



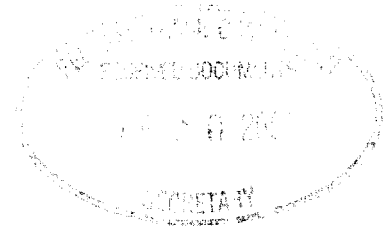
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## Comments Regarding Hearings on Health Care and Competition Law and Policy

July 22, 2003

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580



Dear Mr. Clark:

These comments are concerning testimony that was given by Susan Apold, President of the American College of Nurse Practitioners on June 10, 2003 at the above named hearing.

There are a number of regulatory and non-regulatory strategies that have been employed to restrict independent practice or broadened clinical autonomy by advanced practice nurses. One that we experience in Louisiana is the statutory and regulatory requirement that nurse practitioners (NPs) have a "collaborative practice agreement" (CPA) that is signed by a particular physician. This is required in many other states as well.

NPs understand clearly that collaboration and consultation with physicians (and other providers for that matter) is essential to meet the varied needs of patients, however an informal agreement would be much less burdensome. Physicians and all other providers collaborate in their professional areas, but the requirement that NPs have a signed agreement causes a number of problems including restricted market entry.

1. Some malpractice insurance companies tell physicians that their malpractice insurance rates will go up if they are in a collaborative relationship with a NP. Some physicians will not enter into such an agreement for that reason alone. This impedes NPs from entering practice.
2. Many physicians refuse to sign a CPA unless they are paid a monthly fee. In many cases they receive \$1,000.00 or more a month for collaborating. One hospital in Louisiana paid five physicians over \$1,000.00 each to collaborate with one NP in a rural, hospital-owned clinic. The clinic eventually closed due to fiscal insolvency.
3. When an NP and collaborating physician sign a CPA, and subsequently the physician stops practicing suddenly for any reason, the NP must stop practicing as well until he/she finds another physician who is willing to collaborate. Over the past 6 years in Louisiana the

4. process of getting approval for a new collaborative practice agreement has taken up to three months because of the burdensome regulatory process that included approval from medical board and nursing board representatives. Some NPs were losing jobs and their families were suffering hardships because of the delayed market entry problems. . New legislation (HB 1433) that was written by LANP leaders and successfully lobbied into law recently will hopefully simplify this process.
5. Managed care organizations (MCO's), including Louisiana Medicaid Managed Care, decline to allow NPs to act as primary care providers because the NP can suddenly be forced to lose their right to practice if their collaborating physician withdraws his agreement. The NP is left unable to provide needed services to the MCO's patients. Blue Cross Blue Shield of Louisiana has voiced similar concerns. It is an understandable concern from their perspective. From the NPs perspective, these state laws and regulations requiring signed collaborative agreements deny them the right to work within their legal scope of practice in accordance with their education and certification.

Here is a real-life example of a recent situation that points to problems deriving from the CPA regulations. During the recent session of the Louisiana Legislature, the Louisiana State Medical Society (LSMS) lobbied successfully to repeatedly insert collaboration language into the nurse practice act in six amendments that were added to HB 1433. It was absolutely made clear to NPs that the LSMS insisted that NPs must continue to have a collaborative practice agreement with a physician.

However during the legislative session I received a phone call from an NP who stated that LAMMICO, the professional liability insurance company that insures her collaborating physician told the physician that they would no longer insure him if he continued to collaborate with her and with another NP. He was reportedly told by LAMMICO that it was too risky to collaborate with a NP. He terminated the CPA with her and with another NP as well. Enclosed is an email from her in which she explains the event in her own words.

It is of interest that LAMMICO is a product of Louisiana State Medical Society Physician Services, Inc. The website at <http://www.lsms.org/LPS.htm> states that LSMS Physicians Services, Inc is a wholly owned subsidiary of the Louisiana State Medical Society. On the one hand LSMS is insisting that collaboration language be in the law, yet on the other hand it's subsidiary is telling this physician to terminate his collaborative relationships with NPs or he will not be insured. Coupled with the amendments to HB 1433, this is a catch-22.

