

# **THE USE AND MISUSE OF PHYSICAN EXTENDERS**

**Matthew B. E. Hughes  
Dalizza D. Marqués**

**BOSTON & HUGHES, P.C.**  
- ATTORNEYS AT LAW -

1616 SOUTH VOSS, SUITE 550  
HOUSTON, TX 77057  
PHONE: 713-961-1122 FAX: 713-965-0883  
[WWW.BOSTONHUGHES.COM](http://WWW.BOSTONHUGHES.COM)

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## THE USE AND MISUSE OF PHYSICIAN EXTENDERS

### **I. PHYSICIAN ASSISTANTS**

#### **What is a Physician Assistant (“PA”)?**

A PA is a graduate of an accredited PA program who is academically and clinically trained to practice medicine with the supervision of a licensed physician.<sup>1</sup> He/she is trained as a dependent health care professional and works as part of the Physician-PA team in the delivery of quality health care. When engaged in professional activities, the PA wears a name tag identifying him/her as a PA.<sup>2</sup>

#### **Where can a PA render his services?**

A PA may provide medical services in any place authorized by the delegating physician, including, but not limited to: (1) the physician’s primary practice site and/or alternate practice site, (2) a clinic, (3) a hospital, (4) an ambulatory surgical center, (5) the patient’s home, (6) a nursing center, or, (7) other institutional settings.<sup>3</sup>

#### **How is the Physician-PA relationship established?**

Before being able to practice and be supervised by a delegating physician, the PA has to file a Notice of Intent to Practice before the Texas Physician Assistant Board including his/her and the supervising physician’s name, business address, license number, and telephone number.<sup>4</sup> The delegating physician also has to notify the Texas Medical Board of his/her intent to supervise the PA as well as his/her professional and legal responsibility for the care provided by the PA.<sup>5</sup>

#### **How many PA’s can a physician supervise?**

The number of delegating physicians that a PA may have is unlimited. By contrast, a delegating physician may only supervise up to 5 PAs, or their full-time equivalents, for a maximum of 250 clinic hours per week.<sup>6</sup> However, a delegating physician may only delegate prescriptive authority to a maximum of 3 PAs, or their full-time equivalents, practicing at his/her primary or alternate practice site.<sup>7</sup>

If the delegating physician provides medical services in preventive medicine, disease management, health and wellness education, or similar services in an accredited academic/teaching institution, he/she may supervise more than 5 PAs in that institution or its affiliates provided that: (1) he/she determines that the PAs are properly trained to

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<sup>1</sup> 3 TEX OCC. CODE §204.152-§204.153; TEX. ADMIN. CODE §185.4

<sup>2</sup> 3 TEX OCC. CODE §204.203; 22 TEX. ADMIN. CODE §185.12

<sup>3</sup> 3 TEX OCC. CODE §204.202; TEX. ADMIN. CODE §185.10

<sup>4</sup> 3 TEX OCC. CODE §204.201(a); 22 TEX. ADMIN. CODE §185.13

<sup>5</sup> 3 TEX OCC. CODE §204.205; 22 TEX. ADMIN. CODE §185.15

<sup>6</sup> 3 TEX. OCC. CODE §204.204; 22 TEX. ADMIN. CODE §185.16(a)

<sup>7</sup> 3 TEX OCC. CODE §157.053(e)(1); 22 TEX. ADMIN. CODE §193.6(c)(4) and §193.6(d)(4)

deliver the medical services, (2) the medical services are of such a nature that they may be safely and competently delivered by the supervised PAs, and, (3) the proper paperwork has been filed with the Texas Medical Board.<sup>8</sup>

Furthermore, if the delegating physician is the Medical Director, Chief of Staff, or Emergency Room Department Chair at a licensed hospital, he/she may supervise more than 5 PAs for the purpose of staffing the hospital's emergency room.<sup>9</sup> This delegating physician in turn may delegate the supervision of the emergency room PAs to staff physicians providing medical services at the emergency room if he/she determines that: (1) the PAs are properly trained to deliver the medical services, (2) the medical services are of such a nature that they may be safely and competently delivered by the supervised PAs, and, (3) the proper paperwork has been filed with the Texas Medical Board.<sup>10</sup>

### **Why hire a PA?**

There are many benefits associated with the employment of a PA. Policy-wise, it increases the access to health care in rural or central urban areas where there might be a shortage and misallocation of physicians. Practice-wise, it eases the physician's workload, improves patient flow and routine follow-up, promotes patient education and disease management, as well as enhances continuity of care and increases patient satisfaction levels. It also frees the physician to manage more complex cases and allows the physician to receive reimbursement for the PA's services under Medicare, Medicaid, third-party insurers, and CHAMPUS.

