and are former nurses, emergency medical technicians, or other allied health professionals.

Occupational characteristics

Physician assistants function in teams with physicians, most often playing supplementary or complementary roles. Working as members of the health care team, they take medical histories, examine patients, assist at surgery, order and interpret laboratory tests and x-rays, make diagnoses, record progress notes, instruct and counsel patients, and order or carry out therapy. Physician assistants are employed on clinical staffs in community hospitals, academy health centers, emergency departments, and ambulatory care clinics. Physician assistants also fill service gaps as primary care providers in other places such as correctional health systems, substance abuse clinics, student health services, occupational health clinics, and geriatric settings.

Other health workers who provide direct patient care of a similar level of skill and training as physician assistants include nurse practitioners, physical therapists, occupational therapists, clinical psychologists, speech-language pathologists, and audiologists.

Regulatory framework

Chapter 453, HRS, places the physician assistant regulatory program under the Board of Medical Examiners, which is administratively attached to the Department of Commerce and Consumer Affairs. The medical board consists of nine members—seven physician members and two lay members appointed from the general public. The board is appointed by the governor and confirmed by the Senate. It serves without compensation. A Physician Assistant Advisory Committee under the board, consisting solely of certified physician assistants, reviews all complaints and requests relating to physician assistants and reviews and recommends revisions of the physician assistant regulations. An executive officer in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

Pursuant to Section 453-5.3, HRS, the board requires each person practicing medicine under the supervision of a physician to be certified as a physician assistant. The practice of medicine includes the use of drugs and medicine, water, electricity, hypnotism, or any means, method, or agent for the treatment of disease in the human subject. Physician assistants must apply for recertification every two years.

For physician assistants, the board is required to establish by rule: (1) medical educational and training standards; (2) the degree of supervision required by the supervising physician when a physician assistant performs

a service within the practice of medicine; and (3) the application procedure, examination requirement, if any, and degrees of supervision. Title 16, Chapter 85, Subchapter 6, Hawaii Administrative Rules, clarifies and implements Section 453-5.3, HRS. The administrative rules were last amended in December 1997.

Scope of practice

A physician assistant is considered an agent of the supervising physician in the performance of all practice-related activities as established in writing by the employer. Medical services provided by physician assistants may include, but are not limited to:

- obtaining patient histories and performing physical examinations;
- ordering, interpreting, or performing diagnostic and therapeutic procedures;
- formulating diagnoses;
- developing and implementing treatment plans;
- monitoring the effectiveness of therapeutic interventions;
- assisting at surgery;
- offering counseling and education; and
- making referrals.

Degree of supervision

Supervision is defined by administrative rules as overseeing the activities of and accepting responsibility for the medical services rendered by physician assistants. Supervision is continuous but does not necessarily require the physical presence of the supervising physician at the time and place services are rendered. However, the supervising physician must provide a means for direct communication with the physician assistant via telephone, fax machine, modem, or other telecommunication device.

Supervising physicians retain full professional and legal responsibility for the performance of their physician assistants and the care and treatment of patients. Supervising physicians may not supervise more than two physician assistants at any one time and must personally review the records of each patient seen by the physician assistant within seven working days.

Objectives of the Analysis

1. Ascertain the probable effects of amending Chapter 453, Hawaii Revised Statutes, to require each person practicing medicine under the supervision of a physician to be licensed, rather than certified, as a physician assistant.
2. Make recommendations as appropriate.

Scope and Methodology

This analysis examined the probable impact of changing the terminology regarding physician assistants from certified to licensed. We included an assessment of the impact that S.B. 3234 of the 1998 Legislature would have on the ability of physician assistants to prescribe and dispense controlled substances and the impact, if any, that licensure would have on the ability of physician assistants to bill and be reimbursed for services.

We reviewed recent research, literature, and reports on the regulation of physician assistants as they related to this analysis. We reviewed applicable statutes and proposed regulation. We surveyed and obtained information from local health and medical organizations, commercial insurers, and national and local professional associations. We also conducted interviews with officials from the Narcotics Enforcement Division, Department of Commerce and Consumer Affairs, Board of Medical Examiners, and Physician Assistants Advisory Committee.

