



COMMONWEALTH of VIRGINIA

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The Honorable Jennifer T. Wexton
Member, Senate of Virginia
20 West Market Street
Leesburg, Virginia 20176

Dear Senator Wexton:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a supervising physician who initially saw a patient may prescribe and dispense medication to the same patient based on the recommendation of a nurse practitioner or physician assistant who saw the patient at a follow-up visit.

Applicable Law and Discussion

You inquire as to the authority of a supervising physician to prescribe medication on the recommendation of a nurse practitioner or physician assistant who has seen his patient during a follow-up visit.¹ Under Virginia law, a physician licensed by the Commonwealth “shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.”² In addition, a physician may issue a prescription only to a person with whom he has a bona fide practitioner-patient relationship.³ To establish a bona fide practitioner-patient relationship, the physician must

- i) ensure that a medical or drug history is obtained;

¹ I note that Virginia law also authorizes nurse practitioners and physician assistants to prescribe certain controlled substances under specified conditions. See VA. CODE ANN. §§ 54.1-2952.1 (2013); 54.1-2957.01 (2013); 54.1-3408 (2013).

² Section 54.1-3408(A). Section 54.1-3401 defines the terms “dispense” and “administer.” “Dispense” means “to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.... For practitioners of medicine or osteopathy, ‘dispense’ shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner’s place of practice.” “Administer” is defined as “the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.”

³ Section 54.1-3303(A) (2013).

- ii) provide information to the patient about the benefits and risks of the drug being prescribed;
- iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and
- iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.^[4]

This requirement for a bona fide practitioner-patient relationship to exist applies when a supervising physician prescribes medication after a patient's follow-up visit with a nurse practitioner or physician assistant.

For a bona fide practitioner-patient relationship to exist, the patient must have been appropriately examined. That examination need not have been conducted by the prescribing physician if it was otherwise performed by a person "within the group in which he practices," or by a consulting practitioner prior to issuance of the prescription.⁵ The phrase "within the group he practices" does not have a statutory definition. Generally, when a particular term is not defined in a statute, it must be given its plain and ordinary meaning.⁶ The rule that an undefined term must be given its plain and ordinary meaning also requires that courts be "guided by 'the context in which [the word or phrase] is used.'"⁷ Thus, to determine whether a nurse practitioner or physician assistant is within the group a supervising physician practices, the role, as defined by statute, each fulfills as a practitioner of healing arts must be considered.

I. Nurse Practitioners

In Virginia, a nurse practitioner is required to practice as part of a patient care team,⁸ and must "maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician."⁹ A "patient care team" is "a multidisciplinary team of health care providers actively functioning as a unit . . . for the purpose of providing and delivering health care to a patient or group of patients."¹⁰ Further, for purposes of these requirements, "collaboration" and "consultation" are defined as follows:

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments; and (ii) development of an

⁴ *Id.* These requirements also apply to nurse practitioners and physician assistants when they issue prescriptions as authorized pursuant to §§ 54.1-2957.01 and 54.1-2952.1.

⁵ Section 54.1-3303(A). I note the statute contains an exception for medical emergencies.

⁶ *See Moyer v. Commonwealth*, 33 Va. App. 8, 35 (2000) (citing *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970)).

⁷ *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 21 (2010) (citing *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 595 (1999) (quoting *Dep't of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658 (1980)).

⁸ Section 54.1-2957(B) (2013).

⁹ *Id.*

¹⁰ Section 54.1-2900 (Supp. 2014).

appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

“Consultation” means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.^[11]

Accordingly, the governing law, in requiring practice agreements between a supervising physician and a nurse practitioner, contemplates a relationship where the nurse practitioner will assess the patient and recommend treatments. A nurse practitioner working within the same patient care team with the physician thus reasonably should be considered to be working “within the group” of the supervising physician.

II. Physician Assistants

With respect to physician assistants, Virginia law requires that, prior to initiating practice, a physician assistant inform the Board of Medicine who his supervising physicians will be and how he will be utilized.¹² The medical tasks the physician assistant will be authorized to perform on behalf of a supervising physician must be set forth in a written practice supervision agreement.¹³ Further, although a supervising physician’s physical presence is not required when the assistant is performing his duties, the assistant remains subject to the continuous supervision of the physician,¹⁴ and anyone employing the assistant remains fully responsible for the medical acts of the assistant.¹⁵ Based on the resulting relationship, I conclude that, if the supervising physician and the physician assistant who sees the patient during the follow-up visit have entered into a written practice agreement, then the physician assistant and the physician are within the same practice group.

I therefore conclude that, if the supervising physician has entered into a written practice agreement with a physician assistant, or with a nurse practitioner who is part of the same patient care team, then the physician assistant or nurse practitioner is considered to be within the same group in which the physician practices. The supervising physician can rely on the assessment of the patient by the physician assistant or nurse practitioner who examined the patient at a follow-up visit and thereby have a bona fide practitioner-patient relationship with the patient.¹⁶ The supervising physician may then prescribe medication to the patient based upon the recommendations of the nurse practitioner or the physician assistant.

¹¹ Section 54.1-2957(F).

¹² Section 54.1-2951.1(B) (2013).

¹³ Section 54.1-2952(A) (2013). Delegable duties include “health care services which are educational, diagnostic, therapeutic, preventive, or include treatment, but shall not include the establishment of a final diagnosis or treatment plan for the patient unless set forth in the written practice supervision agreement.” *Id.*

¹⁴ *Id.*

¹⁵ Section 54.1-2952(B).

¹⁶ I note, however, that the other elements of a bona fide practitioner-patient relationship also must be satisfied: the supervising physician must ensure, for a follow-up visit with a nurse practitioner or physician assistant, that an updated medical or drug history is obtained from the patient and that the patient has been provided information regarding the benefits and risks of any drug being prescribed. Section 54.1-3303(A).

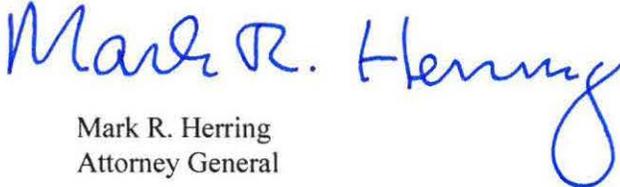
With regard to the dispensing, rather than mere prescribing, of medication, a physician may not sell or dispense controlled substances unless licensed by the Board of Pharmacy.¹⁷ The Board of Pharmacy may grant to a physician licensed in Virginia, “to whom a pharmaceutical service is not reasonably available,” a license to dispense drugs.¹⁸ If the supervising physician has received a license to dispense medications from the Board of Pharmacy, then he may dispense medication that he has prescribed after his patient’s follow-up visit with a nurse practitioner or physician assistant within his practice group.

Conclusion

Accordingly, it is my opinion that if a nurse practitioner is part of the supervising physician’s patient care team, then the supervising physician may prescribe medication to the patient after the patient was seen by the nurse practitioner, based upon the nurse practitioner’s recommendation. Similarly, if a physician assistant has entered into a written practice agreement with the supervising physician that authorizes the physician assistant to assess and recommend treatment for the patient, then the supervising physician may prescribe medication to the patient based upon the physician assistant’s recommendation. In either case, the supervising physician must ensure that all the requirements of a bona fide practitioner-patient relationship have been met. The supervising physician may not dispense medication to the patient unless he is licensed by the Board of Pharmacy to dispense drugs.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹⁷ Section 54.1-2914(A) (2013) provides that “[a] practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy.” Nevertheless, the prohibition does not apply to a physician “who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available.” *Id.*

¹⁸ Section 54.1-3304 (2013).