### **What is the PA's scope of practice?**

The medical services to be provided by the PA are those delegated by the delegating physician and which are within the education, training, and experience of the PA.<sup>11</sup> Those services may consist of the following:

- Obtaining patient histories and performing physical examinations;
- Ordering and/or performing diagnostic and therapeutic procedures;
- Formulating a working diagnosis;
- Developing and implementing a treatment plan;
- Monitoring the effectiveness of therapeutic interventions;
- Assisting at surgery;
- Offering counseling and education to meet patient needs;
- Requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting where the PA is authorized to prescribe pharmaceutical medications and sign prescription drug orders;
- Signing and completion of a prescription; and,

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<sup>8</sup> 22 TEX. ADMIN. CODE §185.16(d)

<sup>9</sup> 22 TEX. ADMIN. CODE §185.16(e)

<sup>10</sup> *Id.*

<sup>11</sup> 3 TEX. OCC. CODE §204.206; 22 TEX. ADMIN. CODE §185.10

- Making appropriate referrals.<sup>12</sup>

### **Can a PA sign a prescription for controlled substances?**

Yes. If delegated by the delegating physician, the PA can sign a prescription for controlled substances listed in Schedules III, IV, or V.<sup>13</sup> However, in these cases the PA's prescription cannot be for a period exceeding 30 days and any refill has to be authorized by the delegating physician after consultation by the PA, who has to note said consult in the patient's chart.<sup>14</sup> If the controlled substance prescription is for a pediatric patient younger than 2 years, the prescription will always have to be authorized by the supervising physician and the PA will have to note the consult in the pediatric patient's chart.<sup>15</sup> The PA is further allowed to telephone prescriptions in to a pharmacy.<sup>16</sup>

The PA has to furnish the following information on each prescription:

- Patient's name and address;
- Drug to be dispensed;
- Directions to the patient regarding the taking of the drug and the dosage;
- Intended use of the drug, if appropriate;
- Name, address, and telephone number of the supervising physician;
- Name, address, telephone number, and identification number of the PA completing or signing the prescription order;
- Date; and,
- Number of refills permitted.<sup>17</sup>

### **How does the delegating physician delegate duties to the PA?**

The delegation of duties to a PA is made through a physician's order, a standing delegation order, a standing medical order, and/or a protocol. A *standing delegation order* consists of written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms.<sup>18</sup> A *standing medical order* consists of orders, rules, regulations or procedures prepared by a physician, or approved by a physician or medical staff of an institution, for patients that have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both.<sup>19</sup> A *protocol* is a delegated written authorization to initiate medical aspects of patient care.<sup>20</sup>

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<sup>12</sup> 3 TEX OCC. CODE §204.202(b); 22 TEX ADMIN CODE §185.10(1)-§185.10(10)

<sup>13</sup> A list of controlled substances can be found at [www/dshs.state.tx.us/dmd/control\\_subst\\_sched.shtm](http://www/dshs.state.tx.us/dmd/control_subst_sched.shtm).

<sup>14</sup> 3 TEX OCC. CODE §157.0511(b)

<sup>15</sup> *Id.*

<sup>16</sup> 22 TEX. ADMIN. CODE §193.2(3)

<sup>17</sup> 3 TEX OCC. CODE §157.056; 22 TEX. ADMIN. CODE §193.2(3)

<sup>18</sup> 22 TEX. ADMIN. CODE §193.2(12)

<sup>19</sup> 22 TEX. ADMIN. CODE §193.2(13)

<sup>20</sup> 22 TEX. ADMIN. CODE §193.2(10)

## **What is the relationship between a PA and a delegating physician?**

The PA is the agent of the delegating physician for any medical services that are delegated by that physician and that are: (1) within the PA's scope of practice, and, (2) delineated by protocols, practice guidelines, or practice directives established by the delegating physician.<sup>21</sup>

## **Who is responsible for the medical services provided by the PA?**

The delegating physician oversees the activities of, and accepts responsibility for, the PA's patient care activities.<sup>22</sup> If the PA is employed by an entity, including a health care facility, the entity shares legal responsibility for the PA's omissions with the delegating physician.<sup>23</sup> Unless the delegating physician has reason to believe that the PA lacks competency to perform the delegated act, the delegating physician is not liable for the actions of a PA solely because he/she signed a standing medical order, a standing delegation order, or a protocol authorizing the PA to administer or sign a prescription drug order.<sup>24</sup> However, the delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under the physician's supervision.<sup>25</sup>

