

CHAPTER 387  
FORMERLY  
HOUSE BILL NO. 349  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PROFESSIONS AND OCCUPATIONS AND THE MEDICAL PRACTICE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 24, Subchapter V of the Delaware Code by adding a new Section thereto, as shown by underlining, as follows:

§ 1769C. Physician practices with multiple offices.

If a physician practice has multiple offices, a physician member of that practice shall visit each office periodically, as frequently as needed but at least once per month, for purposes of ensuring that the office is managed properly and patient care is appropriate.

Section 2. Amend Title 24, Subchapter VI of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1770. The Regulatory Council for Physician Assistants.

~~To assist the Board of Medical Licensure and Discipline in the performance of its duties relating to the regulation of physician assistants, the President of the Board, with advice and approval of the Board, shall appoint members to the Regulatory Council for Physician Assistants. The Regulatory Council is chaired by a member of the Board appointed by the President and has 6 other members, including 1 physician who regularly supervises physician assistants appointed by the Board of Medical Licensure and Discipline and 1 pharmacist appointed by the Board of Pharmacy. The 4 remaining members must be practicing physician assistants, subject to the same causes for removal as a physician member of the Board, except that the requirement for certification and registration to practice medicine is replaced by licensure as a physician assistant. Terms of service for members of the Regulatory Council are the same as terms of service for members of the Board. The chairperson of the Regulatory Council is compensated and reimbursed in the same amount as a Board member is compensated and reimbursed. The other 6 members of the Regulatory Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting related travel and expenses at the State's current approved rate. The Regulatory Council shall meet at least quarterly each calendar year to review the regulation of physician assistants and to advise the Board of policy, rules, and regulations relating to the regulation of physician assistants. The Board may consult Regulatory Council members for advice on particular issues, including issues relating to disciplinary matters for physician assistants. The Board shall determine the specific functions of the Regulatory Council.~~

(a) The Regulatory Council for Physician Assistants (Council) shall consist of 7 voting members, one of whom is a physician member appointed by the Board, one of whom is a physician who regularly supervises physician assistants appointed by the Board, and one of whom is a pharmacist appointed by the Board of Pharmacy. The remaining 4 members, appointed by the Board, must be practicing physician assistants, subject to the same causes for removal as a physician member of the Board except that the requirement for certification and registration to practice medicine is replaced by licensure as a physician assistant. The Council may elect officers as necessary.

(b) Each Council member shall be appointed for a term of 3 years and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, that member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a member whose term of office has expired remains eligible to serve until replaced by the Board. A person who has never served on the Council may be appointed for 2 consecutive terms, but that person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has twice been appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed until an interim period of at least 1 year has expired since the

person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of physician assistants.

(c) The Council, in accordance with the Administrative Procedures Act, shall promulgate rules and regulations governing the practice of physician assistants, subject to approval of the Board. The Board must approve or disapprove any proposed rule or regulation within 60 days of submission by the Council. If the Board fails to approve or disapprove the proposed rules or regulations within 60 days, the proposed rule or regulation is deemed approved by the Board.

(d) The Council shall meet at least on a quarterly basis and at other such times as license applications are pending. The Council shall evaluate the credentials of all applications for licensure as a physician assistant in this State, in order to determine whether the applicant meets the qualifications for licensure set forth in this Chapter. The Council shall present to the Board the names of individuals qualified for licensing, shall review and consider disciplinary complaints and recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations.

§ 1770A. Physician assistants.

As used in this section:

(1) "Delegated medical acts" means healthcare activities and duties delegated to a physician assistant by a supervising physician.

(2) "Physician assistant" or "PA" means an individual who:

a. Has graduated from a physician assistant or surgeon assistant program which is accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA), or a successor agency acceptable to and approved by the Board, or has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants prior to 1986;

b. Has a baccalaureate degree or the equivalent education to a baccalaureate degree, as determined by the Council and the Board;

b. c. Has passed a national certifying examination acceptable to the Regulatory Council for Physician Assistants and approved by the Board;

c. d. Is licensed under this chapter to practice as a physician assistant; and

d. e. Has completed any continuing education credits required by rules and regulations developed under this chapter;

(3) "Supervision of physician assistants" means the ability of the supervising physician to provide or exercise control and direction over the services, activities, and duties of a physician assistant and to be available for consultation with the physician assistant during the time of the patient encounter with the physician assistant, if necessary to provide advice on the ongoing care of the patient. The constant physical presence of the supervising physician is not required in the supervision of a physician assistant, provided that the supervising physician is readily accessible by some form of electronic communication, ~~and that the supervising physician can be physically present with the physician assistant within 30 minutes. Depending upon the specific clinical activity of the physician assistant, a shorter response time may be required; and~~

§ 1771. Physician's duties in supervision of a physician assistant.