Our work was performed from July 1998 to August 1998 in accordance with generally accepted government auditing standards.

Chapter 2

Changing the Regulatory Term Used For Physician Assistants From Certified to Licensed Will Have Minimal Effects

This chapter presents the findings and recommendations of our analysis of the probable effects of modifying the regulatory language of physician assistants from certified to licensed. We found that changing the regulatory terminology will not result in any negative effects to the State or to the public. The State currently treats physician assistants as being licensed and the use of the term licensure is supported by the general medical community. Physician assistants will be able to prescribe and dispense controlled substances with a change in regulatory nomenclature; however, this will only serve to enhance the practice of physician assistants by maximizing their utilization.

Summary of Findings

1. Physician assistants are, in effect, already licensed by the State of Hawaii.
2. A change from the term certification to licensure will allow physician assistants to prescribe and dispense controlled substances.
3. The use of the term licensure for physician assistants will not jeopardize the public's health, safety, or welfare.

Physician Assistants Are In Effect Currently Licensed

The focus of this analysis is to study the effects of changing the terminology pertaining to physician assistants in Chapter 453, HRS, from certified to licensed. Although Chapter 453, HRS, refers to physician assistant *certification*, from a regulatory viewpoint, we believe that physician assistants are licensed and already receive right-to-practice protection.

Physician assistants are treated by the State as being licensed

The Department of Commerce and Consumer Affairs and the Board of Medical Examiners do not see a distinction between the terms certification and licensure as applied to physician assistants. The department and board believe that although physician assistants receive the credential of certification by the State, they are actually licensed. The department and

board interpret state certification and licensure as defined in regulatory terminology to be the same—the permission to engage in a profession or vocation granted by the licensing authority to a qualified individual.

Changing terminology will not significantly impact the State

One concern with the proposed change in statutory terminology is the impact on the Department of Commerce and Consumer Affairs, specifically, the Professional and Vocational Licensing Division. The division is responsible for issuing and renewing physician assistant certificates.

According to the division, a change in the terminology regarding physician assistants from certification to licensure would not result in any significant fiscal or operational effects. The division would probably reprint the pocket-size paper credential awarded to physician assistants and reprint the application forms because both make reference to the term certified. However, these are in-house changes that would not pose a financial burden to the division.

Licensing is a more accurate word

Licensing, as defined by statute and the Council on Licensure, Enforcement, and Regulation (CLEAR), more accurately reflects the regulatory intent of Section 453-5.3 than does the use of the word certification.

Under licensing, the State grants a right-to-practice to those individuals meeting certain criteria. Under certification, the State grants a right-to-title to persons meeting predetermined standards. Currently, Chapter 453 requires the certification of physician assistants who practice medicine; however, it does not grant them title protection. Instead, the actual *practice* of medicine by physician assistants is currently protected and regulated by that chapter.

Use of the term licensure is supported by all stakeholders

Legislation introduced during the 1997 and 1998 legislative sessions to change the term certification to licensure as applied to physician assistants was supported by local and national organizations and individuals in the health community involved with physician assistants. The only organization testifying against legislation that proposed to change the regulatory terminology was the Narcotics Enforcement Division of the Department of Public Safety.

The Board of Medical Examiners testified that it saw no distinction between the terms and assured that changing the terminology would not expand physician assistants' scope of practice or allow them to practice independently. The Hawaii Medical Association also supported passage

of legislation and concurred with the Board of Medical Examiners' position. The Hawaii Academy of Physician Assistants and the American Academy of Physician Assistants also strongly supported past legislation and asserted that the terminology change would not affect the physician assistants' relationship with their supervising physicians. They added that changing the term to licensure would promote clarity in regulatory language for consumers, regulators, and other professionals. The Hawaii State Primary Care Association stated that changing the term to licensure would allow health centers to utilize physician assistants more fully and would enable them to provide quality health care to those in need. In supporting the change in terminology, private medical offices statewide and physician assistants also testified that the nomenclature change would not result in independent practice.

