



NEWSLETTER

Maryland Board of Physician Quality Assurance

4201 Patterson Ave. ♦ P.O. Box 2571 ♦ Baltimore, Maryland 21215-0095

1-800-492-6836

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DRAFT REGULATIONS ON MEDICAL ASSISTANTS IN PHYSICIANS' OFFICES

BPQA has drafted regulations that provide clarification of tasks and duties which a physician may delegate to individuals employed in private medical offices. The regulations designate these employees as "medical assistants," a category of provider not recognized under the Health Occupations Article. A medical assistant may be an individual who has gained experience through on-the-job training or through completion of a medical assistant program. Regulations also apply to individuals who are licensed in a health occupation; e.g., a paramedic or physical therapist, but who would not function under that occupation while employed in the physician's office. Hence, such individuals are limited to tasks which are usually designated to a medical assistant.

A short list of duties and tasks is provided in the proposed regulations. The list is not intended to be all inclusive but indicates the kinds of activities a trained medical assistant may reasonably perform. The physician-employer should personally determine that the medical assistant is competent to carry out assigned tasks or duties, and should not delegate more responsibility

to this employee than is described in the proposed regulations. Physicians may delegate more advanced professional tasks only to formally licensed individuals such as nurses, nurse practitioners, and physician assistants.

The Board has not specified a formal course of study for persons who wish to work in a doctor's office. The physician is responsible to make sure that tasks delegated to a medical assistant are competently performed. The Board will hold supervising physicians accountable for quality performance of medical assistants.

The Board receives few complaints regarding the competency of medical assistants, but occasionally receives complaints which focus on misrepresentation. Patients may feel that they have been deceived intentionally when a medical assistant, for whatever reason, has been presumed to be a licensed nurse or physician assistant with extensive formal training.

The regulations require medical assistants to wear a name tag which identifies the individual

as a "Medical Assistant" to patients.

In 1995, the Board sanctioned three physicians for inappropriate delegation of responsibilities to unlicensed individuals. In two cases, unlicensed physicians were employed to function as Physician Assistants. In the third case, an individual with a liberal arts degree and on-the-job training was delegated to obtain Pap smears and perform prenatal examinations. Physicians may not allow unlicensed employees to

examine, diagnose, or treat patients. These functions constitute the practice of medicine.

Physicians should be particularly cautious when preparing to employ an individual with extensive training but who does not possess a health professions license. Unlicensed health professionals, even physicians, have the same restrictions as do medical assistants. No license means no medical practice, and there are no exceptions.

*The following draft regulations were approved by the Board of Physician Quality Assurance at its regularly scheduled meeting on June 28, 1995. These draft regulations have **not** been approved by the Secretary of the Department of Health and Mental Hygiene or the Office of the Attorney General, and have **not** yet been published in the Maryland Register.*

Among the organizations that have had input throughout the development process were the following: American Academy of Physician Assistants;

American Association of Medical Assistants; Maryland Academy of Family Physicians; Maryland Society of Medical Assistants; Maryland Hospital Association; Maryland Association of Health Maintenance Organizations; Medical and Chirurgical Faculty of Maryland; and the Medix School.

These regulations are expected to be published this winter. During the thirty day comment period following the publication, written comments may be sent to Michele Phinney, Regulations Coordinator, O'Connor Building, Room 538, 201 West Preston Street, Baltimore, Maryland 21201.

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE Subtitle 32 BOARD OF PHYSICIAN QUALITY ASSURANCE

CHAPTER 12 Delegation of Duties by a Licensed Physician--Medical Assistant Authority: Health Occupations Article, §14-306, Annotated Code of Maryland

Notice of Proposed Action

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01-.05 under a new chapter, COMAR 10.32.12 Delegation of Duties by a Licensed Physician--Medical Assistant.

The actions were considered by the Board of Physician Quality Assurance at a public meeting on June 28, 1995, notice of which was given by publication in 22:12 Md.R. 951 (June 9, 1995), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this regulation is to meet the legal mandate specified in Health Occupations Article §14-306(a) & (c) to define the scope of appropriate delegation of medical duties from physicians to unlicensed individuals; to specify the required degree of physician supervision of delegated activities; to specify the setting in which the provisions are applicable; to specify activities that a physician may not delegate to unlicensed individuals; and to specify conduct by physicians and unlicensed individuals that is prohibited.

.01 Scope.

- A. These regulations govern the delegation of medical duties by a physician to a medical assistant.
- B. Nothing in this chapter is to be construed as establishing the licensure, certification, or registration of medical assistants.
- C. These regulations are limited to non-hospital care.