(a) A physician who delegates medical acts to a physician assistant is responsible for the physician assistant's medical acts and must provide adequate supervision. Adequate supervision will depend on the nature of the practice setting and the experience of the physician assistant. It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified, that delegation of medical tasks is appropriate to the physician assistant's level of competence, that the relationship of, and access to,

the supervising physician is defined, and that a process for evaluation of the physician assistant's performance is established.

(b) Each physician-physician assistant team, hospital, clinic, medical group, or other healthcare facility shall be responsible for creating a written agreement, which shall be kept on file at the primary location where the physician assistant provides care, describing the information required by subsection (a) of this section. The written agreement shall be made available to the Board or the Council upon request.

~~(c)~~ (b) A supervising physician may not delegate a medical act to a physician assistant who, by statute or professional regulation, is prohibited from performing the act.

~~(d)~~ (e) A supervising physician may not be involved in patient care in name only.

~~(e)~~ (d) A supervising physician may not delegate medical acts to a physician assistant that exceed the physician's scope of practice.

~~(f)~~ (e) A supervising physician may not at any given time supervise more than 4 ~~2~~ physician assistants, unless a regulation of the Board increases or decreases the number.

~~(g)~~ (f) A physician who supervises a physician assistant in violation of the provisions of this subchapter or of regulations adopted pursuant to this subchapter is subject to disciplinary action by the Board of Medical Licensure and Discipline for permitting the unauthorized practice of medicine.

~~(g) A supervising physician who has supervising physician's patients followed by a physician assistant shall reevaluate within 6 months every patient receiving controlled substances and within 12 months every patient receiving other prescription medications or therapeutics.~~

~~(h) Prescription and nonprescription medications may be initiated by standing orders if these standing orders have been approved by the supervising physician.~~

~~(h)~~ (i) Hospitals, clinics, medical groups and other healthcare facilities may employ physician assistants; however, no more than 4 ~~2~~ physician assistants may at any given time be employed and supervised for each physician practicing in the same facility unless a regulation of the Board increases or decreases the number.

(i) If the supervising physician delegates the authority to a physician assistant to treat patients in a setting where the supervising physician is not routinely present the physician must assure that the means and methods of supervision are adequate to assure appropriate patient care. This may include telecommunication, chart review, or other methods of communication and oversight that are appropriate to the care setting and the education and experience of the physician assistant. The supervision plan must be detailed in the practice agreement and made available to the Board or Council upon request. Failure to have a supervision plan or failure to provide quality patient care due to lack of adequate supervision constitutes grounds for discipline.

§ 1772. Prohibited acts by a physician assistant.

(a) A physician assistant may not maintain or manage an office separate and apart from the office of the physician assistant's supervising physician.

(b) A physician assistant may not engage in diagnosis, prescribe or dispense legend drugs or therapeutics, or practice medicine or surgery or perform refractions in any setting independent of the supervision of a physician who is certified to practice medicine.

(c) A physician assistant may not assign a delegated medical act to another individual without the supervising physician's authorization.

(d) A physician assistant may not independently bill a patient for services rendered at the request of the supervising physician.

(e) Nothing in this chapter may be construed to authorize a physician assistant to practice independent of a supervising physician.

(f) Except as otherwise provided in this chapter or in a medical emergency, a physician assistant may not perform any medical act which has not been delegated by a supervising physician.

(g) A physician assistant may not practice as a member of any other health profession regulated under this code unless the physician assistant is certified, licensed, registered, or otherwise authorized to practice the other profession.

§ 1773. Regulation of physician assistants.

