

SPONSOR: Rep. K. Johnson & Sen. Lockman
Reps. Baumbach, Briggs King, Griffith, Heffernan, Lambert, Lynn, Minor-Brown, Mitchell, Morrison, Ramone, Michael Smith, Yearick; Sen. Sturgeon

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 33
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PHYSICIAN ASSISTANTS.

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

Section 1. Amend Chapter 17, Subchapter II, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1710. Composition.

(b) The Board consists of 16 voting members appointed by the Governor, which shall be composed of the following members:

(1) 8 ~~of whom are~~ persons certified and registered to practice medicine in this State, at least 1 of whom ~~least 1~~ is an osteopathic ~~physician;~~ physician, as follows:

a. 4 ~~of whom are the persons certified and registered to practice medicine in this State and~~ have their primary place of practicing medicine in New Castle County;

b. 2 ~~of whom are persons certified and registered to practice medicine in this State and~~ shall have their primary place of practicing medicine in Kent County;

c. 2 ~~of whom are persons certified and registered to practice medicine in this State and~~ shall have their primary place of practicing medicine in Sussex ~~County;~~ County.

(2) ~~7 of whom are~~ 5 public members. ~~and~~

(3) 2 physician assistants recommended by the Regulatory Council for Physician Assistants.

(4) The Director of the Division of Public Health ~~shall serve as a voting member of the Board~~.

(c) A public member, except a physician assistant, may not be nor may ever have been certified, licensed, or registered pursuant to this chapter; may not be the spouse of someone certified, licensed, or registered pursuant to this chapter; at the time of appointment may not be a member of the immediate family of someone certified, licensed, or registered pursuant to this chapter.

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Section 2. Amend Chapter 17, Subchapter VI, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1770. The Regulatory Council for Physician Assistants.

(a) The Regulatory Council for Physician Assistants (Council) shall consist of 7 voting members, 1 of whom is a physician member appointed by the Board, 1 of whom is a physician who regularly ~~supervises~~ collaborates with physician assistants appointed by the Board, and 1 of whom is a pharmacist appointed by the Board of Pharmacy. The remaining 4 members, recommended by the Council and 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 to practice medicine as a physician assistant. The Council may elect officers as necessary and recommend Council members to the Governor for appointment to the Board.

§ 1770A. Physician assistants; definitions.

As used in this subchapter:

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

~~(2)~~(1) "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;

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

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

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

f. Completes a collaborative agreement with the collaborating physician.

(2) “Collaborative Agreement” means a written document expressing an arrangement of collaboration between a licensed physician and a physician assistant.

(3) “Collaborating Physician” means physicians licensed by the Board who practices with a physician assistant using a Collaborative Agreement.

~~(3)~~(4) ~~"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~~ “Collaboration or “collaborating” means a process in which the physician who oversees patient services and the physician assistant jointly contribute to the healthcare and medical evaluation and treatment or management of patients with each performing actions he or she is individually licensed for and has the education, training, and experience to perform. The collaborating physician must 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~~ collaborating physician is not required on-site in the practice setting ~~in the supervision of a physician assistant~~, provided that the ~~supervising~~ collaborating physician is readily accessible by some form of electronic communication.

§ 1771 Physician's ~~duties~~ role in ~~supervision~~ collaborating with a physician assistant.

(a) A physician who ~~a delegates medical acts to~~ collaborates with a physician assistant ~~is responsible for the physician assistant's medical acts and must provide adequate supervision~~ must be available for consultation with the physician assistant. ~~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, and ~~that delegation of medical tasks~~ is appropriate to the physician assistant's level of ~~competence~~ education, training, and experience, that the relationship of, and access to, the ~~supervising~~ collaborating 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 collaborative 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 collaborative agreement shall be made available to the Board or the Council upon request.

~~(c) 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.~~

(c) ~~(d)Supervising~~ A collaborating physician may not be involved in patient care in name only and must be involved in active patient care on a regular basis.

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

~~(f)~~(e) A ~~supervising~~ collaborating physician may not at any given time ~~supervise~~ collaborate with more than 4 physician assistants, unless a regulation of the Board increases or decreases the number. This limit does not apply to physicians and physician assistants who practice in the same physical office or facility building, such as an emergency department so long as there is active, physician coverage.

~~(g)~~(f) A physician who ~~supervises~~ collaborates with 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.

~~(h)~~(g) Hospitals, clinics, medical groups and other healthcare facilities may employ physician assistants subject to § 1771(e). ~~; however, no more than 4 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)~~(h) If ~~the supervising physician delegates the authority to~~ a physician assistant to treat patients in a setting ~~where~~ the ~~supervising~~ collaborating physician is not routinely present the physician must assure that the means and methods of ~~supervision~~ collaboration 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, training 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 a~~n office~~ a location ~~separate and apart from the office of the~~ that does not have oversight by the physician assistant's ~~supervising~~ collaborating 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)~~(b) Nothing in this chapter may be construed to authorize a physician assistant to practice independent of a ~~supervising~~ collaborating physician.

~~(f)~~(c) 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~~ without a collaborative agreement.

~~(g)~~(d) 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 Council shall adopt rules and regulations which address the following:

(1) The licensing of physician assistants to allow:

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

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

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

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

b. The recording of patient progress notes in an in-patient or out-patient setting;

c. The ordering, relaying, transcribing, or executing of specific diagnostic or therapeutic orders or procedures;

d. Medical acts of diagnosis and prescription of therapeutic drugs and treatments ~~which have been delegated by the supervising physician~~; and referral of patients to specialists as needed;

e. Prescriptive authority for therapeutic drugs and treatments within the scope of physician assistant practice~~, as delegated by the supervising physician~~. The physician assistant's prescriptive authority and authority to practice as a physician assistant are subject to biennial renewal upon application to the Physician Assistant Regulatory Council; and

f. The use of telemedicine as defined in this chapter and, as further described in regulation, the use of and participation in telehealth.

(b)(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.

§ 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~~ the physician assistant is able to provide without ~~supervision~~ collaboration pursuant to § 1770A of this title or with such ~~supervision~~ collaboration as is available.

(b) Any physician who ~~supervises~~ collaborates with 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 collaborating physician.

§ 1774 Temporary licensing of physician assistants.

(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~~ collaborating physician.

§ 1774D Inactive license; return to clinical practice.

(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~~ the 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~~ collaborating physician to be physically on-site while the physician assistant is practicing;

(2) Requiring the ~~supervising~~ collaborating 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.

§ 1774E Participation in charitable and voluntary care.

(1) A physician assistant licensed in this state, or licensed or authorized to practice in any other U.S. jurisdiction, or who is credentialed by a federal employer or meets the licensure requirements of their requisite federal agency as a physician assistant may volunteer to render such medical care the physician assistant is able to provide at public or community events and facilities without a collaborating physician as defined in this chapter or with such collaborating physicians as may be available. Such medical care must be rendered without compensation or remuneration.