.02 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) "Hospital" means hospital as defined in Health Occupations Article, §19-301(a), Annotated Code of Maryland.
 - (2) "Medical assistant" means an individual, whether or not certified, registered or licensed by the Board or any other State Health Occupation Board, to whom medical duties are delegated by a supervising physician.
 - (3) "On site supervision" means oversight exercised by a supervising physician who is physically present in the treatment facility during the course of performance of duties by a medical assistant authorized by this chapter.
 - (4) "Properly trained" means successful completion of a course of study or on-the-job instruction that satisfies the supervising physician that the medical assistant can safely and competently perform delegated medical acts.
 - (5) "Supervising physician" means a physician possessing an active license to practice medicine in this State who directs a medical assistant to perform delegated medical acts on the physician's patient.

.03 Standards for a Physician Delegating Medical Duties.

- A. A physician who delegates medical duties to a medical assistant shall supervise and control those duties and is responsible for the acts of the medical assistant.
- B. A supervising physician may delegate medical acts only to a medical assistant possessing the proper training to safely and competently perform the delegated act.
- C. A supervising physician who delegates medical laboratory tests to a medical assistant shall require that the medical assistant meet applicable personnel training and experience requirements as set forth in 42 CFR 493.1401 - 493.1495, COMAR 10.10.01 and COMAR 10.10.06, which are incorporated by reference in Regulation .03 of the chapter.

.04 Scope of Practice.

- A. A medical assistant may not perform any service or procedure which requires a person performing the service or procedure to be licensed, certified, registered, or otherwise recognized pursuant to any provision of the Health Occupations Article of the Annotated Code of Maryland.
- B. A medical assistant shall wear a tag or badge with lettering clearly visible to the patient, bearing his or her name and the title "Medical Assistant."
- C. A supervising physician may delegate medical acts to a medical assistant that:
 - (1) Are performed only at the order of the supervising physician;
 - (2) Do not involve the prescribing or dispensing of any medications; or
 - (3) Do not require the medical discretion or professional judgement required of a physician.
- D. A medical assistant may perform without on site supervision acts including but not limited to the following:
 - (1) Patient preparation for physical examination;
 - (2) Patient history interview;
 - (3) Collecting and processing specimens, such as performing phlebotomy and inoculating culture media; or
 - (4) Selected tests such as pregnancy testing, urinalysis, microbiology (streptococcal testing, cultures, gram straining, and susceptibility testing), tuberculosis skin testing, electrocardiography, pulmonary function tests, and vision and hearing testing.
- E. The supervising physician shall provide on site supervision of a medical assistant when the medical assistant performs procedures including, but not limited to:
 - (1) Preparation and administration of oral drugs;
 - (2) Preparation and administration of injections limited to intradermal, subcutaneous, and intramuscular (deltoid, gluteal, vastus lateralis); or
 - (3) Establishing an intravenous line.
- F. A supervising physician may not delegate acts, including but not limited to the following:
 - (1) Preparing or injecting intravenous medications;
 - (2) Surgical procedures including suturing and debridement;
 - (3) Conducting physical examination;
 - (4) Administering any form of anesthesia; or
 - (5) Independent initiating of any form of treatment, exclusive of cardiopulmonary resuscitation.

.05 Prohibited Conduct.

- A. A medical assistant practicing beyond the scope of this chapter may be considered to be engaged in the unlicensed practice of medicine and may be subject to all applicable penalties and fines as outlined in the Health Occupations Article, §§14-602 and 14-607, Annotated Code of Maryland.
- B. A supervising physician, through either act or omission, facilitating or otherwise enabling a medical assistant to practice beyond the scope of this chapter may be subject to discipline for grounds including, but not limited to, practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine.

THE ABOVE IS A PROPOSED NEW REGULATION

BOARD NOTES

EMERGENCY LEGISLATION PROPOSED TO ACCEPT THE LMCC FOR LICENSURE

Senator Thomas M. Middleton has agreed to sponsor emergency legislation for the 1996 Legislative Session that would permit the Board to accept the passing scores on the Licentiate of the Medical Council of Canada (LMCC) examination as satisfactorily fulfilling the examination requirement for physician licensure in Maryland. In order to expedite the licensing of those who passed the LMCC and meet all the requirements for medical licensure, the Board will accept and process applications in anticipation of the enactment of the legislation. Interested parties wishing to obtain more information may contact the Board starting January 1996 at (410) 764-4777.

BPQA TO OFFER CREDENTIALING SERVICE

Physicians licensed in Maryland after January 1, 1996, may experience a shorter and more streamlined credentialing process in hospitals and HMOs. Over the summer, BPQA has worked with the Licensing and Certification Administration to develop procedures for verifying medical education. Hospitals, if they choose, will not have to duplicate this effort to meet State Credentialing Regulations.

QUERY TO THE BOARD

Do I need to get a signed release from each patient prior to allowing a chart review by an insurance company?

