

**Comments of the American Association
of Nurse Anesthetists Regarding
Resolutions 902 and 904**

**Submitted to American Medical Association
Reference Committee "L"**

November 12, 2006

October 30, 2006

Dr. H. David Bruton
Chair, AMA Reference Committee "L"
c/o Roger Brown, PhD
Director, Office of House of Delegates Affairs
American Medical Association
515 N. State Street
Chicago, IL 60610

Re: Resolutions 902 & 904

Dear Dr. Bruton:

I am the president of the American Association of Nurse Anesthetists (AANA), which represents more than 36,000 nurse anesthetists nationwide.

These comments concern Resolutions 902 and 904, titled, "Need for Active Medical Board Oversight of Medical Scope-of-Practice Activities by Mid Level Practitioners" and "Diagnosis of Disease and Diagnostic Interpretation of Tests Constitutes Practice of Medicine to be Performed by or Under the Supervision of Licensed Physicians," respectively.

The AANA urges American Medical Association (AMA) Reference Committee "L" to recommend withdrawal of Resolution 902 and 904. If the resolutions are not withdrawn, we request that Reference Committee "L" recommend that the AMA's House of Delegates vote against the resolutions.

Both Resolution 902 and Resolution 904 fail to cite any evidence demonstrating that the alleged problems cited in the resolutions actually exist and, if so, to what extent; in spite of our past requests for evidence supporting claims of professional misconduct, no such evidence has been provided. The AMA's House of Delegates should not adopt policies based on rumor or unsubstantiated or anecdotal evidence.

Resolution 902

Resolution 902, without citing any evidence, contends that the "quality of care rendered by individuals with limited licenses is not equivalent to that of a physician (MD or DO)" The fact that the education of a provider who is not a physician may be different than physician education does not make such care "inferior" in quality. For example, all credible evidence indicates that the quality of care that Certified Registered Nurse Anesthetists (CRNAs) provide is "equivalent" within the scope of practice of CRNAs. It is disappointing that Resolution 902 disparages healthcare practitioners in such a gratuitous fashion.

The resolution states that "some" "mid-level or limited license practitioners" continue to "attempt to practice medicine" and "rely on false assertions of authority, not backed up by scope of practice laws, by various nursing boards and other bodies regulating limited license practitioners"

How many practitioners constitute "some" practitioners? Two? A dozen? Five hundred? How are such practitioners "attempting" to practice medicine? What are the so-called "false assertions" of authority by various regulatory boards to which the resolution is referring? These sweeping statements, unsupported by evidence, smack of

McCarthyism -- arousing fears to instigate a witch hunt despite the lack of substantial evidence justifying the action. In fact, when no evidence exists to support a claim, accusers often use broad, sweeping claims that force the accused to discredit the claims even though there is no evidence to support the claim in the first place. We assume the AMA does not want to be known for making policy based on witch-hunt logic or McCarthyistic tactics.

Certainly, CRNAs do not wish or seek to practice "medicine." Similarly, we are unaware of any national healthcare organization that represents practitioners who are not medical doctors (MDs) or doctors of osteopathy (DOs) that is seeking to authorize its members to practice "medicine." Nor are we aware of any such organization that advocates practitioners providing services beyond the scope of what is legally allowed under state or federal law.

State legislatures, through licensing laws, determine what is and is not the practice of medicine and what is and is not in the public's best interest. Licensing laws, however, do not create monopolies for professions. Many professions are authorized to practice in the same, related, or similar fields and as a result have overlapping practice areas. Because of this overlap, many areas of practice are not the exclusive province of one healthcare profession or solely the practice of "medicine." For example, anesthesia administration is a series of functions through which patients are rendered insensitive to pain; these functions can and do constitute the practices of nursing, dentistry, or medicine. Courts have long recognized the administration of anesthesia by nurses as a proper nursing function.¹ Consequently, anesthesia administration is an area that is both the practice of medicine and the practice of nursing.

Resolution 902's call for state medical boards to have "full authority" to regulate the practice of medicine by all persons within a state is nonsensical – every board of medicine currently has the authority to regulate the practice of medicine. Consequently, we must infer that Resolution 902 is seeking to expand the jurisdiction of boards of medicine to regulate every healthcare professional's practice on the grounds that all healthcare activities can be argued to be part of the practice of "medicine." We reject the implication of Resolution 902 that boards of medicine should regulate all healthcare activities, regardless of whether they constitute the legitimate practice of other healthcare professions (e.g., nursing, dentistry, optometry, psychology) and are not the practice of medicine exclusively.

Resolution 902 seems to imply that state boards of medicine should ignore the jurisdictional authority of boards of nursing and regulatory boards for other professions and indiscriminately begin accusing providers who are not physicians of the unlicensed practice of medicine. Such actions would be reckless at best, and would ignore the statutory authority of regulatory boards such as boards of nursing. Resolution 902 would politicize the composition of boards of medicine by seeking to "stack the deck" with individuals who would ignore the jurisdictional authority of other boards and the legitimate and legal scope of practice of providers who are not MDs or DOs. This would be unprecedented and leaves the reader of Resolution 902 with little choice but to conclude that the resolution is attempting to reform boards of medicine to accomplish political objectives unrelated to patient safety. This is inappropriate, as boards of medicine are not extensions of national medical associations; rather, state medical

¹ See, e.g., Frank v. South, 194 S.W.375 (Ky. 1917) (overruling a challenge that nurses administering anesthesia were practicing medicine); Sermchief v. Gonzales, 660 S.W.2d 683 (Missouri Supreme Court 1983) (holding that the nurse's scope of practice cannot be restricted by whether a function may also be the "practice of medicine")

boards exist to protect the public and not to do the bidding of medical associations that evidently seek to protect medicine's "turf." Resolution 902 disparagingly labels the lack of widespread medical board action to "halt" the unlicensed practice of medicine as an "unwillingness." The fact that boards of medicine have not sought sanctions against healthcare professionals who are legitimately providing services within their scope of practice is in fact a recognition of appropriate jurisdictional boundaries rather than a dereliction of duty.

