

The Supervision of Unlicensed Personnel and the Corporate Practice of Medicine

Approved by the State Board of Medical Examiners at its October 4, 2017 Meeting

Service Area: Medical

In accordance with S.C. Code Ann. § 40-47-10(I)(1), the State Board of Medical Examiners (“Board”) may “publish advisory opinions and position statements relating to practice procedures or policies authorized or acquiesced to by any agency, facility, institution, or other organization that employs persons authorized to practice under this chapter to comply with acceptable standards of practice.” The Board publishes this advisory opinion to clarify its position on the principles of the supervision of unlicensed personnel and the corporate practice of medicine, which have become interwoven in certain clinical settings, in an effort to assist its physicians ensure compliance with their statutory and ethical obligations.

The Medical Practice Act specifically addressed the circumstances under which tasks may be delegated to an unlicensed person. Section 40-47-30(A) provides, “[A] person may not practice medicine in this State unless the person is twenty-one years of age and has been authorized to do so pursuant to the provisions of this article. Nothing in this article may be construed to:

(5) prohibit a licensed physician from delegating tasks to unlicensed personnel in the physician's employ and on the premises if:

(a) the task is delegated directly to unlicensed personnel by the physician and not through another licensed practitioner;

(b) the task is of a routine nature involving neither the special skill of a licensed person nor significant risk to the patient if improperly done;

(c) the task is performed while the physician is present on the premises and in such close proximity as to be immediately available to the unlicensed person if needed;

(d) the task does not involve the verbal transmission of a physician's order or prescription to a licensed person if the licensed person requires the order or prescription to be in writing; and

(e) the unlicensed person wears an appropriate badge denoting to a patient the person's status.

The unlicensed person shall wear a clearly legible identification badge or other adornment at least one inch by three inches in size bearing the person's first name at a minimum and staff position. The identification badge must be worn in a manner so that it is clearly visible to patients at all times.”

All or staff where ID Badges

S.C. Code Ann. § 40-47-20 (20) states "immediately available" for the purpose of supervising unlicensed personnel means “being located within the office and ready for immediate utilization when needed.”

The Board has previously clarified that if a physician is jointly employed by a healthcare entity with an unlicensed person for which the physician has supervisory responsibility, the unlicensed personnel may be considered to be within the physician’s employ for purposes of § 40-47-30(A)(5), so long as the other requirements set forth therein are satisfied. Although the Board is not concerned about the form of the legal entity jointly employing the supervising physician and the supervised unlicensed personnel, it is most concerned about preservation of the physician’s exercise of his or her clinical judgment. The Board anticipates that a close working relationship exists between the supervising physician and the supervised unlicensed personnel such that the physician will determine in his or her individual judgment which tasks may be delegated

appropriately to the unlicensed personnel and, further, confirm that these tasks do not require the special skill of a licensed person, including, but not limited to, a licensed nurse.

The Board recognizes that unlicensed personnel may also be supervised by licensed nurses as set forth in the Nurse Practice Act. Specifically, § 40-33-20(61) defines "unlicensed assistive personnel" or "UAP" as "persons not currently licensed by the board as nurses who perform routine nursing tasks that do not require a specialized knowledge base or the judgment and skill of a licensed nurse. Nursing tasks performed by a UAP must be performed under the supervision of an advanced practice registered nurse, registered nurse, or selected licensed practical nurse."

Section 40-33-42 further provides:

(A) An advanced practice registered nurse, registered nurse, or licensed practical nurse is responsible for the delegation and supervision of nursing tasks to unlicensed assistive personnel. Tasks that may be assigned to unlicensed assistive personnel must be stated in the employers' policies, and the employer shall verify the training of this personnel and their competencies to perform the tasks.

(B) Tasks which may be delegated and performed under supervision may include, but are not limited to:

- (1) meeting patients' needs for personal hygiene;
 - (2) meeting patients' needs relating to nutrition;
 - (3) meeting patients' needs relating to ambulation;
 - (4) meeting patients' needs relating to elimination;
 - (5) taking vital signs;
 - (6) maintaining asepsis;
 - (7) observing, recording, and reporting any of the tasks enumerated in the subsection.
- (C) Subject to the rights of licensed physicians and dentists under state law, the administration of medications is the responsibility of a licensed nurse as prescribed by the licensed physician, dentist, and other authorized licensed provider or as authorized in an approved written protocol or guidelines. Unlicensed assistive personnel must not administer medications, except as otherwise provided by law.

The Board finds the specific provisions from the Nurse Practice Act informative regarding which tasks require the special skill of a licensed nurse. The Board cautions physicians to consider whether a proposed task is appropriate for delegation to an unlicensed person or whether the special skill of a licensed person is required. Physicians should refrain from delegating any tasks to an unlicensed person that involve either the special skill of a licensed person or pose significant risk to the patient if improperly done. At all times, the supervising physician is responsible for ensuring patient safety.

The Board does not license or regulate corporations. However, the Board has well-established expectations concerning the economic relationships within which its licensees may practice. While the economic relationship is not a direct regulatory concern of the Board, the licensee must control the exercise and practice of his or her clinical judgment at all times. The physician's professional judgment must be independently exercised, regardless of the economic relationship or business form involved. Licensees are subject to all provisions of the Medical Practice Act regardless of the economic relationship or corporate form in which they practice. Licensees may not employ or permit unlicensed persons to practice medicine. It is unlawful and unprofessional conduct for a licensee who engages in the practice of medicine to permit an unlicensed person to direct, participate in or interfere with the licensee's practice of medicine.

Consequently, licensees should not enter into any agreement or associate themselves with a practice arrangement which permits a person other than a licensed physician to direct, participate in, or interfere with the licensee's practice of medicine and exercise of their independent professional judgment. Licensees should ensure unlicensed personnel are appropriately trained and competent to perform delegated tasks and provide documentation of that to the Board upon request.

To the extent the licensee's economic relationship complies with the principles set forth herein and is otherwise authorized by applicable law, it is authorized by the licensing law of this State governing physicians. It is each physician's individual responsibility to ensure that he or she practices only within the lawful scope of practice set forth in the Medical Practice Act and other State law. It is further the responsibility of non-licensees to refrain from any activities which constitute the practice of medicine. As required by law, complaints received by the Board concerning unlicensed practice or other violations of the Medical Practice Act by licensees will be investigated and appropriate disciplinary action or other enforcement action taken as warranted by the individual facts and circumstances. It is the Board's desire to collect only relevant information concerning the physician's economic relationship with third parties necessary to enforce the provisions of the Medical Practice Act.