National trends point to a shift to the term licensure

Currently, all states except Mississippi regulate physician assistants. Hawaii is in the clear minority of states that do not use the term licensure in regulating physician assistants. More than 65 percent of all states that regulate physician assistants use the term licensure compared with 31 percent that use the term certification or registration. As of July 1998, 34 states used the term licensure in their physician assistant statutes, 11 states (including Hawaii) used the term certification, and 4 states used the term registration.

The number of states using the term licensure for physician assistants has more than doubled over the past several years. In 1993, 16 states used the term license in their physician assistant statutes. Since then, 18 states have amended their regulatory laws in order to change the terminology from certified to licensed physician assistants. According to the American Academy of Physician Assistants, most states viewed the amended certification term as a minor technical change.

Pew Health Professions Commission recommends the term licensure

The American Academy of Physician Assistants and the Pew Health Professions Commission recommend using the term licensure for state regulation of physician assistants. The Pew Health Professions Commission is a nonprofit organization that assists health professionals, workforce policy makers, and educational institutions in responding to the changing health care system. The commission was created in 1989 and is administered by the University of California at San Francisco's Center for the Health Professions.

In December 1995, the commission's Taskforce on Health Care Workforce Regulation published a report containing general recommendations and policy options about health care workforce regulation. The taskforce's first recommendation was that states should

use standard language for health professions' regulation to clearly describe them for the general public. Specifically, the taskforce recommended the following:

1. Reserve the use of the term licensure for state regulation of health professions title protection and practice acts.
2. Reserve the term certification for voluntary private sector programs that attest to the competency of individual health professions.

Currently, the State of Hawaii and the National Commission on Certification of Physician's Assistants (NCCPA) use the term certification to refer to the credential awarded to physician assistants who meet certain criteria. Utilizing the term licensure for state regulation of physician assistants would minimize the confusion surrounding the use of the term certification by the NCCPA—a private organization attesting to the competency of physician assistants.

Other regulated health care professions use the term licensure

A review of various statutes that regulate various health care providers in Hawaii reveals that a vast majority utilize the term licensure. The State currently regulates about 23 various health care providers. Of these, only three use the term certification—physician assistants, nurses aides, and emergency medical technicians. Nurses aides work under the supervision of a nurse and assist patients in all activities of daily living. Emergency medical technicians work under the direction of a physician and provide basic or advanced life support to patients at the site of an emergency or in transit to a medical facility.

The U.S. Bureau of Labor Statistics compares the level of skill and training of physician assistants to the occupations of physical therapists, nurse practitioners, clinical psychologists, speech pathologists, and audiologists. These occupations are regulated in Hawaii and use the term licensure in their statutes. Other health care providers that use the term licensure include acupuncture practitioners, dental hygienists, pharmacists, massage therapists, naturopathic physicians, chiropractors, radiation therapists, and physicians. Taking into account that the current law regulates the scope of practice of physician assistants, it is reasonable to conclude that they should be included in the group of health care providers that use the term licensure.

Changing to the Term Licensure Will Allow Physician Assistants to Prescribe and Dispense Controlled Substances

State laws need clarification

Although prescribing medication and drugs is within the scope of practice of physician assistants, states vary in levels of authorization to prescribe controlled substances. In Hawaii, the affected statutes are not clear about the prescriptive authority given to physician assistants. The nationwide trend does extend this authority to physician assistants.

In 1996, a concern regarding the legal interpretations of Chapter 453, HRS, and Chapter 328, HRS, the Hawaii Food, Drug, and Cosmetic Act, surfaced. The question raised was whether physician assistants are licensed medical practitioners and may prescribe medications and drugs under Chapter 328, HRS. Chapter 328 states that a prescription drug shall be dispensed only upon a written prescription of a practitioner *licensed* by law to administer the drug (emphasis added).