## **How is the PA supervised?**

Supervision of a PA includes overseeing the activities of, and accepting responsibility for, the medical services rendered by the PA.<sup>26</sup> It must be *continuous but does not require the constant physical presence of the delegating physician where the PA services are being performed*.<sup>27</sup> If the delegating physician is not present, he/she and the PA must be, or must be able to easily be, in contact with one another by radio, telephone or another communication device.<sup>28</sup>

An alternate physician may supervise the PA on a temporary basis not to exceed 14 consecutive days.<sup>29</sup> In such cases, the alternate physician shall affirm in writing and document through a log where the PA is located, that he/she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising the care provided by the PA under said protocols or standing orders.<sup>30</sup>

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<sup>21</sup> 3 TEX OCC. CODE §204.202(e)

<sup>22</sup> 3 TEX OCC. CODE §157.001, §204.204(a), §204.205(3)(B), and, §204.207(a); 22 TEX. ADMIN. CODE §185.2(17)

<sup>23</sup> 3 TEX OCC. CODE §204.207(b)

<sup>24</sup> 3 TEX OCC. CODE §157.060; 22 TEX. ADMIN. CODE §193.6(a) and §193.6(m)

<sup>25</sup> 22 TEX. ADMIN. CODE §193.6(h)

<sup>26</sup> 22 TEX. ADMIN. CODE §185.2(18)

<sup>27</sup> 22 TEX. ADMIN. CODE §185.14(a)

<sup>28</sup> 3 TEX OCC. CODE §157.153(c) and §204.204(b); 22 TEX. ADMIN. CODE §185.2(18)

<sup>29</sup> 22 TEX. ADMIN. CODE §185.2(3)

<sup>30</sup> 22 TEX. ADMIN. CODE §185.13(d)

## **Supervision of a PA with prescriptive authority at a Site Serving Medically Underserved Populations (“S-MUP”)**

In a S-MUP, the delegating physician’s supervision of a PA with prescriptive authority is considered adequate if he/she: (1) formulates and/or approves the physician’s order, standing delegation order, standing medical order, and/or protocol and periodically reviews the order and the services provided to patients under the same; (2) is on-site to provide medical direction and consultation at least once every 10 business days during which the PA is on-site providing care; (3) receives a daily status report from the PA on any problem or complication encountered; (4) is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency; and, (5) randomly reviews and countersigns at least 10% of the patient’s charts.<sup>31</sup> Nonetheless, a physician may not supervise more than 3 clinics serving S-MUPs, or any number of clinics with combined regular business hours exceeding 150 concurrent hours per week, without approval of the Texas Medical Board.<sup>32</sup>

## **Supervision of a PA with prescriptive authority at the delegating physician’s Primary Practice Site**

A primary practice site is: (1) the location where the delegating physician spends the majority of his/her time, (2) a licensed hospital, long-term care facility, or adult care center where both the delegating physician and the PA are authorized to practice, (3) a clinic operated for the benefit of a public school district to provide care for the students of that district and the siblings of those students, (4) the residence of an established patient, and, (5) another location at which the delegating physician is physically present with the PA.<sup>33</sup>

At his/her primary practice site, a delegating physician’s supervision of a PA with prescriptive authority is considered adequate if it conforms “to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the particular PA.”<sup>34</sup> However, this delegated prescriptive authority at a physician’s primary practice site is limited to 3 PAs or their full-time equivalents and to patients with whom the physician has established or will establish a physician-patient relationship.<sup>35</sup>

## **Supervision of a PA with prescriptive authority at a Facility-Based Practice Site**

PAs whose practice is facility-based at a hospital or long-term care facility may have prescriptive authority if the delegating physician that delegates the same is: (1) the medical director or chief of medical staff of the facility, (2) the chair of the facility’s

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<sup>31</sup> 3 TEX OCC. CODE §157.052(e); 22 TEX. ADMIN. CODE §193.6(b)(2) and §222.7

<sup>32</sup> 22 TEX. ADMIN. CODE §193.6(b)(3).

<sup>33</sup> 3 TEX OCC. CODE §157.053(a); 22 TEX. ADMIN. CODE §193.6(c)(1)

<sup>34</sup> 3 TEX OCC. CODE §157.053(c); 22 TEX. ADMIN. CODE §193.6(c)(3)

<sup>35</sup> 3 TEX OCC. CODE §157.053(e)(2); 22 TEX. ADMIN. CODE §193.6(c)(4)

credentialing committee, (3) a department chair of the facility, or, (4) a physician who consents to the request of the medical director or chief of medical staff.<sup>36</sup>

