March 17, 1995

Dennis O'Leary, MD
President
Joint Commission on the Accreditation of Healthcare
Organizations
One Renaissance Boulevard
Oakbrook Terrace, Illinois 60181

Dear Dr. O'Leary:

Thank you for providing the American Nurses Association (ANA) with the opportunity to comment on the Proposed Revisions to the Medical Staff Standards for the 1996 Accreditation Manual for Hospitals ("Proposed Revisions"). The American Nurses Association is the only full-service professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

Given our mandate and the changing environment for health care delivery, **we have serious concerns about the implications of the proposed revisions to the 1996 Medical Staff Standards (1996 Standards) on nursing practice**. As a private certification organization, the Joint Commission On The Accreditation of Healthcare Organizations (JCAHO), has a mandate to develop rules which will not interfere with state licensure law. Further as an accrediting body given "deeming authority" under the Social Security Act, your organization has been placed in a sensitive position of providing alternative government health and safety enforcement mechanisms. Much of the JCAHO "hospital accreditation is either explicitly or implicitly a requirement for participation in many private or public licensure, certification and financing programs".[1] As of 1984, thirty-eight states had "to varying degrees incorporated JCAHO standards or accreditation decisions into their licensing programs for health care institutions."[2] Likewise, many private insurers such as Blue Cross and Blue Shield mandate JCAHO accreditation as a condition for reimbursement. With 80 percent of hospitals using JCAHO accreditation and a number of managed care organizations using your services, ANA believes you have an affirmative responsibility to review the existing scope of licensing authority for all health providers and tailor your legislation to allow all professions to evolve in a manner consistent with state law.

[1]Jost, Timothy, The Joint Commission on Accreditation of Hospitals: Private Regulation of Health Care and the Public Interest, 24 B.C. L. Rev. 835.

[2]See Jost at 844.

The ANA has concerns about any private accrediting agency promulgating standards which are not reflective of present state professional licensure law. We believe that state law takes precedent over the hospital certification process and barring any health and safety concerns, there is a need to restructure the 1996 Standards to accommodate new classes of providers. Without revision of the standards to reflect these statutory changes in practice, ANA believes the 1996 Standards will deter advanced practice nurses from practicing to their full scope, in the following manner:

- The 1996 Standards, as drafted, do not allow the advanced practice nurse to practice to the full scope of licensure. By treating the nurse as a licensed independent practitioner, and not as medical staff, the 1996 Standards create a dichotomy in the class of persons privileged by the hospital. This dichotomy is not based on skills or expertise, but instead upon old notions of boundaries of practice.

- The 1996 Standards deprive nurses of the ability to retain confidential and professional one-on-one relationships with their clients. The mandating of a third party to conduct medical examination and supervise multidisciplinary care creates an unwarranted collaborative effort. Additionally, the Standards deprive the primary care provider of making clinical judgments related to the care of the patient, including determining the appropriateness of collaboration; and imposes an unwarranted and unasked for economic burden on the patient.

- The JCAHO has developed a credentialing process which holds the medical staff, not the governing body ultimately accountable for the credentialing process (see page 4 M.S. 2 overview). In doing so, the JCAHO is attempting to place the entire employment process under the civil immunity provisions of the Health Care Quality Improvement Act of 1986 ("HCQIA"), protect the peer review process from litigation and from discovery of the records during litigation. This structure further limits the ability of nurses to challenge a privileging process, already tailored to protect the physician competitor.

- The JCAHO has not provided historical or statistical evidence that advanced practice nurses are unsafe providers or that there are other reasons for mandating physician intrusion into primary advanced practice nursing care, but for the stated recommendations of the American Medical Association.[3]

3See the working papers and Agenda of the Hospital Accreditation Program Professional and Technical Advisory Committee October 12-13, 1994, Professional and Technical Advisory committee Minutes of the June 20, 1994 meeting, pages 3-8.

- The 1996 Standards implies that advanced practice nurses are not qualified to provide primary care, utilize independent clinical decision-making skills or direct the care of their patients.

- The 1996 Standards promotes physician staff models seldom used in contemporary health care delivery systems. Health maintenance organizations, integrated delivery systems and the other forms of managed care tend to use multidisciplinary groups, however, their organizational structure is determined by the type of care provided, not by a mandated hierarchy for professionals. These standards undermine use of this model.

- Although each health provider is held liable for his/her activities regardless of the accreditation process, the mandated inclusion of a physician to provide a second opinion and diagnosis makes the physician provider subject to unwarranted malpractice activity.[4]

Moreover, the overall tone of the 1996 Standards reflects a physician approach to credentialing which reinforces the traditional physician-hospital relationship. We believe the structure reflects differing treatment of individuals who provide similar services but are educated through different care modalities. Nurses provide nursing care which includes health maintenance, education, and preventative care, with advanced practice nurses conducting assessments and making diagnoses in a manner consistent with their education, clinical training and expertise.

Before the JCAHO completes its deliberation process on the 1996 Proposed Revisions, we ask that you consider changes in nursing regulation and licensure which have substantially expanded how nurses, particularly those in advanced practice, provide care.
There are 48 states, including the District of Columbia which allow advanced practice nurses to prescribe drugs and therapeutic devices.[5] In eleven jurisdictions -- Alaska, Arkansas, Iowa, Michigan, Montana, New Hampshire, New Mexico, Oregon, Washington, Utah and the District of Columbia -- advanced practice nurses are authorized to practice independently.[6]

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4 *Callahan vs. Cardinal Glennon Hospital*, 863 S.W.2d 852 (1993).

5 See attachment 1.

6 In these states, the ability to practice independently, without physician supervision, has been legislated. However, in some of these states, nurse prescribing has been structured to require use of a formulary (which may be developed by a committee including nurses, physicians and pharmacists or a combination thereof.)

And three states have passed legislation which mandates nondiscrimination in the privileging process.[7] Further, approximately 22 states have been identified as having hospitals or health care facilities which allow nurses to admit patients.[8] As indicated by these statistics, advanced practice nurses have the option of providing care independently or in an employment setting; and we believe that only state statute or federal law may be utilized to limit or restrict this licensing authority.

For these reasons, we ask that the Commission reject any amendments to return to the 1994 Standards. Alternatively, ANA recommends changes to the 1996 Proposed Standards which reflect the true diversity and scope of licensed advanced nursing practice. As always, we remain available to meet with you to discuss this and other issues related to your standards development process. Should you have any questions about our position or wish to discuss this matter further, please contact me at 202/651-7017.

Sincerely,

Geri Marullo, RN, MSN
Executive Director

cc: Virginia Trotter Betts, JD, MSN, RN
President

Enclosure: ANA 1995 Prescriptive Authority Chart

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7 The District of Columbia, Ohio (solely for nurse-midwives) and Oregon.

8 ANA Privileging Survey, conducted 10/93.