~~(a) The Board, in conjunction with the Regulatory Council for Physician Assistants established under § 1770 of this title, shall adopt regulations regarding activities which may be undertaken by physician assistants, and shall license all physician assistants with the Board.~~

~~(b) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall adopt rules and regulations which address the following define the scope of practice of physician assistants including:~~

(1) The licensing of physician assistants to allow:

a. The performance of delegated medical acts within the education, training, and experience of physician assistants; and

b. The performance of services customary to the practice of the supervising physician;

(2) Delegated medical acts provided by physician assistants to include, but not be limited to:

a. The performance of complete patient histories and physical examinations;

b. The recording of patient progress notes in an outpatient setting;

~~c. The relaying, transcribing, or executing of specific diagnostic or therapeutic orders, so long as all such notes, orders, and other writings are reviewed and countersigned by the supervising physician within 72 hours, barring extraordinary events or circumstances;~~

~~d. Delegated medical acts of diagnosis and prescription of therapeutic drugs and treatments which have been delegated by the supervising physician within the scope of physician assistant practice, as defined in the regulations promulgated by the Regulatory Council for Physician Assistants and approved by the Board of Medical Licensure and Discipline; and~~

~~e. Prescriptive authority for therapeutic drugs and treatments within the scope of physician assistant practice, as delegated by the supervising physician defined in the regulations promulgated by the Regulatory Council for Physician Assistants and approved by the Board of Medical Licensure and Discipline. The physician assistant's prescriptive authority and authority to practice as a physician assistant make medical diagnoses and treatment decisions, if any, are subject to biennial renewal upon application to the Physician Assistant Regulatory Council.~~

~~(b)(e)~~(1) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall suspend, revoke, or restrict the license of a physician assistant or take disciplinary action or other action against a physician assistant for engaging in unprofessional conduct as defined in § 1731(b) of this title; or for the inability to render delegated medical acts with reasonable skill or safety to patients because of the physician assistant's physical, mental, or emotional illness or incompetence, including but not limited to: deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol; or for representing himself or herself as a physician, or for knowingly allowing himself or herself to be represented as a physician; for failing to report in writing to the Board within 30 days of becoming aware of any physician, physician assistant, or healthcare provider who the licensee reasonably believes has engaged in unprofessional conduct as defined in § 1731(b) of this title or is unable to act with reasonable skill or safety to patients because of the physician's, physician assistant's, or other healthcare provider's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol for failing to report child abuse and neglect as required by § 903 of Title 16. The license of any physician assistant who is convicted of a felony sexual offense shall be revoked. Disciplinary action or other action undertaken against a physician assistant must be in accordance with the procedures, including appeal procedures, applicable to disciplinary actions against physicians pursuant to subchapter IV of this chapter, except that a hearing panel for a complaint against a physician assistant consists of 3 unbiased members of the Regulatory Council, the 3 members being 2 physician assistant members and 1 physician or pharmacist member if practicable.

A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(2)a. If the Board or the Regulatory Council for Physician Assistants receives a formal or informal complaint concerning the activity of a physician assistant and the Regulatory Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Regulatory Council, with the approval of the Board, may issue an order temporarily suspending the physician assistant's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Council, with the approval of the Board, unless the physician assistant or the physician assistant's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the physician assistant or the physician assistant's attorney can be heard in opposition to the proposed suspension, and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended physician assistant requests a continuance of the hearing date. If the physician assistant requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A physician assistant whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the physician assistant or sent by certified mail, return receipt requested, to the physician assistant's last known address.

c. A physician assistant whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the physician assistant received notification of the decision of the Council, with the approval of the Board, to temporarily suspend the physician assistant's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a physician assistant's license to practice pending a hearing, the Executive Director shall appoint a 3-member hearing panel. After notice to the physician assistant pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the physician assistant requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician assistant requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

§ 1773A. Participation in disaster or emergency care.

(a) A physician assistant licensed in this State or licensed or authorized to practice in any other U.S. jurisdiction or credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by an emergency or a state or local disaster (excluding an emergency which occurs in that person's place of employment or practice) may render such care that he or she is able to provide without supervision pursuant to Section 1770A of this title or with such supervision as is available.

(b) Any physician who supervises a physician assistant providing medical care in response to such an emergency or state or local disaster shall not be required to meet the requirements set forth in this Subchapter for a supervising physician.

(c) A person licensed as a physician assistant under this chapter who, in good faith and without gross or wanton negligence, renders emergency care at the scene of an emergency, excluding an emergency which occurs in that person's place of employment or practice, shall not be liable for civil damages as a result of any acts or omissions in rendering the emergency care.

§ 1774. Temporary licensing of physician assistants.

