

the Professional Nursing Law, we can find no provision in either the definition of "Practice of Professional Nursing," in Section 212.1(k) or anywhere else within the Professional Nursing Law which would authorize the delegation of nursing functions.

Unlike other health professional licensing statutes, the Professional Nursing Law does not contain a statutory provision authorizing registered nurses to delegate duties to unlicensed assistive persons. Section 17 of the Medical Practice Act of 1985 (63 P.S. § 422.17) specifically allows a medical doctor to delegate to a health care practitioner or technician the performance of medical services under certain specified conditions. The Medical Practice Act also provides for the certification of physician assistants as paraprofessionals. The absence of similar provisions within the Professional Nursing Law is particularly noteworthy. If the General Assembly had intended to grant registered nurses the authority to delegate functions to any other supportive personnel it would have been specifically provided within the Professional Nursing Law.

In addition, Section 225.4 of the Professional Nursing Law states:

It shall be unlawful for any person to practice or attempt to offer to practice nursing, as defined in this Act, without having at the time of doing so, a valid, unexpired, unrevoked and unsuspended license issued under this Act. The unlawful practice of nursing as defined in the Act may be enjoined by the courts on petition of the Board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it determined that the respondent has engaged in the unlawful practice of nursing, the court shall enjoin him or her from so practicing unless and until he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment. (Emphasis added.)

This section specifically prohibits the performance of nursing duties by any unlicensed persons. To the extent that this proposed rulemaking authorizes unlicensed persons to perform "nursing" functions, the proposed regulation is in direct conflict with this section of the Professional Nursing Law and subjects unlicensed persons performing nursing duties to penalties.

We do note, however, that the Practical Nurse Law (63 P.S. § 652(1)) defines the "practice of practical nursing" as the performance of selected nursing acts in the care of the ill, injured or infirm under the direction of a licensed professional nurse, a licensed physician or a licensed dentist. We believe that this language provides the authority necessary for the registered nurse to direct the practical nurse in the performance of selected nursing acts. However, we can find no such authority for a registered nurse to delegate certain functions to an unlicensed supportive person. The specific provision within the Practical Nurse Law supports our conclusion that if the General Assembly had intended to grant registered nurses the authority to delegate

functions to any other supportive personnel, it would have specifically provided for such a function within the Professional Nursing Law.

We agree with the Board's assessment that there is currently a very real problem with regard to the regulating of duties delegated by a registered nurse in a variety of settings. In addition, we also understand that the use of trained and properly supervised supportive personnel in the practice of nursing can be safe and cost effective. However, we do not agree with the Board that this proposed regulation can be utilized as a means to resolve this particular problem. We are bound by the criteria of the Regulatory Review Act to first and foremost determine if the regulation is contrary to the statutory authority of the promulgating agency and intention of the General Assembly. In conclusion, we believe that the Board is exceeding its statutory authority to permit the delegation of nursing functions to unlicensed assistive persons.

We strongly recommend that the Board work closely with the General Assembly to amend the Professional Nursing Law to incorporate language allowing a registered nurse to delegate duties and to allow for the certification of assistive persons after the completion of appropriate education and training programs.

If the Board believes and can demonstrate that it has the authority to promulgate this proposed regulation then we suggest that the Board consider these additional concerns.

1. Substantive guidelines.

As proposed, Section 21.18(e) permits a registered nurse to delegate medication administration in conformity with the Board's Guidelines on Delegation of Medication Administration. We have reviewed the guidelines and find the majority of them to be substantive requirements. For example, the guidelines require the registered nurse to assess and evaluate the condition of the client at regular intervals and require the registered nurse to review the procedures and directions established for the administration of medication by unlicensed assistive person. These are clearly requirements which should be promulgated as part of the regulation. We are very concerned that this proposed regulation references such substantive guidelines because guidelines do not undergo any public review prior to becoming effective and may be revised at the Board's discretion. Therefore, we believe that the Board should proceed to incorporate these guidelines into Chapter 21 as a separate proposed rulemaking.

2. Undefined parameters.

As proposed, Section 21.19(a) establishes that a registered nurse may delegate the performance of "a selected function" to an unlicensed assistive person provided the registered nurse determines that the person is "competent and qualified" (proposed Section 21.19(a)(1)) and as long as the registered nurse is available to "exercise supervision and direction" (proposed Section 21.19(a)(3)). We believe that this proposed language is vague and leaves

undefined the kinds of functions or situations under which a registered nurse may delegate to an unlicensed assistive person.

We do not believe that all nursing functions should be delegated by a registered nurse. The problem we see with the proposed regulation is that it does not adequately address this issue. It provides no guidance to or criteria for a registered nurse to use when determining what functions can be delegated. In addition, the language directing the registered nurse to base the delegation upon the competency and qualifications of an unlicensed assistive person exposes the registered nurse, who will ultimately be held responsible for any errors or accidents that may occur, to greater liability and may expose the patient to substandard care. The regulation is also not clear as to whether the supervision and direction of the delegation is supposed to mean the registered nurse must be in the room where an unlicensed assistive person is performing selected nursing functions, in the same building, or simply available by telephone for consultation.

We believe that if the Board intends to pursue this rulemaking, it needs to further clarify this proposal by specifically defining the appropriate "selected functions" that may be delegated and also define the "selected situations" in which the Board believes delegation is appropriate. We also recommend that the Board specifically define the phrase "competent and qualified" and more specifically define its intent with regard to the "supervision and direction" provided by a registered nurse.