I have heard reports from NPs across the country that their collaborating physicians are being required to pay higher malpractice insurance rates due to the collaborative relationship, although I have seen NO evidence that collaboration with a NP increases a physician's liability. NPs are rarely sued from what I can tell. In fact, a look at the Healthcare Integrity and Protection Databank (HIPDB)<sup>1</sup> shows that the number of adverse actions, civil judgments or criminal convictions reported to the databank from November 22, 1999 to July 17, 2003 for providers in

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<sup>1</sup> [http://www.npdb-hipdb.com/pubs/stats/hipdb\\_state.htm](http://www.npdb-hipdb.com/pubs/stats/hipdb_state.htm) accessed on July 22, 2003.

Louisiana was zero (0) adverse actions and one (1) civil judgment or criminal conviction for NPs, whereas MDs had 265 adverse actions and 5 civil judgments or criminal convictions. Nationally NPs had 104 adverse action reports and 3 civil judgments or criminal convictions compared to 21,994 adverse actions and 122 civil judgments or criminal convictions for physicians during that same time period.

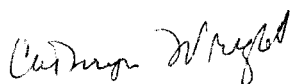
In summary, the regulatory or statutory requirement for collaboration poses a burdensome barrier to NPs in Louisiana and many states, by preventing NPs from practicing their profession to the full extent of their certification and scope. The end result is that citizens who wish to utilize the services of NPs often find them inaccessible as a class of providers. This also drives up costs, since empirical evidence shows that NPs can provide equivalent care to physicians, with equivalent outcomes.<sup>2</sup> Since Medicare charges are less for NP visits, it is clear that they are also economically desirable.

It is my hope that the information presented will shed some light on areas that need further investigation and study, and that new ways will be found to promote competition, which will increase citizens' access to the provider of their choice.

If you have any questions please do not hesitate to contact me at:

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Sincerely,



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Louisiana association of Nurse Practitioners

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<sup>2</sup> Mundinger, Mary O. "Primary Care Outcomes in Patients Treated by Nurse Practitioners or Physicians. A Randomized Trial." *Journal of the American Medical Association* 283, no 1 (2000): 59-68.

**Cathryn Wright**

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**From:** Cathryn Wright [cwright5@att.net]  
**Sent:** Sunday, July 20, 2003 7:24 PM  
**To:** Cathryn Wright  
**Subject:** FW: How's this Catherine?

-----Original Message-----

**From:** PBEgan@aol.com [mailto:PBEgan@aol.com]  
**Sent:** Sunday, June 01, 2003 6:31 PM  
**To:** cwright5@att.net  
**Subject:** How's this Catherine?

Dear

My physician called me last week and told me he had just been to a Lamico meeting. At the meeting he was told that it was increased liability to collaborate with a Nurse Practitioner because if the NP is sued, the physician is automatically sued as well. He told me that he would have to terminate our collaborative agreement as he already had three suits against him and the insurance company told him that he must decrease his risks.

I am not sure what will happen with the private clinic that I have developed for the past two years. I opened a Family Practice Walk-In Clinic in Covington, LA July 2000. The clinic serves a great need to the un-insured of Louisiana as our follow-up visit for self-pay patients is \$35/visit. I paid this physician a 10% collaborative fee on what was collected and 5% to do the billing.

I have a post-graduate degree with a Masters in Nursing. I am a board certified Adult & Family Nurse Practitioner, Clinical Specialist in Gerontology/Mental Health, Certified Diabetes Educator, & have a Diploma in Asthma Care. This is the only graduate prepared profession that cannot practice independently. Physical Therapist, Social Workers, Speech Pathologist all practice independently.

I asked my collaborative physician if he would give me a months notice so that I would not have to close the clinic down. He reluctantly agreed.

I have approached two physicians who were not interested in collaborating due to liability issues. I have another meeting set up Wednesday with another physician.

This is a grave hardship as I do not want to abandon my patients and even if I find a physician who is willing to collaborate, it will take months to have the agreement approved by the committee and State Board of Nursing.

There is a place for Nurse Practitioners in Louisiana. The poor self-pay patients are often not seen by a physician if they don't have insurance. Physicians in this state want control of NP's, but don't want the liability. Wouldn't an informal agreement between NP and Physician be more appropriate so that the MD would not be named in lawsuits involving NP's?

This also embarrassing for me. How will I explain to my patients that my physician will no longer collaborate with me? This implies that I've done something wrong.

I am being forced to attempt to sell my practice to a physician since I am unable to practice independently and will be forced to close the clinic.

Sincerely yours,

Pamela B. Egan, MN, NP

7/22/2003