



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2021

Sherif Zaafran, M.D.  
President  
Texas Medical Board  
Post Office Box 2018  
Austin, Texas 78768-2018

**Opinion No. KP-0353**

Re: Whether chapter 157 of the Occupations Code requires a physician to provide any level of supervision to a certified registered nurse anesthetist to whom the physician has delegated authority, and the potential liability for such delegation (RQ-0371-KP)

Dear Dr. Zaafran:

You ask two questions about the relationship between physicians and certified registered nurse anesthetists (“CRNAs”) to whom physicians delegate authority pursuant to chapter 157 of the Occupations Code.<sup>1</sup> Relevant to your questions, section 157.058 expressly authorizes a physician to delegate the administration of anesthesia to a CRNA in certain settings:

- (a) In a licensed hospital or ambulatory surgical center, a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician.
- (b) The physician’s order for anesthesia or anesthesia-related services is not required to specify a drug, dose, or administration technique.
- (c) Pursuant to the physician’s order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the medical devices appropriate to accomplish the order and maintain the patient within a sound physiological status.

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<sup>1</sup>See Letter from Sherif Zaafran, M.D., Pres., Tex. Med. Bd., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Aug. 12, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0371KP.pdf> (“Request Letter”).

(d) This section shall be liberally construed to permit the full use of safe and effective medication orders to use the skills and services of certified registered nurse anesthetists.

TEX. OCC. CODE § 157.058. This office considered questions pertaining to such a delegation twice before, in Attorney General opinions JC-0117, issued in 1999, and more recently in KP-0266, issued in 2019. *See* Tex. Att’y Gen. Op. Nos. JC-0117 (1999), KP-0266 (2019). As we observed in KP-0266, the relevant law has not changed significantly since this office first considered the respective authority and obligations of physicians and CRNAs twenty-one years ago. Tex. Att’y Gen. Op. No. KP-0266 (2019) at 1.

You first ask whether chapter 157 of the Occupations Code requires “any level of physician supervision” of a CRNA. Request Letter at 1. Section 157.058 of the Occupations Code expressly allows a physician in a licensed hospital or ambulatory surgical center to “delegate” the ordering of anesthesia-related drugs and devices to a CRNA. TEX. OCC. CODE § 157.058. Section 157.058 does not require a physician to supervise the actions a CRNA takes pursuant to a delegation under that section. *Id.*

You highlight section 157.001 of the Occupations Code and suggest that acts delegated to a CRNA pursuant to section 157.058 “must be performed under the delegating physician’s supervision” pursuant to section 157.001. Request Letter at 2. Section 157.001 provides general authority for a physician to delegate medical acts:

(a) A physician may delegate to a qualified and properly trained person acting under the physician’s supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician:

(1) the act:

(A) can be properly and safely performed by the person to whom the medical act is delegated;

(B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine.

TEX. OCC. CODE § 157.001(a).

A physician’s authority to delegate the administration of anesthesia to a CRNA pursuant to section 157.058 is a separate grant of authority from the authority granted in section 157.001. In the absence of section 157.058, a physician could delegate the administration of anesthesia to a

qualified and properly trained person, but physician supervision would be required. *Id.* However, the Legislature separately authorized physicians to delegate to CRNAs the administration of anesthesia under section 157.058, and it did not require physician supervision in that section.

In contrast, throughout the Medical Practice Act, the Legislature authorized physician delegation of various medical tasks, and in most instances, the Legislature expressly required physician supervision. *See generally id.* §§ 151.001–170.003. For example, a physician may delegate to an advanced nurse practitioner “acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device” in certain limited circumstances. *Id.* § 157.054(a). And a physician may delegate to a pharmacist “acting under adequate physician supervision the performance of specific acts of drug therapy management.” *Id.* § 157.101(b); *see also id.* § 157.101(c) (defining “adequate physician supervision” of a pharmacist).