Prior to approving a physician for inclusion in a panel of providers, an insurance company may request a review of a representative sample of patient

records to assess the quality of record keeping and patient care issues. The physician need not obtain permission from patients for purposes of such a review. However, the physician should have the reviewer sign a note recognizing confidentiality of the patient's records. Disclosure of information in this situation is authorized under the "Confidentiality of Medical Records Act." A copy of the law is found at Title 4 in the Annotated Code of Maryland in the first volume titled "Health-General" which is available in the reference section of public libraries.

WOULD YOUR RECORDS MEASURE UP?

"Doctor, this is a subpoena for copies of twenty of your records. BPQA has requested a peer review of your practice. . ."

When BPQA requests that the Medical and Chirurgical Faculty of Maryland (Med Chi) peer review an incident or the practice of a physician, the peer reviewers must rely on the physician's written record. Remember, the reviewers only know what they can read in your records. What is not recorded is assumed not to have been done. If your records are illegible or scanty, the reviewers may not be able to follow what you did. Would your records measure up to the following standards/guidelines?

- ◆ Are initial and follow-up histories comprehensive enough to include/exclude potential diagnostic and treatment problems?
- ◆ Are physical examinations detailed enough to document appropriate management?
- ◆ Are physician's instructions adequately documented?
- ◆ Were recommended physician follow-ups adequate?
- ◆ Have actions regarding abnormal PEs, labs and X-rays been adequate?
- ◆ Was the standard of care met in the treatment of the patient?
- ◆ If the standard of care was not met, describe how the care deviated from the standard.
- ◆ Describe any known mitigating circumstances.

BOARD DISCIPLINARY ACTIONS
JULY 1 - SEPTEMBER 30, 1995

KIOKO, Gideon, M., M.D., License #D08283. Application for reinstatement of licensure denied. The physician did not meet standards for reinstatement. Effective 7/21/95.

BRADFORD, S. Edward, P.A., Certification #C00642. In lieu of summary suspension and pending resolution of charges, the physician's assistant is subject to terms and conditions in addition to those contained in a consent order of March 23, 1994. The Board had issued an intent to summarily suspend the health provider based on the investigative information that he was in violation of terms and conditions of the March 23, 1994 consent order. Effective 7/21/95.

WILLIAMS, Robert J., M.D., License #D25055. (Edmondson Avenue, Baltimore, MD) Restrictions imposed on prescribing privileges by the April 4, 1995 order are terminated. All other conditions contained in the order remain in full force and effect. The physician successfully completed the mini-residency in the proper prescribing of controlled dangerous substances as directed by the April 4, 1995 order. Effective 7/25/95.

GAROFANO, Anthony S., M.D., License #D01143. Probation is terminated. The physician has complied with the conditions precedent to termination of probation. Effective 7/25/95.

ORDONEZ-SMITH, Jorge, M.D., License #D14246. Modification of May 24, 1995 consent order: reinstatement of prescribing privileges for the limited purpose of writing post-operative orders on surgical patients for whom the physician has served as a surgical assistant. The modified language in a more detailed fashion sets out the intent of the Board in the May 24, 1995 consent order. Effective 7/26/95.

PAL, Bimal Kumar, M.D., License #D12748. License is suspended effective August 27, 1995, for a period of one year. Three years of probation subject to terms and conditions from the end of the suspension. Board determined that the physician was

guilty of unprofessional conduct because of intimate, non-medical, physical contact with a patient. Effective 7/26/95.

VANN, Mary Lee, Medical Radiation Technologist. Certification #R01872. Reprimand. For aiding unauthorized persons in the practice of medical radiation technology by hiring a radiographer who practiced while uncertified at a health care facility. Effective 7/26/95.

ABBAS, Mahmoud F., M.D., License #D12722. License revoked. The physician entered a plea of guilty to an allegation of felony medicaid fraud in violation of Md. Code Ann., Art 27, 230B. Effective 8/1/95.

CORDOVA, Edmund S., M.D., License #D25096. License surrendered in lieu of revocation. The physician was prompted to surrender his license because of an investigation into unprofessional conduct and his desire to avoid prosecution. The investigation was based on actions the United States Army took against the physician for unprofessional and indecent conduct during medical examinations of patients at Army hospitals in Alaska and Oklahoma and the revocation of his license in New Mexico for sexual abuse of two patients. Effective 8/1/95.

MESBAHI, Kathy Azar, M.D., License #D28710. Probation terminated. The physician has complied with the conditions and terms imposed under the probationary period. Effective 8/1/95.

RAJAN, V.K. Suresh, M.D., License #D23312. Modification of the consent order of June 2, 1994. Based upon a peer review report and a report from the physician's supervisor, the physician may engage in private practice limited to the monitoring of medication. The frequency of supervision is reduced to a monthly basis. Effective 8/1/95.