(a) Notwithstanding any provision of this subchapter to the contrary, the Executive Director, with the approval of a physician member of the Board, may grant a temporary license to an individual who has graduated from a physician or surgeon assistant program which has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA) or a successor agency and who otherwise meets the qualifications for licensure but who has not yet taken a national certifying examination, provided that the individual is registered to take and takes the next scheduled national certifying examination. A temporary license granted pursuant to this subsection is valid until the results of the examination are available from the certifying agency. If the individual fails to pass the national certifying examination, the temporary license granted pursuant to this subsection must be immediately rescinded until the individual successfully qualifies for licensure pursuant to this subchapter.

(b) An individual who is temporarily licensed pursuant to this section may not have a prescriptive practice and may not perform delegated medical acts except in the physical presence of the individual's supervising physician.

§ 1774A. Fees set by Board.

The Division of Professional Regulation shall establish fees for licensing physician assistants, for renewing licenses on a biennial basis, and for other regulatory purposes. The fees must approximate the costs reasonably necessary to defray the actual expenses of the Board and the regulatory council, as well as the proportional expenses incurred by the Division in administering the issuance and renewal of licenses, and other regulation of physician assistants.

§ 1774B. Prohibited acts; penalties; enforcement.

(a) A person may not practice as a physician assistant in this State or represent that the person is a physician assistant or knowingly allow himself or herself to be represented as a physician assistant unless the person is licensed under this subchapter, except as otherwise provided in this chapter.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice as a physician assistant within the State or represents that the person is a physician assistant or knowingly allows himself or herself to be represented as a physician assistant shall be fined not less than \$500 nor more than \$2,000 or imprisoned not more than 1 year, or both.

(c) The Attorney General of this State or a deputy attorney general shall enforce the provisions of this subchapter.

§ 1774C. Procedure or action not prescribed.

This subchapter governs the practice of physician assistants. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of physician assistants, the Board or Council may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

§ 1774D. Inactive license; return to clinical practice.

(a) Any physician assistant who notifies the Board in writing on forms prescribed by the Board may elect to place his or her license on inactive status. A physician assistant whose license is inactive shall be excused from payment of renewal fees and shall not practice as a physician assistant. Any licensee who engages in practice while his or her license is inactive shall be considered to be practicing without a license, which shall be grounds for discipline under Section 1774B of this title. A physician assistant whose license has been inactive for 3 years or less may reactivate the license by paying the renewal fee pursuant to Section 1774A and meeting the requirements for ordinary license renewal as determined by the Board.

(b) If a physician assistant whose license has been on inactive status for in excess of 3 years and who has not practiced as a physician assistant in any jurisdiction of the United States for over 3 years requests to reactivate his or her license, the Board may grant a re-entry license and may, after consultation with the Council, impose additional practice and supervision requirements for the re-entry license. A re-entry license granted under this subsection shall be valid for no longer than 6 months and may be renewed only once at the Board's discretion.

In the month immediately preceding the month during which the re-entry license will expire, a physician assistant may apply to the Board for a full license as a physician assistant. The Board shall grant a full license to a physician assistant who meets all qualifications for licensure and whom the Board determines is qualified to practice. If the Board determines that a physician assistant is still not qualified to receive a full license at the conclusion of the re-entry license period, the Board may only once renew the re-entry license. If the Board elects to renew a re-entry license instead of issuing a full license, the Board shall provide to the physician assistant a written explanation for that decision when issuing the renewed re-entry license.

Additional practice requirements that the Board may choose to impose as a condition of a re-entry license may include:

(1) Requiring the supervising physician to be physically on-site while the physician assistant is practicing;

(2) Requiring the supervising physician to review and countersign a portion of patient charts for patients seen by the physician assistant;

(3) Requiring the physician assistant to possess current certification from the NCCPA;

(4) Requiring the physician assistant to take a review course or to complete a specified amount of Category 1 CME, as determined by the Council and agreed upon by the Board as appropriate; and

(5) Requiring documentation of a specific minimum number of clinical practice hours performed under the re-entry license.

(c) The above subsection (b) shall also apply to a physician assistant who has not placed his or her license on inactive status in this State but who has previously practiced as a physician assistant in another jurisdiction of the United States and has not actively engaged in clinical practice for a period in excess of 3 years immediately prior to applying for a license under this Subchapter.

Approved August 02, 2012