Unlike other delegation provisions, the Legislature chose not to include language requiring physician supervision over acts delegated to a CRNA pursuant to section 157.058. *Id.* § 157.058. When construing statutes, courts and this office presume that the Legislature chooses a statute’s language with care, including each word chosen for a purpose, while purposely omitting words not chosen. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). Had the Legislature desired to include a physician supervision requirement in section 157.058, it knew how to do so. *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 884–85 (Tex. 2000) (recognizing that if the Legislature uses language in one section but chooses not to use it in another, courts will presume that the language was excluded for a purpose). We will not read language into a statute to create a different meaning than that written by the Legislature. *See Lee v. City of Houston*, 807 S.W.2d 290, 294–95 (Tex. 1991) (“A court may not judicially amend a statute and add words that are not implicitly contained in the language of the statute.”). Thus, chapter 157 of the Occupations Code does not, by itself, require a physician who properly delegates anesthesia-related acts to a CRNA to supervise the CRNA’s performance of those acts. *See Tex. Att’y Gen. Op. No. JC-0117* (1999) at 7.

However, while you limit your question to chapter 157, the language of chapter 157 is not the only relevant authority to consider in addressing the question of physician supervision over acts delegated to a CRNA. Federal regulations limiting Medicare coverage and conditioning hospital participation in Medicare and Medicaid programs require physician supervision of a CRNA when administering anesthesia in certain circumstances. *See, e.g.*, 42 C.F.R. §§ 416.42(b)(2), 482.52(a)(4), 485.639(c)(1)(v), (2) (requiring a CRNA to operate under a physician’s supervision when administering anesthesia in certain circumstances). Furthermore, a CRNA may not administer an anesthetic that is a controlled substance outside the presence of a physician. *See TEX. HEALTH & SAFETY CODE* §§ 481.002(1)(A) (defining “administer” to require agent to apply controlled substance in presence of physician), .071(a) (prohibiting physician from causing controlled substance to be administered under physician’s “direction and supervision” except for valid medical purpose and in course of medical practice). And a CRNA may not obtain an anesthetic that is a dangerous drug unless a physician has listed that CRNA as the physician’s designated agent. *See id.* §§ 483.001(4) (defining “designated agent”), .022(a) (requiring physician to name each designated agent in writing).

Whether and the extent to which physician supervision is required for an act delegated to a CRNA will depend on the specific act delegated, the type of facility in which the CRNA performs the act, and any relevant regulations of that facility. And while section 157.058 authorizes a physician to delegate to a CRNA, a physician is never required to do so. If a physician is concerned about a CRNA's ability to perform a delegated act or desires to limit the delegation, the physician retains the authority to refrain from delegating, to limit the delegation, or to supervise the delegation to whatever extent the physician determines necessary. In sum, the authority to delegate provided by section 157.058 of the Occupations Code does not eliminate the need to comply with all other applicable statutes, regulations, bylaws, ethical standards, and a physician's own professional judgment. *See* TEX. OCC. CODE § 157.007 (“An act delegated by a physician under [chapter 157] must comply with other applicable laws.”).

You also ask whether the liability of the delegating physician is “limited solely to the determination of competency to initially delegate to [a] CRNA under Section 157.060” of the Occupations Code, or whether it includes “liability for all delegated medical acts under Section 157.001.” Request Letter at 1.

In authorizing physicians to delegate the administration of anesthesia to CRNAs, the Legislature did not expressly limit the liability of the delegating physician. *See* TEX. OCC. CODE § 157.058; *cf. id.* § 157.004(c) (providing that in specified circumstances a physician who issues a standing delegation under chapter 203 generally “is not liable in connection with an act performed under that standing delegation order”). Thus, we cannot conclude that the liability of a physician delegating the administration of anesthesia to a CRNA is limited solely to the determination of competency. Questions of physician liability in any specific context are highly factual and not an appropriate determination for the opinion process. *See* Tex. Att’y Gen. Op. No. GA-0446 (2006) at 18 (“Questions of fact are not appropriate to the opinion process.”).

**S U M M A R Y**

Section 157.058 of the Occupations Code does not, by itself, require a physician who properly delegates anesthesia-related tasks to a certified registered nurse anesthetist (“CRNA”) to supervise the performance of those acts. Whether and the extent to which physician supervision is required for an act delegated to a CRNA will depend on the specific act delegated, the type of facility in which that task is performed, and any relevant regulations of that facility.

Questions of physician liability in any specific context are highly factual and not an appropriate determination for the opinion process.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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