In addition, directing the Scope of Practice Partnership (SOPP) members to assist law enforcement authorities in the prosecution of unlicensed medical practice is tantamount to encouraging self-appointed McCarthy posers to secure MD and DO scope of practice, in the absence of evidence supporting such extraordinary actions. This misdirected approach would serve only to protect professional turf at the expense of assuring access to quality care by the patients who need it most.

Resolution 904

As with Resolution 902, Resolution 904 makes a series of sweeping statements that call for action, but without supplying a single substantiated fact to justify House of Delegates action. Consequently, Resolution 904 is unnecessary and its adoption would not advance patient safety.

The first "resolved" clause in Resolution 904 states that it "shall be the policy of our [AMA] that the diagnosis of disease and diagnostic interpretation of a study or studies for a specific patient constitutes the practice of medicine" As the AMA certainly knows, state medical practice acts are broadly worded and all healthcare functions are already considered part of the practice of medicine. Consequently, the first "resolved" clause is superfluous, unless the implication is that the diagnosis of disease and diagnostic interpretation of a study or studies for a specific patient constitutes the exclusive practice of medicine. We would strongly disagree with that premise, as the diagnosis of disease and diagnostic interpretation of a study or studies is not exclusive to the practice of medicine, and is commonly a part of the scope of practice of other professions as well (e.g., nursing).

In addition, we are puzzled by Resolution 904's second "resolved" clause that a "PhD scientist or other non-physician laboratory personnel work under the supervision or in collaboration with a physician under their applicable scopes of work to perform a study or studies that will be the basis of a diagnostic interpretation for a specific patient" Is there any evidence that such supervision or collaboration must be required to ensure appropriate care? If not, does Resolution 904 attempt to micromanage the activities of other qualified healthcare professionals? If so, why? The answer appears to reside in Resolution 904's third "resolved" clause that would deny Medicare payment directly to "non-physician personnel working under the supervision or in collaboration of a physician to perform a laboratory study or studies"

Resolution 904 also does not cite evidence to support the fourth "resolved" clause's assertion that there are "expansions of the scope of work by PhD scientists and other non-physician laboratory personnel" to authorize the "independent practice of medicine." No evidence is presented to demonstrate that such PhD scientists and other laboratory personnel seek to practice beyond their qualifications and expertise.

Summary

The AANA is deeply disappointed that in a time when there are more than 45 million uninsured Americans, resolutions continue to be proposed for AMA House of Delegates consideration that divide healthcare professionals and might unduly frighten patients. Surely, there are less inflammatory measures or communication avenues that can be explored that will provide all healthcare professionals with an opportunity to discuss their mutual concerns. Resolutions 902 and 904 appear to take the path of confrontation, rather than constructive dialogue.

Resolutions 902 and 904 do not appear to be based on evidence, and are instead built on erroneous or flawed premises. Accordingly, Reference Committee "L" should recommend withdrawal of the resolutions or, alternatively, recommend that the resolutions be defeated. Adopting resolutions based on faulty information and premises would certainly not constitute sound public policy and would make a mockery of the AMA House of Delegates resolution process. Adoption of these resolutions would foster a perception that the AMA's House of Delegates' purpose is to advance political aims of the SOPP rather than seek solutions concerning problems of genuine public concern. The AANA once again requests that the AMA House of Delegates turn from the path of confrontation and intimidation, and instead commit to collegial dialogue with other national healthcare professional organizations to advance the public interest and patient safety. Our collective resources must be directed toward patient-focused quality healthcare that is evidence-based.

It is beyond time for us to focus on the "what" of healthcare (the healthcare practices that will improve care) rather than "who" provides healthcare (the type of provider delivering the care). As we have done in the past, we offer again to meet with a delegation of the AMA to discuss legitimate scope of practice issues related to AMA Resolutions 902 and 904, and to collectively address any specific and substantiated claims. As the professional organization representing nurse anesthetists who administer more than 27 million safe anesthetics annually, we stand ready to work with our physician colleagues in support of our shared mission to advance patient safety and excellence in anesthesia. We hope that you will agree that it is time to stop wasting resources, and sit down together to address issues of common concern so that we can focus our energies and our resources on the patients who look to all of us to help assure their health and well-being. This is not just a nice thing to do; it is necessary for the security and well-being of our nation as a whole.

Thank you for this opportunity to comment concerning Resolutions 902 and 904. If you have questions or comments, please do not hesitate to contact Jeffery M. Beutler, CRNA, MS, the AANA's Executive Director, at 847-655-1100, or at jbeutler@aana.com.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wicks", with a large, stylized flourish at the end.

Terry C. Wicks, CRNA, MHS
President, AANA

cc: Jeffery M. Beutler, CRNA, MS
AANA Executive Director