In these cases, the delegating physician's authority to delegate has to be in accordance with the policies approved by the facility's medical staff and is limited to the delegating physician's patients unless given consent by another physician.<sup>37</sup> Moreover, the delegating physician may not delegate prescriptive authority at more than 1 licensed hospital or 2 long-term care facilities and his/her supervision must conform "to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the particular PA."<sup>38</sup>

### **Supervision of a PA at an Alternate Site**

An alternate site is a practice site where services similar to the services provided at the delegating physician's primary practice site are provided and which is located within 60 miles of said primary practice site.<sup>39</sup> In this case, the PA's supervision will be adequate if the delegating physician: (1) is on-site with the PA at least 20% of the time, (2) randomly reviews at least 10% of the medical charts at the site, and, (3) is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency.<sup>40</sup> If the delegating physician is unable to supervise the PA, an alternate supervising physician may provide supervision on a temporary basis.<sup>41</sup>

### **How can a Physician Reduce his Liability Exposure for the Medical Acts Performed by the PA?**

The delegating physician might do the following in order to reduce his liability exposure for the medical acts performed by the PA:

- Identify the PA's scope of practice;
- Delegate medical tasks appropriate to the PA's level of competence;
- Define the relationship between the members of the team;
- Define the relationship of, and access to, the delegating physician;
- Establish a process for evaluation of the PA's performance; and,
- Ensure that the PA's annual registration is current.<sup>42</sup>

### **AMA Guidelines for Physician/Physician Assistant Practice**

In 1995 the House of Delegates of the American Medical Association adopted the following guidelines for physician/physician assistance practice:

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<sup>36</sup> 3 TEX OCC. CODE §157.054(a); 22 TEX. ADMIN. CODE §193.6(e)(1)

<sup>37</sup> 3 TEX OCC. CODE §157.054(b)(1)-(b)(2); 22 TEX. ADMIN. CODE §193.6(e)(2)

<sup>38</sup> 3 TEX OCC. CODE §157.054(b)(5)-(c); 22 TEX. ADMIN. CODE §193.6(e)(2)(E) and §193.6(e)(3)

<sup>39</sup> 3 TEX OCC. CODE §157.0541(a); 22 TEX. ADMIN. CODE §193.6(d)(1) and §222.1(2)

<sup>40</sup> 3 TEX OCC. CODE §157.0541(c); 22 TEX. ADMIN. CODE §193.6(d)(3)

<sup>41</sup> 3 TEX OCC. CODE §157.0541(d)

<sup>42</sup> 3 TEX OCC. CODE §204.206; 22 TEX. ADMIN. CODE §185.14(b)(1)-§185.14(b)(6)

- The physician is responsible for managing the health care of patients in all practice settings.
- Health care services delivered by physicians and PAs must be within the scope of each practitioner’s authorized practice as defined by state law.
- The physician is ultimately responsible for coordinating and managing the care of patients and, with the appropriate input of the PA, ensuring the quality of health care provided to patients.
- The physician is responsible for the supervision of the PA in all settings.
- The role of the PAs in the delivery of care should be defined through mutually agreed upon guidelines that are developed by the physician and the PA and based on the physician’s delegatory style.
- The physician must be available for consultation with the PA at all times either in person or through telecommunication systems or other means.
- The extent of the involvement by the PA in the assessment and implementation of treatment will depend on the complexity and acuity of the patient’s condition and the training and experience and preparation of the PA as adjudged by the physician.
- Patients should be made clearly at all times whether they are being cared for by a physician or a PA.
- The physician and the PA together should review all delegated patient services on a regular basis, as well as the mutually agreed upon guidelines for practice.
- The physician is responsible for clarifying and familiarizing the PA with his/her supervising methods and style of delegating patient care.<sup>43</sup>

## II. ADVANCE PRACTICE NURSES

### What is an Advance Practice Nurse (“APN”)?

An APN is a registered nurse licensed by the Texas Board of Nursing to practice as an APN on the basis of completion of an advanced educational program. The term is synonymous with “advance nurse practitioner” and includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist.<sup>44</sup> An APN is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including, but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice.<sup>45</sup> The APN *acts independently and/or in collaboration with other health care professionals* in the delivery of health care services.<sup>46</sup>

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<sup>43</sup> American Medical Association, Policy H-160-947, available at [www.ama-assn.org/ama/noindex/category/11760.html](http://www.ama-assn.org/ama/noindex/category/11760.html).