In October 1996, the Department of the Attorney General provided an opinion on the issue. The attorney general concluded that a physician assistant's certification under Chapter 453, HRS, cannot be equated with the licensure requirements of Chapter 328, HRS. Therefore, a physician assistant is not a practitioner licensed by law to administer prescription drugs. The attorney general suggested that the definition of a practitioner under Chapter 328, HRS, be amended to include an individual "authorized by law" by the State to prescribe prescription drugs within the scope of the person's practice. During the 1997 legislative session, Chapter 328, HRS, was amended and pharmacists are now allowed to fill prescriptions for legal drugs and medications written by physician assistants.

A similar issue currently exists regarding the interpretations of Chapter 453, HRS, and Chapter 329, HRS, the Uniform Controlled Substances Act.

Uniform Controlled Substances Act excludes physician assistants

Although physician assistants are allowed by statute to use drugs and medication in the course of treating a patient, the Uniform Controlled Substances Act (Chapter 329, HRS) excludes physician assistants from prescribing controlled substances. Each controlled substance is placed in one of five different schedules based on its degree of danger or probable danger as follows:

- Schedule I substances have the highest degree of danger or probable danger and have no accepted medical use in the United States. Schedule I substances include heroin and LSD.
- Schedule II substances have a high degree of danger or probable danger and have a high abuse potential for severe psychic or physical dependence. Schedule II substances consist of certain narcotic, stimulant, and depressant drugs. They include opium, morphine, and codeine.
- Schedule III substances have a degree of danger or probable danger less than substances in Schedule I or II. Schedule III substances contain limited quantities of certain narcotic and non-narcotic drugs. Anabolic steroids are Schedule III substances.
- Schedule IV substances have a degree or danger or probable danger less than substances in Schedule III. Schedule IV substances include depressants such as Valium and Xanax.
- Schedule V substances have a degree of danger or probable danger less than substances in Schedule IV. Schedule V substances contain limited quantities of certain narcotic and stimulant drugs generally for antitussive (cough suppressants), antidiarrheal, and analgesic purposes.

Under Chapter 329, HRS, only individual practitioners who are *licensed* and registered with the Department of Public Safety may write prescriptions for controlled substances (emphasis added). The Department of Public Safety and its Narcotics Enforcement Division are charged with enforcing the Uniform Controlled Substances Act. The Narcotics Enforcement Division does not interpret physician assistants as being licensed practitioners because they are certified under Chapter 453, HRS. Therefore, the division will not register physician assistants as persons authorized to prescribe controlled substances.

***Board of Medical
Examiners’
administrative rules
conflict with statute***

In December 1997, the Board of Medical Examiners revised its administrative rules knowing that the Narcotics Enforcement Division would not register physician assistants as practitioners authorized to prescribe controlled substances under the Uniform Controlled Substances Act. However, pursuant to the revised rules, supervising physicians are authorized to allow physician assistants to prescribe, dispense, and administer medications, including controlled substances, to the extent delegated by the supervising physician, subject to the following requirements:

- Physician assistants may prescribe and dispense Schedule III through V controlled substances and all legal medications, however, no physician assistant may prescribe Schedule II controlled substances.
- Physician assistants given the authority to prescribe Schedule III through V medications must register with the U.S. Drug Enforcement Agency.
- Each prescription written by a physician assistant shall include the name, address, and phone number of the supervising physician and physician assistant. The printed name of the supervising physician shall be on one side of the form and the printed name of the physician assistant on the other side. The physician assistant shall sign the prescription next to his/her printed name.
- A physician assistant may request, receive, and sign for professional samples and may distribute professional samples to patients.

Although supervising physicians have the authority to allow physician assistants to prescribe controlled substances under the board's rules, the Narcotics Enforcement Division will not register them as authorized practitioners under the Uniform Controlled Substances Act. Therefore, a prescription for a controlled substance written by a physician assistant is in violation of the Uniform Controlled Substances Act.

