

Federation of State Medical Boards Report

This is an update concerning the status of the Federation of State Medical Boards' (FSMB) "Report of the Special Committee on Outpatient (Office-based) Surgery." The report includes so-called "model guidelines" for unregulated outpatient surgery. That would include physician office surgery and anesthesia practice in states that do not currently regulate physician offices. [To view the final FSMB report, go to the FSMB's Web site at www.fsmb.org/pdf/2002_grpol_Outpatient_Surgery.pdf.]

The AANA is pleased that, as the AANA requested, the FSMB has removed its draft report's "anesthesiologist preference" language. The FSMB's House of Delegates adopted a final report -- without the objectionable language -- at its April 27, 2002 meeting.

Prior to April 26-27, the FSMB draft report had stated that when a "non-physician administers the anesthesia, the individual preferably should be under the supervision of an anesthesiologist or, at a minimum, must be under the supervision of the operating physician, unless state law permits otherwise."

The AANA submitted detailed written comments from former President Chambers to the FSMB in which the AANA stated that there is no legitimate justification for stating a "preference" for anesthesiologist supervision. President Chambers also submitted comments to all state boards of medicine.

On April 26, 2002, the FSMB reference committee (Reference Committee "B") to which this matter had been assigned met in San Diego to consider the draft outpatient surgery report. The president of the Connecticut Association of Nurse Anesthetists, Antonio Cavicchia, testified in behalf of the AANA before the FSMB reference committee. Mr. Cavicchia stated that the AANA requested that the reference committee revise the draft report and remove the anesthesiologist supervision preference.

Subsequently, FSMB Reference Committee "B" amended the draft report to remove the anesthesiologist supervision preference, and submitted the revised report to the FSMB's House of Delegates for approval on April 27. The FSMB House of Delegates then approved the revised report.

The final FSMB outpatient surgery report states at page eight, lines 39-41, that: "In those cases in which a non-physician administers the anesthesia, the individual must be under the supervision of an anesthesiologist or the operating physician, unless state law permits otherwise." The final report language, therefore, does not contemplate physician supervision of CRNAs, unless a state requires such supervision. In addition, to the extent that a state requires physician supervision of CRNAs, the FSMB report contemplates that such supervision could be provided by either an anesthesiologist or the operating physician.

Significantly and appropriately, the FSMB report does not require physicians who "supervise" CRNAs to possess particular training or experience in anesthesia to do so. By implication, therefore, the report acknowledges that it is appropriate for surgeons to rely upon the anesthesia expertise of CRNAs.

While the FSMB report does not have the force of law, it may prove influential as additional states ponder how to regulate outpatient (and especially office) surgical and anesthesia care.

The AANA is gratified that the FSMB was responsive to the AANA's concerns regarding the FSMB's outpatient report. The AANA had been working on this matter since June 2001. The AANA's extensive input helped result in the final, adopted FSMB report including provisions that:

- 1) Do not contemplate physician supervision of CRNAs unless state law requires such supervision.
- 2) Recognize the jurisdictional and legal complexity of regulation of outpatient surgery. At the AANA's urging, FSMB added a statement to the outpatient report recommending "that state medical boards consult with legal counsel prior to adopting guidelines, rules or regulations, national accreditation organization standards, individual states' standards or publishing a position statement. Such counsel is intended to assure that the board's action does not exceed its jurisdictional authority, restrict the practice of healthcare practitioners in a manner that is inconsistent with state law, or encroach upon the regulatory authority of other state health care regulatory authorities." In December 5, 2001 comments that the AANA had submitted to the FSMB, the AANA had pointed out that in some states boards of medicine may not have the jurisdictional authority to legally adopt or endorse "guidelines" or "position statements." Moreover, some medical boards may not have the authority to adopt rules or regulations concerning outpatient surgery and anesthesia practice. Finally, boards of medicine must be careful not to encroach upon the regulatory authority of other state regulatory authorities such as boards of nursing.
- 3) State that discharging patients "is the responsibility of the surgeon and/or the individual responsible for anesthesia care and should only occur when patients have met specific physician-defined criteria." (A previous draft of the FSMB report merely stated that discharging "patients is the responsibility of the surgeon or the anesthesiologist and should only occur when patients have met specific criteria.")
- 4) Do not discriminate against "non-physicians" concerning establishment of personnel policies. The final report states that: "Functional responsibilities of all healthcare practitioners and personnel should be defined and delineated. Policies and procedures for oversight of healthcare practitioners and personnel should be in place." (A previous draft of the FSMB report had instead stated that appropriate

policies and procedures for oversight of "non-physician practitioners" should be in place.)

The FSMB, however, did not follow two other recommendations made by the AANA during the drafting process. The final report states “[a]ll health care practitioners who administer anesthesia or supervise the administration of anesthesia should maintain current training in advanced resuscitation techniques (ACLS or PALS).” In written comments submitted by former President Chambers in December 2001, the AANA objected to requiring surgeons who work with CRNAs to have such training, but not requiring surgeons who work with anesthesiologists to have such training. There is no evidence, clinical or otherwise, to justify this type of distinction. The AANA recommended deleting the requirement that supervising surgeons maintain this training.

The adopted language discriminates against CRNAs because it requires surgeons who supervise CRNAs in supervision states or supervise CRNAs pursuant to facility policy to maintain this training while not requiring surgeons who work with anesthesiologists to do so. Nevertheless, the FSMB language could be used to the advantage of CRNAs. CRNAs who are supervised by surgeons who follow this guideline can present an advantage that anesthesiologists will not necessarily have. The CRNAs will be able to state that there are two individuals qualified in advanced resuscitation, not just the CRNA.

In addition, the final report states, “A number of national medical professional organizations ... have published standards applicable to office-based surgery. State regulatory agencies may choose to adopt some combination of national medical professional organization standards, recommendations from this report and national accrediting standards to construct an individualized state regulatory model.” In its December 2001 comments, the AANA recommended deleting the term “medical,” stating that use of this term ignores the standards of respected professional organizations such as the AANA.

Although the AANA did not prevail on these two points, the AANA’s input resulted in many substantial changes that will benefit CRNAs. If you have questions concerning the FSMB report, please contact the AANA’s State Government Affairs Division at (847) 655-1130, or at sga@aana.com.

For additional information concerning the FSMB, please see the FSMB’s website at www.fsmb.org.