Department of Law
State of Georgia

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MEMORANDUM:

TO: LaSharn Hughes, Executive Director
Composite State Board of Medical Examiners

FROM: Wylencia Hood Monroe
Assistant Attorney General

RE: Applications of O.C.G.A. §§ 43-34-26.1 and 43-34-26.3

The Composite State Board of Medical Examiners ("Board") has requested advice on whether an advanced practice registered nurse ["APRN"] can practice under both O.C.G.A. §§ 43-34-26.1 and 43-34-26.3 at the same time. Although it appears that there is no law or rule that explicitly prohibits such conduct, it is factually impracticable for a physician to delegate to a single APRN pursuant to both O.C.G.A. §§ 43-34-26.1 and 43-34-26.3.

Title 43, Chapter 34, Section 26.1 of the Official Code of Georgia authorizes a physician to delegate to a registered professional nurse ["RN"] the authority to order controlled substances, except Schedule I controlled substances, and the authority to order dangerous drugs, medical treatments, and diagnostic studies pursuant to a nurse protocol agreement. At present, there are no Board rules corresponding to this Code section. Title 43, Chapter 34, Section 26.3 of the Official Code of Georgia authorizes a physician to delegate to an APRN the authority to perform certain medical acts pursuant to a nurse protocol agreement, and which acts may include, without being limited to, the ordering of drugs, medical devices, medical treatments, diagnostic studies, or in life-threatening situations radiographic imaging tests. The authority provided by Section 26.3 includes the authority to issue a written prescription drug order, except with respect to Schedule I and II controlled substances. O.C.G.A. § 43-34-26.3(d) and (k). The term APRN "includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists in psychiatric/mental health, and others recognized" by the Board of Nursing. O.C.G.A.§ 43-26-3(1). However, for the purposes of O.C.G.A. § 43-34-26.3, a certified nurse anesthetist is excluded. The term APRN also includes a registered professional nurse who has met the requirements to be recognized by the Board of Nursing as an APRN. Accordingly, an APRN is also a RN and more. An APRN is permitted to have a protocol agreement with more than one physician. With

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some exceptions, a physician is prohibited from having a Section 26.3 agreement with more than four APRN's at any one time. O.C.G.A. § 43-34-26.3(g). The law states that the authority provided in O.C.G.A. § 43-34-26.3 is "[i]n addition to and without limiting the authority granted pursuant to Code Section 43-34-26.1." So follows the question of whether a single physician may delegate to a single APRN pursuant to both O.C.G.A. §§ 43-34-26.1 and 43-34-26.3 at the same time.

While it appears that a literal interpretation of the law may permit a physician to delegate to an APRN pursuant to both O.C.G.A. §§ 43-34-26.1 and 43-34-26.3, it seems that operating a medical practice in such a manner may be disadvantageous to the physician. Under O.C.G.A. § 43-34-26.1, a RN is not authorized to issue a written prescription drug order. In contrast, under O.C.G.A. § 43-34-26.3, an APRN is authorized to issue a written prescription drug order, with limitations. With the authority to issue a written prescription drug order, the delegating physician has additional responsibilities, for example, periodic review of patient records, patient evaluation or follow-up examination, and, with respect to a patient who receives a prescription drug order for any controlled substance, evaluation or examination on at least a quarterly basis or at a more frequent interval as determined by the Board. The legislative scheme of O.C.G.A. § 43-34-26.3 appears to indicate that with the authority to issue written prescription drug orders comes additional regulations and safeguards which provide a higher standard of care. On a practical level, in delegating to an APRN, a physician cannot reasonably distinguish between patient settings or patients when he or she delegates to an APRN; consequently, in order to assure compliance with the laws and rules, the physician would have no alternative but to comply with or follow the higher standard of care required in O.C.G.A. § 43-34-26.3 with respect to all patients in all settings. Moreover, it would appear to be impossible for a physician to comply with all the applicable laws and rules while having two protocols, one pursuant to O.C.G.A. § 43-34-26.1 and one pursuant to O.C.G.A. § 43-34-26.3, with the same APRN. A physician would likely have a difficult time identifying which patients require periodic review of the patient record or other additional tasks required in connection with delegating to an APRN pursuant to O.C.G.A. § 43-34-26.3. The ability to accurately document the patient record and document compliance with all applicable laws and rules is highly questionable in such a circumstance. Also, from a liability standpoint, it would appear that with respect to a single patient, although some medical tasks may have been performed pursuant to the authority provided by O.C.G.A. § 43-34-26.1 and others pursuant to the authority provided in O.C.G.A. § 43-34-26.3, the physician would be held to the higher standard provided in O.C.G.A. § 43-34-26.3 in determining whether the physician has committed an act or omission that resulted in malpractice. Consequently, it would appear that a physician should choose to either have a protocol with an APRN pursuant to O.C.G.A. § 43-34-26.1 or a protocol with an APRN pursuant to O.C.G.A. § 43-34-26.3. In instances where the physician has more than one practice location, it would appear to be the better course of action for the physician to identify which practice locations he/she will use which protocol agreement.

If you have any questions or concerns, please do not hesitate to contact me.