The Board of Medical Examiners revised its administrative rules because it found that physician assistants are qualified practitioners able to prescribe controlled substances. The Department of Commerce and Consumer Affairs stated that it was the board's intention to extend health care services in a safe manner to patients in need of medical care. The department felt that it was within the board's jurisdiction to amend the rules but acknowledged that the Narcotics Enforcement Division would enforce the Uniform Controlled Substances Act and not allow physician assistants to obtain a controlled substance registration.

State laws need clarification to be consistent with occupational regulatory laws. If the physician assistant occupation is authorized certain practices, relevant laws should be consistent with that authority to practice.

National trends support prescriptive authority

The number of states giving physician assistants the authority to prescribe drugs, medication, and controlled substances has increased over the past several years. As of July 1993, physician assistants were authorized to prescribe pharmaceuticals in 36 states. By August 1998, physician assistants had prescribing privileges in 43 states, including Hawaii. Only

13 of these states imposed a restriction, such as the use of a formulary or prescriptions limited to underserved areas and primary practice sites.

Physician assistants currently have the authority to prescribe controlled substances in 34 states. Of these 34 states, 18 allow physician assistants to prescribe Schedule II through V controlled substances, with some states placing restrictions on Schedule II substances. Another 14 states allow physician assistants to prescribe only Schedule III to V controlled substances. Only two states restrict controlled substance prescription by physician assistants to Schedule V substances. Five years ago in 1993, only 20 states allowed physician assistants to prescribe controlled substances.

Amending Regulatory Terminology to Licensure Will Not Jeopardize the Public

Changing the regulatory nomenclature for physician assistants from certified to licensed will have little to no effect on the public's health, safety, or welfare. We found that the safeguards currently implemented by statute and administrative rules ensure consumer protection. Furthermore, physician assistants will be subject to the state and national registration requirements if given the authority to prescribe controlled substances. Lastly, we found that a change in nomenclature will not result in a negative financial impact to consumers in the form of higher health insurance costs.

Current safeguards are adequate

Evidenced by the few complaints made against physician assistants and testimony provided by private medical offices, it appears that the safeguards currently in place are sufficient to protect consumers from incompetent or negligent physician assistants. First, physician assistants who want to practice medicine in Hawaii must meet certain criteria to assure they are competent to provide medical services. Physician assistants must also be recertified by the State every two years. To be eligible for state recertification, physician assistants must maintain national certification by the National Commission on Certification of Physician's Assistants (NCCPA). NCCPA also requires recertification every two years. Nationally certified physician assistants must meet certain continuing medical education requirements and are required to take an examination every six years to test their capability and to assure a minimum level of knowledge and skill.

Physician supervision is ensured

Physician supervision requirements will not be affected by the term change from certification to licensure. In Hawaii, physician assistants cannot legally practice medicine independently of physician supervision. Furthermore, physician assistants may perform only those services delegated by their supervising physicians. Supervising physicians retain

full professional and legal responsibility for the performance of their physician assistants and the care and treatment of all patients. Physician assistants must introduce themselves as being a physician assistant to all patients and may not imply that they are independent practitioners. Physicians will also continue to be required to personally review, within seven working days, the records of each patient seen by physician assistants.

In our 1992 sunset evaluation report, we found that the board's requirement that physician assistants could not provide services in a place separate and apart from the supervising physician's primary places for meeting patients was impractical. We recommended that the board develop amendments to the rule on supervision to address this. Pursuant to the December 1997 amendments made to the board's rules, physician supervision currently does not require the physical presence of the supervising physician when and where the services are provided. However, supervision must be continuous and there must be a means of direct communication between the physician assistant and supervising physician (i.e. telephone contact). Services may still continue through the physician assistant if the supervising physician is no longer needed. The Department of Commerce and Consumer Affairs believes that rural communities without access to physicians would especially benefit through this provision for care via the physician assistant.

Scope of practice will not expand

If the regulatory language relating to physician assistants is amended from certified to licensed, there will be no effect on the scope of practice of physician assistants. Physician assistants will continue to perform only services allowed by their supervising physicians and within the scope of practice set by the board's administrative rules. Physician assistants' scope of practice is broad and may include performing physical examinations; assisting at surgery; and prescribing, dispensing, and administering medications and controlled substances. Physician assistants are considered agents of the supervising physicians in their performance of all medical services as established in writing by the physicians.