BOLYARD, Donald, Cardiac Rescue Technician. Certification #E31599. Probation terminated. The allied health provider has met the conditions precedent for termination. Effective 8/8/95.

HODJATI, Hassan H., M.D., License #D23383. Probation terminated. The respondent has complied with the conditions and terms imposed under the probationary period. Effective 8/8/95.

KUSHNER, Jack, M.D., License #D13450. Inactive status. If the physician applies for reinstatement of an active license, he shall appear before a committee of the Board. The Board had sufficient evidence to conclude that the physician's care and treatment of a patient failed to meet the standard of care in his practice of neurosurgery. Effective 8/9/95.

BERAN, Bohumil F., M.D., License #D13875. Modification of the March 23, 1994 consent order. The Board is limiting the physician's practice of psychiatry to no more than 8 hours per day, 40 hours per week. He must submit monthly reports to the Board. Effective 8/15/95.

BRIGGS, Jeffrey A., M.D., License #D28640. Second modification of the order of December 27, 1994. This modification approves a proposed practice setting and imposes the condition of having a chaperon present during the physical examination of female patients. All other provisions and terms and conditions of the orders dated December 27, 1994, and June 13, 1995, remain in effect. The physician is satisfactorily meeting the conditions of the previous orders. Effective 8/22/95.

WIERNIK, Peter, M.D., License #: D13260. Reprimand. The Maryland Board took reciprocal action, based on action by the New York State Board, for willfully filing a false report. Effective 8/22/95.

LANKFORD, James E. Jr., Cardiac Rescue Technician, (Upperco, MD) Reinstatement. The allied health provider has complied with the conditions precedent for reinstatement of his certification. Effective 8/31/95.

SINGH, Inder, M.D., License #D18962. Conditions lifted. Consent order of September 16, 1992, is terminated. The physician has complied with the conditions precedent for restoration of his license. Effective 9/13/95.

REGAN, Bruce L., M.D., License #D18610. Conditions imposed by the consent order of October 11, 1991, are terminated. The physician has complied with all the conditions precedent to termination. Effective 9/19/95.

SCHEMM, Christopher M., M.D., License #D36618. Probation for two years subject to terms and conditions. The physician failed to meet the standards of care with regard to his care and treatment of several patients in his practice of internal medicine. Effective 9/19/95.

BIRSCHBACH, H. Robert, M.D., License #D04115. Reprimand. The physician is guilty of unprofessional conduct in the practice of medicine and of abandonment of one patient. Effective 9/27/95.

BRITOS-BRAY, Anibal C. R., M.D., License #D16953. Revoked. The physician pled guilty to medicaid fraud and is subject to State statute that requires revocation of licensure for a crime of moral turpitude. Effective 9/27/95.

MAXWELL, George A., M.D., License #D07852. Reprimand. Restrictions placed on practice. The physician failed to meet the standards of care in the practice of gynecology. Effective 9/27/95.

RENJEL, Luis Eduardo, M.D., License #D02534. The suspension imposed by the consent order of March 22, 1995, is stayed, and the physician is placed on probation for three years subject to terms and conditions. The physician has met the conditions precedent for a stay of his suspension. Effective 9/27/95.

LETTERS TO THE EDITOR



The Board welcomes your comments! Send your letters, ideas, or questions to Cheryl E. Winchell, M.D., Editor, BPQA Newsletter, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095.

WELCOME NEW BOARD MEMBER

The Board extends a warm welcome to its newest member, Mrs. Lorna Green, who began her four year appointment as a consumer member last July. Born in Trinidad, Mrs. Green has been in the USA since 1969 and became a naturalized citizen in 1975. Mrs. Green has a degree in Business Administration from Pace University in New York.



with federal and state regulations in the areas of mortgage lending and community investment. She is actively involved in community organizations promoting safe streets, education, and youth initiatives, and serves as the President of the Caribbean Infusion Cultural Committee.

Mrs. Green brings a diverse body of experience to the Board. She has served as an administrator in the Division of Child Protection for Children's Hospital National Medical Center. Subsequently, she developed marketing strategies for Maxima, Inc. Currently, she is an independent auditor with expertise in the examination of banking policy compliance

At her first Board meeting, after receiving her first nine pounds of monthly board reading materials, Mrs. Green commented: "I'm looking forward to learning more about the Board's functions and responsibilities. After reviewing the 'Board Book,' I realized there's much more involved than I first thought. I hope to bring the consumer's viewpoint to the physicians of the many changes occurring in the medical community that affect our daily lives."

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P.O. BOX 2571
BALTIMORE, MD 21215-0095
1-800-492-6836

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