<sup>44</sup> 3 TEX. OCC. CODE §301.152(a); 22 TEX. ADMIN. CODE §221.1(3)

<sup>45</sup> 22 TEX. ADMIN. CODE §221.1(3)

<sup>46</sup> *Id.* See also 22 TEX. ADMIN. CODE §222.2(1)

## Are there different categories of APNs?

Yes. APN might be classified as:

- Certified Nurse Anesthetists (“CRNA”);
- Nurse-Midwives;
- Nurse Practitioners specializing in:
  - a) Acute Care - Adult
  - b) Acute Care – Pediatric
  - c) Adult
  - d) Family
  - e) Gerontological
  - f) Neonatal
  - g) Pediatric
  - h) Psychiatric/Mental Health
  - i) Women’s Health
- Clinical Nurses specializing in:
  - a) Adult Health/Medical-Surgical Nursing
  - b) Community Health Nursing
  - c) Critical Care Nursing
  - d) Gerontological Nursing
  - e) Pediatric Nursing
  - f) Psychiatric/Mental Health Nursing<sup>47</sup>

## What is the scope of practice of an APN?

An APN’s scope of practice is based upon the educational preparation, continued advanced practice experience, and accepted scope of professional practice of his/her particular specialty area. However, an APN’s scope of practice is in addition to the scope of practice permitted for a registered nurse and *does not prohibit the APN from practicing in those areas deemed to be within the scope of practice of a registered nurse.*<sup>48</sup>

## How are duties delegated to an APN?

First of all, it has to be noted that an APN acts independently and/or in collaboration with the health care team in the observation, assessment, diagnosis, intervention, evaluation, rehabilitation, care and counsel, and health teachings of persons who are ill, injured or infirmed or experiencing changes in normal health processes; and in the promotion and maintenance of health or prevention of illness.<sup>49</sup> An APN does not require authority to perform nursing aspects of care. However, if an APN is to provide medical aspects of care, they have to be delegated by a physician through protocols or any other written authorization.<sup>50</sup>

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<sup>47</sup> 22 TEX. ADMIN. CODE §221.2(a)

<sup>48</sup> 22 TEX. ADMIN. CODE §221.12

<sup>49</sup> 22 TEX. ADMIN. CODE §221.13(c)

<sup>50</sup> 22 TEX. ADMIN. CODE §221.13(d)

## **How should APN protocols and/or written authorizations be formulated?**

APN protocols and/or written authorizations shall promote the exercise of professional judgment by the APN commensurate with his/her education and experience. The degree of detail may vary in relation to the situations covered by them. However, any protocols and/or written authorizations should be: (1) jointly developed by the physician and the APN, (2) signed both by the physician and the APN, (3) reviewed and re-signed at least annually, (4) maintained in the practice setting of the APN, and, (5) made available as necessary to verify authority to provide medical aspects of care.<sup>51</sup>

## **Who is responsible for services provided by the APN?**

The APN retains professional accountability for advanced practice nursing care.<sup>52</sup> However, the delegating physician shares responsibility for the medical aspects of care provided by the APN.

## **Can an APN sign a prescription order?**

Yes. An APN can sign a prescription order provided that such duty is delegated by a physician and the APN has a prescription authorization number issued by the Texas Board of Nursing.<sup>53</sup> The signing of a prescription order by an APN is limited to those drugs that are authorized by a physician through a protocol and/or written authorization for medical aspects of patient care and which are prescribed for patient populations within the accepted standards of an APN's specialty area.<sup>54</sup>

An APN has to provide the following information on each prescription:

- Patient's name and address;
- Name, strength, and quantity of the drug to be dispensed;
- Directions to the patient regarding the taking of the drug and the dosage;
- Intended use of the drug, if appropriate;
- Name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the delegating physician;
- Address and telephone number of the site at which the prescription drug order was carried out or signed;
- Date of issuance;
- Number of refills permitted; and,
- Name, prescription authorization number, original signature, and if the prescription is for a controlled substance, the DEA number of the APN signing or co-signing the prescription order.<sup>55</sup>

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<sup>51</sup> *Id.* See also 22 TEX. ADMIN. CODE §221.1(14)

<sup>52</sup> 22 TEX. ADMIN. CODE §221.13(e)

<sup>53</sup> 22 TEX. ADMIN. CODE §222.2

<sup>54</sup> 22 TEX. ADMIN. CODE §222.4(a)

<sup>55</sup> 22 TEX. ADMIN. CODE §222.4(c)

## **Can an APN sign a prescription for controlled substances?**

Yes, an APN can sign a prescription for controlled substances listed in Schedules III, IV, or V. However, in these cases the prescription cannot be for a period exceeding 30 days and any refill has to be authorized by the delegating physician after consultation by the APN, who has to note said consult in the patient's chart.<sup>56</sup> If the controlled substance prescription is for a pediatric patient younger than 2 years, the prescription will always have to be authorized by the delegating physician and the APN will have to note the consult in the pediatric patient's chart.<sup>57</sup>

## **APNs prescribing drugs at S-MUP**

When carrying out or signing prescription drug orders in a S-MUP, the APN shall: (1) maintain protocols and/or written authorizations to be reviewed and signed by the delegating physician and the APN at least annually, (2) have access to the delegating physician or alternate delegating physician for consultation, assistance with medical emergencies, or patient referral, (3) provide a daily status report to the physician on any problems or complications encountered that are not covered by protocol, and, (4) be available during on-site visits by the delegating physician, which shall occur at least once every 10 business days during which the APN is on-site providing care.<sup>58</sup>

## **APNs prescribing drugs at the Physician's Primary Practice Site**

When carrying out or signing prescription drug orders at the physician's primary practice site, the APN shall: (1) maintain protocols and/or written authorizations to be reviewed and signed by the delegating physician and the APN at least annually, and, (2) sign or co-sign prescription drug orders only for those patients with whom the physician has established or will establish a physician-patient relationship.<sup>59</sup>

## **APNs prescribing drugs at Alternate Practice Sites**

When carrying out or signing prescription drug orders at an alternate practice site, the APN shall: (1) maintain protocols and/or written authorizations to be reviewed and signed by the delegating physician and the APN at least annually, (2) be on-site with the delegating physician at least 20% of the time, and, (3) have access to the delegating physician through direct telecommunication for consultation, patient referral, or assistance with a medical emergency.<sup>60</sup>

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<sup>56</sup> 22 TEX ADMIN. CODE §222.6(b)

<sup>57</sup> *Id.*

<sup>58</sup> 22 TEX. ADMIN. CODE §222.7

<sup>59</sup> 22 TEX. ADMIN. CODE §222.8

<sup>60</sup> 22 TEX. ADMIN. CODE §222.9

## **APNs prescribing drugs at Facility-Based Practice Sites**

When carrying out or signing prescription drug orders at facility-based practice sites, the APN shall: (1) maintain protocols and/or written authorizations developed in accordance with the facility's medical staff policies and reviewing the authorizing documents with the appropriate medical staff at least annually, (2) sign or co-sign prescription drug orders in the facility in which the delegating physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair; or a physician who consents to the request of the medical director or chief of the medical staff to delegate; and, (3) sign or co-sign prescription drug orders for the care and treatment of only those patients for whom the physicians have given their prior consent.<sup>61</sup>

### **III. CERTIFIED REGISTERED NURSE ANESTHETISTS**

#### **What duties can be delegated to a Certified Registered Nurse Anesthetist (“CRNA”) in a licensed hospital or ambulatory surgical center?**

A physician may delegate to a CRNA the ordering of drugs and devices necessary for the CRNA to administer an anesthetic or an anesthesia-related service ordered by the physician. The delegating physician's order is not required to specify a drug, dosage, or administration technique but has to be in accordance with facility policies or medical staff by laws.<sup>62</sup> Pursuant to such order, the CRNA may order anesthesia-related medications during perianesthesia periods or in preparation for recovery from anesthesia.<sup>63</sup>

#### **What Duties can be Delegated to a CRNA in Outpatient Settings?**

CRNAs might be authorized to provide general anesthesia, regional anesthesia, or monitored anesthesia in outpatient settings. This authorization might include the administration of any inhaled anesthetic agents, including, but not limited to nitrous oxide.<sup>64</sup> *[Please refer to 22 TEX. ADMIN. CODE §221.16(a)-(e) for a complete list of requisites, standards, building and inspection requirements, as well as enforcement provisions applicable to CRNAs providing anesthesia in outpatient settings.]*

### **IV. SURGICAL ASSISTANTS**

#### **What is the scope of practice of a licensed Surgical Assistant (“SA”)?**

The practice of a licensed SA is limited to “surgical assisting” performed under the direct supervision of a physician who delegated the acts and in any place authorized by the delegating physician, including a clinic, hospital, ambulatory surgical center, or other

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<sup>61</sup> 22 TEX. ADMIN. CODE §222.10

<sup>62</sup> 3 TEX OCC. CODE §157.058; 22 TEX. ADMIN. CODE §193.6(k)(1) and §221.15

<sup>63</sup> 22 TEX. ADMIN. CODE §221.15(b)

<sup>64</sup> 22 TEX. ADMIN. CODE §221.16(1)

institutional setting.<sup>65</sup> The term “surgical assisting”, also known as “first assisting”, is defined as providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration on the topical application of a local anesthetic at the operation site.<sup>66</sup> However, a licensed PA or an APN is not required to hold a SA license in order to perform “surgical assisting” duties if delegated by the delegating physician.<sup>67</sup>

### **How is a SA supervised?**

SAs are under direct supervision of a licensed physician. This means supervision by a delegating physician who is *physically present and who personally directs delegated acts* and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care has been transferred to another physician.<sup>68</sup> Telecommunication between the SA and the delegating physician is insufficient for supervision purposes.<sup>69</sup>

### **Who is responsible for the acts of the SA?**

The delegating physician oversees and accepts professional and legal responsibility for the acts performed by the SA while “surgically assisting” the delegating physician.<sup>70</sup>

### **What to do in order to reduce a physician’s liability exposure for the acts of the SA?**

There are many things that can be done to enable an efficient and professional working relationship between the physician and the SA. Among these, the delegating physician should ensure that: (1) the SA’s scope of practice is identified, (2) the delegation of medical tasks is appropriate to the SA’s level of competence, (3) the relationship between the members of the team is defined, (4) the relationship of, and access to, the delegating physician is defined, and, (5) a process is established for evaluating the SA’s performance.<sup>71</sup>

## **V. OBSTETRICAL SERVICES**

### **Can certain obstetrical services be delegated?**

Yes. A physician may delegate to a PA specializing in obstetrics or an APN recognized as a nurse-midwife the act of administering or providing controlled substances during intrapartum and immediate postpartum care. This delegation is limited to: (1) 3 PAs/APNs or their full-time equivalents, (2) the facility where the PAs/APNs provide

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<sup>65</sup> 3 TEX OCC. CODE §206.251; 22 TEX. ADMIN. CODE §184.12

<sup>66</sup> 3 TEX OCC. CODE §206.001(6); 22 TEX. ADMIN. CODE §184.2(11)

<sup>67</sup> 3 TEX OCC. CODE §206.002(a)

<sup>68</sup> 3 TEX OCC. CODE §206.001(3); 22 TEX. ADMIN. CODE §184.2(8)

<sup>69</sup> 22 TEX. ADMIN. CODE §184.13(a)

<sup>70</sup> 3 TEX OCC. CODE §206.001(2); 22 TEX. ADMIN. CODE §184.1 and §184.2(7)

<sup>71</sup> 3 TEX OCC. CODE §206.254; 22 TEX. ADMIN. CODE §184.13(b)

care, and, (3) has to be through a physician's order, standing delegation order, standing medical order or protocol. It also requires that the PAs/APNs report and monitor each patient's progress, including any complication of pregnancy and delivery.<sup>72</sup>

## **VI. LASER/PULSED LIGHT DEVICES**

### **Can a physician delegate the use of lasers/pulsed light devices?**

Yes. A physician may delegate to a PA or an APN the use of lasers for the purpose of treating a physical disease, disorder, deformity or injury, provided that: (1) the delegation is made through a written protocol, (2) the delegation is *only for non-ablative treatment*, (3) the PA/APN completes basic training devoted to the principles of lasers, thermal, radiofrequency, and other non-ablative devices and their instrumentation, physiological effects and safety requirements, and, (4) the delegating physician is on-site and immediately available.<sup>73</sup> The term "non-ablative treatment" includes any laser/intense pulsed light treatment that is not expected or intended to remove, burn, or vaporize the epidermal surface of the skin, as well as treatments related to laser hair removal.<sup>74</sup>

### **How are PAs/APNs performing non-ablative laser treatments supervised?**

Supervision by the delegating physician is considered adequate if he:

- Ensures that patients are adequately informed and have signed consent forms prior to treatment that outline reasonable foreseeable side-effects and untoward complications that may result from the non-ablative treatment;
- Is responsible for the formulation or approval of a written protocol and any patient-specific deviations from the protocol, and reviews and signs it at least annually;
- Receives, on a schedule defined in the written protocol, a periodic status report on the patients, including any problems or complications encountered;
- Remains on-site for non-ablative treatments performed by PAs/APNs and is immediately available for consultation, assistance, and direction;
- Personally attends to, evaluates, and treats complications that arise; and,
- Evaluates the technical skills of the PAs/APNs performing the non-ablative treatments by documenting and reviewing their ability at least on a quarterly basis.<sup>75</sup>

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<sup>72</sup> 3 TEX OCC. CODE §157.059; 22 TEX. ADMIN. CODE §193.6(l) and §221.14

<sup>73</sup> 22 TEX. ADMIN. CODE §193.11

<sup>74</sup> 22 TEX. ADMIN. CODE §193.11(b)(2)

<sup>75</sup> 22 TEX. ADMIN. CODE §193.11(e)(1)-§193.11(e)(7)

## **VII. DRUG THERAPY MANAGEMENT**

### **Can a physician delegate drug therapy management?**

Yes. A physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management if such delegation is made through a physician's order, standing delegation order, standing medical order, or protocol.<sup>76</sup> The drug therapy management to be provided by the licensed pharmacist may include the following:

- Collecting and reviewing patient drug use histories;
- Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration;
- Ordering drug therapy-related laboratory tests;
- Implementing or modifying drug therapy following diagnosis, initial patient assessment, and ordering of drug therapy by a physician, as detailed in the protocol;
- Generically equivalent drug selection if the physician's signature does not clearly indicate that the prescription must be dispensed as written; or,
- Any other drug therapy-related act delegated by a physician.<sup>77</sup>

### **What is considered adequate supervision of a pharmacist performing drug therapy management?**

A delegating physician's supervision of a pharmacist performing drug therapy management is considered adequate if the physician: (1) formulates or approves the physician's order, standing delegation order, standing medical order or protocol and periodically reviews the same, (2) has established a physician-patient relationship with each patient who is provided drug therapy management by the pharmacist, (3) has informed the patient that drug therapy will be managed by a pharmacist under written protocol, (4) is geographically located so as to be able to be physically present daily to provide medical care and supervision, (5) receives, on a schedule defined in the written protocol, a periodic status report on each patient, including any complications encountered, and, (6) is available through direct telecommunication for consultation, assistance, and direction.<sup>78</sup>

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<sup>76</sup> 3 TEX OCC. CODE §157.101(b); 22 TEX. ADMIN. CODE §193.7(b)

<sup>77</sup> 22 TEX. ADMIN. CODE §193.7(c)(1)-§193.7(c)(6)

<sup>78</sup> 3 TEX OCC. CODE §157.101(c); 22 TEX. ADMIN. CODE §193.7(d)(1)-§193.7(d)(5)

**VIII. FINAL CONSIDERATIONS TO MINIMIZE A PHYSICIAN'S LIABILITY FOR THE ACTS OF HEALTH CARE EXTENDERS UNDER PHYSICIAN SUPERVISION**

- provide adequate and continuous supervision to PAs and APNs performing medical acts;
- coordinate with an alternate supervising physician the supervision of PAs/APNs if absent for a period of less than 14 consecutive days;
- encourage the exercise of professional judgment by the PAs/APNs;
- make sure that the delegated acts can be properly and safely performed by the PAs/APNs;
- make sure that the PAs/APNs always wear an identification tag with the "P.A." or "A.P.N." acronym and do not represent to the patients that they are authorized to practice medicine;
- establish clear protocols, standing medical orders and standing delegating orders, and discuss them regularly with the PAs/APNs;
- maintain constant availability for consultation through direct telecommunication;
- instruct the PAs/APNs to give you a daily status report of any problem or complication encountered;
- if delegating prescriptive authority for Schedules III, IV, or V controlled substances, make sure that the protocol establishes that: (1) the prescription cannot be for more than 30 days, (2) no refills will be authorized unless the PAs/APNs consult with you and document it in the patient's chart, and, (3) no prescription will be issued for patients younger than 2 years old unless the PAs/APNs consult with you and document it in the patient's chart;
- do not delegate prescriptive authority to more than 3 PAs/APNs;
- do not delegate prescriptive authority to PAs/APNs at more than 1 licensed hospital or 3 long-term care facilities without prior approval by the Texas Medical Board;
- keep protocols, standing medical orders, and standing delegation orders at the site where the PAs/APNs perform their duties;
- if utilizing PAs/APNs at an alternate practice site, make sure that: (1) you are physically on-site at least 20% of the time supervising the PAs/APNs, and, (2) review at least 10% of the patients' charts;
- if utilizing PAs/APNs at a S-MUPs, make sure that: (1) you periodically review the quality of the services provided by the PAs/APNs, (2) are on-site at least once every 10 business days, and, (3) make diagnosis for follow-up care;
- make sure that the protocol is signed by the PAs/APNs and yourself;
- specify how will the PAs/APNs will reach you in case of an emergency or if needed for a consultation;
- document the name or identification number of the patients discussed during the daily status reports provided by the PAs/APNs;
- document quality assurance activities;
- maintain a record of all signed protocols;

- delegate medical tasks appropriate to the level of competence of the PAs/APNs;
- do not supervise more than 5 PAs unless you practice at an accredited academic/teaching institution or you are the Medical Director, Chief of Staff, or Emergency Room Department Chair at a licensed hospital and the PA's services are needed for purposes of staffing the hospital's emergency room; and,
- do not supervise more than 3 S-MUPs or clinics with more than 150 combined regular business hours without prior approval by the Texas Medical Board.

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