Limited evidence of harm

A review of complaints filed with the Regulated Industries Complaints Office (RICO) and a survey of several private medical offices statewide confirm that there is limited evidence of harm caused by physician assistants. Medical offices report few consumer complaints and high levels of satisfaction with physician assistant services. One neighbor island medical office reported that patients specifically request treatment by its physician assistant.

In our previous sunset review of this profession in December 1992, we found that only two complaints had been filed with RICO over a three year period. Since January 1996, only two complaints have been filed with RICO. Neither complaint alleged negligent or incompetent practice by the physician assistant. One case alleged that a physician assistant was being improperly supervised by his supervising physician, and the second alleged that a physician assistant had provided services outside the scope of practice for physician assistants. The cases were placed on inactive status after both physician assistants were each sent an advisory letter. Potential abuse appears to be minimal and may be attributed to the number of safeguards currently in place.

Physician assistants will be subject to registration requirements

If physician assistants are given the authority to prescribe controlled substances, they will be required under state and federal laws to register with the Narcotics Enforcement Division and the U.S. Drug Enforcement Agency. Registration with both agencies serves to reduce the incidence of abuse and diversion of prescription drugs and controlled substances to the illicit market.

Pursuant to Section 329-32, HRS, every person who prescribes or dispenses any controlled substances in Hawaii must be registered by the Department of Public Safety. According to the department's administrative rules, authorized persons must annually obtain a certificate of registration issued by the department. Under the federal Controlled Substances Act, every mid-level practitioner who prescribes any controlled substances must be registered with the Drug Enforcement Administration. Physician assistants will be required to renew their federal registration every three years.

No impact to third party reimbursements

A change in nomenclature will not affect insurance coverage of physician assistant services. The American Academy of Physician Assistants (AAPA) reports that most private insurers and managed care organizations currently cover medical services provided by physician assistants. Most insurers want the services to be billed under the name of the supervising physician. The AAPA also reports that physician assistants do not bill separately or independently. Services are billed by the employer with reimbursements going to the employer and not directly to the physician assistant.

A survey of several private insurers in Hawaii confirms that physician assistant services are currently indirectly covered through supervising physicians and that a change from the term certification to licensure will not impact them. Generally, physician assistants do not independently or directly bill or receive reimbursement for their services. The private insurers we contacted stated that physician assistant services are billed through the supervising physicians and reimbursement is made to those

physicians. Insurers say they do make certain exceptions for direct reimbursement on a case-by-case basis. The private insurers we contacted noted that using the term certification versus licensure is not really an issue with them. Rather, they report that physician assistants' scope of practice and physician supervision are of greater concern.

Conclusion

There is little evidence that changing the regulatory terminology for physician assistants from certification to licensure will result in any negative effects to the State or to consumers. The Department of Commerce and Consumer Affairs currently treats physician assistants as being licensed and does not anticipate being affected by a change in nomenclature. Furthermore, the Board of Medical Examiners has recognized the competence of physician assistants to prescribe controlled substances. Amending Chapter 453, HRS, will allow for the maximum utilization of physician assistants without jeopardizing the public's health, safety, or welfare.

Recommendation

Sections 453-5.3 and 453-5.4, Hawaii Revised Statutes, should be amended as proposed in S.B. No. 3234 (1998) to require each person practicing medicine under the supervision of a physician to be licensed, rather than certified, as a physician assistant.

THE SENATE
NINETEENTH LEGISLATURE, 1998
STATE OF HAWAII

JAN 29 1998

S.B. NO. 3234

A BILL FOR AN ACT

RELATING TO PHYSICIAN ASSISTANTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 453-5.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§453-5.3 Physician assistant; [certification] licensure
4 required. (a) The board of medical examiners shall require each
5 person practicing medicine under the supervision of a physician,
6 other than a person licensed under section 453-3, to be
7 [certified] licensed as a physician assistant. A person who is
8 trained to do only a very limited number of diagnostic or
9 therapeutic procedures under the direction of a physician shall
10 not be deemed a practitioner of medicine and therefore does not
11 require [certification] licensure under this section.

