

## **Nebraska Nurse Practice Act Does Not Interfere with Medical Assisting Practice**

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A question has arisen about whether the medical assistant's right to be delegated duties by a physician is undermined by the Nebraska Nurse Practice Act and the Nebraska Administrative Code. As will be demonstrated herein, specific language in the Nebraska Nurse Practice Act and an opinion letter of the Nebraska Bureau of Examining Boards protect the medical assistant's right to be delegated duties by a physician.

### I.

Section 38-2205 of the Nebraska Nurse Practice Act defines "delegating" as follows: "Delegating means transferring to another individual the authority, responsibility, and accountability to perform nursing interventions." Title 172, 99-002 of the Nebraska Administrative Code (NAC) contains the following definitions:

Delegation means the transference from one individual to another individual the authority, responsibility, and accountability to perform nursing interventions.

1. Delegation by a Registered Nurse means the transference from an RN to an unlicensed person the authority, responsibility, and accountability to provide selected non-complex nursing interventions on behalf of the RN.
2. Delegation decision includes determining which nursing intervention(s) may be delegated, selecting which unlicensed person(s) may provide the delegated interventions, determining the degree of detail and method to be used to communicate the delegation plan, and selecting a method of evaluation and supervision.

Nursing intervention means the initiation and completion of client/patient focused actions necessary to accomplish the goals defined in the plan of care. Examples include health maintenance activities, health promotion activities, client/patient teaching, counseling, referral, and implementation of diagnostic or therapeutic regimens of licensed practitioners.

1. Complex interventions means those which require nursing judgment to safely alter standard procedures in accordance with the needs of the patient; or require nursing judgment to determine how to proceed from one step to the next; or require the multi-dimensional application of the nursing process.
2. Non-complex interventions means those which can safely be performed according to exact directions, do not require alteration of the standard procedure, and for which the results and client/patient responses are predictable.

99-004.01C2 addresses elements of the delegation process:

2. Developing a delegation plan. The delegation plan must include:

- a. Selecting and identifying nursing interventions which may be delegated.
- (1) Selected interventions must be those:
    - (a) which frequently recur in the daily care of a client/patient or group of clients/patients,
    - (b) which do not require the unlicensed person to exercise independent nursing judgment,
    - (c) which do not require complex and/or multi-dimensional application of the nursing process,
    - (d) for which the results of the intervention are predictable and the potential risk is minimal, and
    - (e) which utilize a standard and unchanging procedure.
  - (2) Interventions which must not be delegated include, but are not limited to:
    - (a) activities including data collection, problem identification, and outcome evaluation which require independent nursing judgment;
    - (b) teaching except for that related to promoting independence in personal care and activities of daily living;
    - (c) counseling, except that unlicensed persons may be instructed to recognize and report basic deviations from health behavior and communication patterns, and may provide listening, empathy, and support;
    - (d) coordination and management of care including collaborating, consulting, and referring;
    - (e) triage and/or the giving of advice; and
    - (f) treatments which are complex interventions as defined in 172 NAC 99-002.

## II.

At first, it would appear that medical assisting practice could be limited by the above language. Upon further investigation, however, it is apparent that the pertinent legal analysis is what the Nebraska law says about the right of *physicians* to delegate, not the right of *nurses* to delegate.

Quite significantly, Section 38-2218 of the Nebraska Nurse Practice Act reads, in part, as follows:

Nursing; practices permitted. The Nurse Practice Act confers no authority to practice medicine or surgery. The act does not prohibit:

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(3) Auxiliary patient services provided by persons carrying out duties under the direction of a licensed practitioner.

“Licensed practitioner” is defined by 38-2209 of the Nurse Practice Act:

Licensed practitioner, defined. Licensed practitioner means a person lawfully authorized to prescribe medications or treatments.

Of course, according to this definition a licensed physician is considered a licensed practitioner. Therefore, Section 38-2218 explicitly exempts the delegation of duties by a physician to a medical assistant from the provisions and prohibitions of the Nurse Practice Act.

Protection of the medical assistant's right to practice is also safeguarded by the following 1990 letter from the Nebraska Bureau of Examining Boards, Department of Health:

We are responding to your letter asking if a medical assistant can give injections in a physician's office.

On February 11, 1990, the Board of Examiners in Medicine and Surgery discussed this question and stated that appropriately trained medical assistants can give injections in a physician's office.

### III.

Section 38-2218 of the Nebraska Nurse Practice Act provides strong legal authority for the physician's right to delegate clinical and administrative duties to a medical assistant working under direct supervision in an ambulatory health care delivery setting. The letter from the Nebraska Bureau of Examining Boards also speaks specifically to this matter. Consequently, one must conclude that the medical assistant's right to be delegated duties by a physician is not infringed by the Nebraska Nurse Practice Act and the Nebraska Administrative Code.