12 (b) The board shall establish medical educational and
13 training standards with which a person applying for
14 [certification] licensure as a physician assistant shall comply.
15 The standards shall be at least equal to recognized national
16 education and training standards for physician assistants.

17 (c) Upon satisfactory proof of compliance with the required
18 medical educational and training standards, the board may grant
19 state [certification] licensure to a person who has been granted

1 certification based upon passage of a national certifying
2 examination and who holds a current certificate from the national
3 certifying entity approved by the board.

4 (d) The board shall approve temporary [certification]
5 licensure of an applicant under this section. The applicant
6 shall have graduated from a board approved training program
7 within twelve months of the date of application and never taken a
8 national certifying examination approved by the board but
9 otherwise meet the requirements of this section. The applicant
10 shall file a complete application with the board and pay all
11 required fees. If the applicant fails [to]:

12 (1) To apply for, or to take, the first examination
13 scheduled by the board following the issuance of the
14 temporary [certificate, fails to] license;

15 (2) To pass the examination[, or fails to]; or

16 (3) To receive certification,

17 all privileges under this section shall automatically cease upon
18 written notification sent to the applicant by the board. A
19 temporary [certificate] license shall be issued only once to each
20 person.

21 (e) Prior to practicing under temporary [certification,]
22 licensure, holders of temporary [certificates] licenses shall

1 notify the board in writing of any and all supervising physicians
2 under whom they will be performing services.

3 (f) The board shall establish the degree of supervision
4 required by the supervising physician when a physician assistant
5 performs a service within the practice of medicine. A physician
6 who does not supervise a physician assistant's services at the
7 degree required by the board shall be deemed to have engaged in
8 professional misconduct.

9 (g) Any [certification] license of a physician assistant
10 may be denied, not [recertified,] renewed, revoked, limited, or
11 suspended under section 453-8.

12 (h) The board shall establish the application procedure,
13 medical educational and training standards, examination
14 requirement, if any, and degrees of supervision by rule.

15 (i) Every person holding a [certificate] license under this
16 section shall apply for [recertification] renewal with the board
17 no later than January 31 of each even-numbered year and pay a
18 renewal fee. Failure to apply for [recertification] renewal
19 shall constitute a forfeiture of the [certificate] license which
20 may only be restored upon written application for
21 [recertification] restoration and payment to the board of a
22 restoration fee.

1 (j) A [certificate] license that has been forfeited for one
2 renewal term shall be automatically terminated and cannot be
3 restored. A new application for [certification] licensure shall
4 be required."

5 SECTION 2. Section 453-5:4, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~453-5.4] Physician assistant advisory committee.

8 There shall be a physician assistant advisory committee under the
9 board of medical examiners consisting solely of persons
10 [certified] licensed under section 453-5.3. The committee shall
11 review all complaints and requests relating to physician
12 assistants, and review and recommend revisions of the physician
13 assistant regulations.

14 The chairperson of the committee shall be the representative
15 for the committee members to the board of medical examiners for
16 the purpose of providing input to the board from the physician
17 assistant's perspective on issues and concerns, including
18 complaints and requests, regarding physician assistants. The
19 chairperson shall not be a member of the board of medical
20 examiners to avoid conflict of interests."

21 SECTION 3. Statutory material to be repealed is bracketed.
22 New statutory material is underscored.

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Rosalyn H. Baker

Notes

Chapter 1

1. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, 2d ed., Lexington, The Council on Licensure, Enforcement and Regulation, 1994, p. 1.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on October 19, 1998. A copy of the transmittal letter is included as Attachment 1. The department did not submit a written response.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

October 19, 1998

COPY

The Honorable Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Matayoshi:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Analysis of a Proposal to Modify the Regulation of Physician Assistants*. We ask that you telephone us by Wednesday, October 21, 1998, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, October 29, 1998.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures