

# Non-Physician Scope of Practice: The Legalities

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# Simple Rule

- If it's the practice of medicine, only a physician can do it unless a specific exception applies
- If it's the practice of medicine, a physician cannot assist a non-physician to do it, unless a specific exception applies

# So, the big questions are

- What is the practice of medicine

&

- What are the exceptions

# The Practice of Medicine

- to engage, with or without compensation, in medical diagnosis, healing, treatment, or surgery.

# It includes the following:

- diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment ... of an individual by physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or by appliance, test, drug, operation, or treatment;

# It further includes

- ending of a human pregnancy;
- performing acupuncture.

# Does not include

- does not include selling any nonprescription drug or medicine
- practicing as an optician;
- performing a massage or other manipulation by hand.

# Exceptions to definition

- This title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under the **Health Occupations Article**.

- or a Christian Science practitioner, who is accredited by the First Church of Christ, Scientist, in Boston, Massachusetts, from dealing with human ills in accordance with the tenets of Christian Science; and charging for services

# The “great-grandfather” clause

- This title does not prohibit a licensed dentist or any other individual authorized to practice dentistry under Title 4 of this article, **who has administered anesthesia regularly in hospitals in this State for at least 15 years before June 1, 1962**, from practicing anesthesiology or administering anesthesia for medical purposes.

# Prohibition

- Except as otherwise provided in this title or § 13-516 of the Education Article [EMTs], an individual shall be licensed by the Board before the individual may practice medicine in this State.

# Exception: trainee

- **A medical student or an individual in a postgraduate medical training program that is approved by the Board, while doing the assigned duties at any office of a licensed physician, hospital, clinic, or similar facility;**

# Exceptions: federal employee

- a physician employed in the service of the federal government while **performing the duties incident to that employment;**

# Exception: Consultation

- a physician licensed by and residing in another jurisdiction, while engaging in consultation with a physician licensed in this State;

# Exception: Adjoining state

- a physician who resides in and is authorized to practice medicine by any state adjoining this State and whose practice extends into this State, **if the physician does not have an office or other regularly appointed place in this State to meet patients; and the same privileges are extended to licensed physicians of this State by the adjoining state;**

# Exception: psychiatrist assistant

- **an individual while under the supervision of a licensed physician who has specialty training in psychiatry**, and whose specialty training in psychiatry has been approved by the Board, **if the individual submits an application to the Board on or before October 1, 1993**, and either as a master's degree from an accredited college or university; and has completed a graduate program accepted by the Board in a behavioral science that includes 1,000 hours of supervised clinical psychotherapy experience; or has a baccalaureate degree from an accredited college or university; and has 4,000 hours of supervised clinical experience that is approved by the Board.

# Exception: Delegation

- To the extent permitted by the rules, regulations, and orders of the Board, an individual to whom duties are delegated by a licensed physician may perform those duties without a license as provided in this section.

# Delegation exception (2)

- The individuals to whom duties may be delegated under this section include any individual authorized to practice any other health occupation regulated under this article or § 13-516 of the Education Article.

# Exception to the exception

## “X-Ray assistants”

- An individual may perform X-ray duties without a license only if the duties do not include computerized or noncomputerized tomography; fluoroscopy; invasive radiology; mammography; nuclear medicine; radiation therapy; or xerography [and] are limited to X-ray procedures of the chest, anterior-posterior and lateral; spine, anterior-posterior and lateral; or extremities, anterior-posterior and lateral, not including the head [and] are performed by an individual who is not employed primarily to perform X-ray duties in the medical office of the physician who delegates the duties;

# X-Ray Assistants (cont.)

- and by an individual who, before October 1, 2002, has taken a course consisting of at least 30 hours of training in performing X-ray procedures approved by the Maryland Radiological Society in consultation with the Maryland Society of Radiologic Technologists; and successfully passed an examination based on that course that has been approved by the Maryland Radiological Society in consultation with the Maryland Society of Radiologic Technologists.

# Delegation regulations

A physician who delegates shall:

- Evaluate the risk to the patient and the outcome of the delegated acts;
- Delegate only those **technical** acts that are customary to the practice of the supervising physician;
- Delegate only those technical acts for which the assistant has been trained;
- Be responsible for the acts of the assistant; and
- Supervise the assistant.

# What is a “technical act”?

- "Technical act" means a routine medical or surgical act which does not require medical judgment and is performed with the supervision specified.

# “Trained”

- “possessing the knowledge, skills, and abilities, as determined by the physician, to perform delegated acts.”

# Limitations on delegation

A physician may not delegate to an assistant technical acts which are exclusively limited to any individual required to be licensed, certified, registered, or otherwise recognized pursuant to any provision of the Health Occupations Article and the Education Article, Annotated Code of Maryland.

# Surgical/non surgical

A physician may delegate technical acts consistent with national standards in the medical community and the approved policies and procedures of the sites for the delivery of health services in the following categories:

- Surgical technical acts that the delegating physician directly orders while present, scrubbed, and personally performing the surgery in the same surgical field; and
- Nonsurgical technical acts while the assistant is under the physician's direct supervision

# Direct Supervision

means oversight exercised by a delegating physician who is:

- (a) Personally treating the patient;  
and
- (b) In the presence of the assistant and the patient.

# Delegation without direct supervision

- Hospital or ambulatory surgery center:  
a physician may delegate technical acts **in compliance with State regulations and the policies, procedures, and supervisory structures of those sites.**

# Other locations

- Depends on level of supervision

# Without on-site supervision

- (a) Patient preparation for physician examination; (b) Patient history interview; (c) Collecting and processing specimens, such as performing phlebotomy and inoculating culture media; (d) Preparation of specimens for selected tests including (i) Pregnancy tests, (ii) Dipstick and microscopic urinalysis, and (iii) Microbiology (rapid streptococcal testing and throat cultures); (e) Laboratory tests that the physician is satisfied the assistant is qualified to perform under State and CLIA regulations; (f) Clinical tests such as: (i) Application of tuberculin skin tests, (ii) Electrocardiography, (iii) Administering basic pulmonary function tests; and (iv) Visual field tests; (g) Transmitting prescriptions to a pharmacy; (h) Providing sample packets of medication, selected by a physician who is physically present at the time of selection, to patients as directed by the delegating physician and [statute]; and (i) Preparing and administering oral drugs;

# On-site supervision

- Preparing and administering injections limited to intradermal, subcutaneous, and intramuscular (deltoid, gluteal, vastus lateralis) to include small amounts of local anesthetics;
- Establishing a peripheral intravenous line; and
- Injecting fluorescein-like dyes for retinal angiography;

# Direct Supervision

- injecting intravenous drugs or contrast materials.

# May Never Be Delegated

- Conducting physical examinations;
- Administering any form of anesthetic agent or agent of conscious sedation other than topical anesthetics or small amounts of local anesthetics;
- Initiating independently any form of treatment, exclusive of cardiopulmonary resuscitation;
- Dispensing medications;
- Giving medical advice without the consult of a physician; and
- Providing physical therapy.

# Consequences

- A delegating physician, through either act or omission, facilitation, or otherwise enabling or forcing an assistant to practice beyond the scope of this chapter, may be subject to discipline for grounds within Health Occupations Article, §14-404(a), Annotated Code of Maryland, including, but not limited to, practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine.

# Cosmetic procedures

- Special rules govern the performance, delegation, assignment, and supervision of cosmetic medical procedures, and the use of cosmetic medical devices by a physician or under a physician's direction.

# Definitions

"Cosmetic medical device" means a device that alters or damages living tissue.

It includes any of the following items, when the item is used for cosmetic purposes:

- Laser;
- Device emitting light or intense pulsed light;
- Device emitting radio frequency, electric pulses, or sound waves;
- Microdermabrasion device; and
- Devices used for the injection or insertion of foreign or natural substances into the skin, fat, facial tissue, muscle, or bone.

"Cosmetic medical procedure" means a procedure using a cosmetic medical device or medical product to improve an individual's appearance, including the following:

- Skin treatments using lasers;
- Skin treatments using intense pulsed light;
- Skin treatments using radio frequencies, microwave, or electric pulses;
- Deep skin peels;
- Skin treatments with phototherapy;
- Microdermabrasion;
- Subcutaneous, intradermal, or intramuscular injections of medical products;
- Treatments intended to remove or cause destruction of fat; and
- Any treatment using a cosmetic medical device for the purpose of improving an individual's appearance.

# Physician training

- A physician who performs, assigns, supervises, or delegates the performance of cosmetic medical procedures by a non-physician first shall obtain training in the indications for and performance of the cosmetic medical procedures and operation of any cosmetic medical device to be used.

# Required Physician Training

- Manufacturer provided training may not be a physician's only education in the use of the cosmetic procedure or device.
- ACCME or AOA approved continuing education or completion of an ACGME or AOA accredited postgraduate program that includes training in the cosmetic medical procedure performed will satisfy this requirement.

# Required Qualifications of Delegatee

- A physician may only delegate performance of a cosmetic medical procedure to a physician assistant or
- any other Maryland licensed health care practitioner whose licensing board has determined that the procedure falls within the practitioner's scope of practice. (aestheticians and cosmetologists do not qualify)

# Required training of delegatee

- A physician may not permit any individual who performs cosmetic medical procedures delegated or assigned by that physician to operate a cosmetic medical device or perform a cosmetic medical procedure unless the individual has received appropriate training, which includes
- Any training required by that individual's health occupations board.
- Training specified by the regulations;

# Specifics of required training

- Should be both theoretical and clinical
  - Indications and contraindications
  - Identification of realistic and expected outcomes
  - Selection, maintenance and utilization of equipment
  - Appropriate technique, including infection control and safety precautions
  - Pharmacological intervention specific to the procedure

# Training specifics (cont.)

- Identification of complications and adverse reactions for procedure
- Emergency procedures
- Documentation

Clinical instruction must include observation of an experienced individual and the use of the procedure under the direct supervision and observation of the delegating physician.

# Exception: Other health occupations

These are among the health occupations recognized by Maryland:

- Physician Assistants
- Nurse Practitioners
- Nurse Anesthetists
- Nurse Midwives
- Optometrists
- Physical Therapists
  - » Physical therapy assistants
- Podiatrists
- Other MBP licensed allied health
  - » Respiratory tech
  - » Rad techs, etc.
  - » polysomnographer

# Other health occupations

- Must practice only within scope of their practice

# Examples

- Physician assistants
- Scope
  - the performance of medical acts that are
    - Delegated (as recorded in delegation agreement) by a supervising physician to a physician assistant;
    - Within the supervising physician's scope of practice; and
    - Appropriate to the physician assistant's education, training, and experience.

# Nurse Practitioners

## Scope of practice

- All acts considered to be within the scope of “registered nurse practice”
- Conducting comprehensive physical assessments;
- Establish a medical diagnosis for common chronic stable or short-term health problems;
- Ordering, performing, and interpreting laboratory tests;
- Prescribing drugs as provided under § 8-508 of Nursing Act
- Performing diagnostic, therapeutic, or corrective measures;
- Referring an individual to an appropriate licensed physician or other health care provider; and
- Providing emergency care.

# Nurse Practitioners

- Collaboration agreement required
- Before commencing practice, a nurse practitioner shall complete a Board-approved written attestation that:
  - The nurse practitioner has an agreement for collaborating and consulting with a physician;
  - States the name and license number of the physician;
  - The nurse practitioner shall refer to and consult with physicians and other health care providers as needed; and
  - The nurse practitioner shall practice in accordance with the standards of practice of:
    - The American Academy of Nurse Practitioners; or
    - Any other national nurse practitioner certifying body recognized by the Board

# Nurse Anesthetists

- Scope
  - the performance of acts in collaboration with an anesthesiologist, licensed physician, or dentist, which require substantial specialized knowledge, judgment, and skill related to the administration of anesthesia.

# Nurse Anesthetists

- Collaboration specifics
  - An anesthesiologist, licensed physician, or dentist shall be physically available to the nurse anesthetist for consultation at all times during the administration of, and recovery from, anesthesia;
  - An anesthesiologist shall be available for consultation to the nurse anesthetist for other aspects of the practice of nurse anesthesia; and
  - If an anesthesiologist is not available, a licensed physician or dentist shall be available to provide this type of consultation.

# Nurse midwives

- Scope
  - the health care management of newborns and clients throughout their reproductive life cycle.

# Nurse midwives

- Collaboration plan must fully describe:
- Delegated medical functions, if any, to be performed by the nurse midwife;
- The parameters of service;
- A comprehensive plan for transfer of care when needed;
- Practice guidelines for every specialty area of practice including, but not limited to:
  - Client selection criteria;
  - Parameters and methods for assessing client health status;
  - Parameters for risk management; and
  - Parameters for consultation, collaboration, and referral;
  - Appropriate interventions including treatment, medication, and any devices; and
  - The categories of substances selected from the approved formulary that may be prescribed and dispensed by the certified nurse midwife.

# Optometry

- To use any means known in the science of optics or eye care, except surgery:
- 1. To detect, diagnose, and subject to §§ 11-404 and 11-404.2 of this title, treat, subject to this title, any optical or diseased condition in the human eye; or
- 2. To prescribe eyeglasses, lenses, or contact lenses to correct any optical or visual condition in the human eye;
- (ii) To give advice or direction on the fitness or adaptation of eyeglasses or lenses to any individual for the correction or relief of a condition for which eyeglasses or lenses are worn; or
- (iii) To use or permit the use of any instrument, test card, test type, test eyeglasses, test lenses, or other device to aid in choosing eyeglasses or lenses for an individual to wear.
- (2) Subject to §§ 11-404 and 11-404.2 of this title, "practice optometry" includes:
- (i) The administration of topical ocular diagnostic pharmaceutical agents;
- (ii) The administration and prescription of therapeutic pharmaceutical agents; and
- (iii) The removal of superficial foreign bodies from the cornea and conjunctiva.

# Optometrist

- Strict collaboration and referral requirements for use of therapeutic medications

# Physical Therapists

"Practice physical therapy" means to design, implement, and modify therapeutic interventions for the purpose of:

- (i) The prevention of disability in patients or clients; and
- (ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice physical therapy" includes:

- (i) Performing an evaluation of the physical therapy needs of patients or clients;
- (ii) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;
- (iii) Planning treatment programs that are based on test findings; and
- (iv) Except as provided in paragraph (3) of this subsection, administering therapeutic interventions that include therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

- The practice of physical therapy does not include using
  - x-rays
  - Radioactive substances
  - Electricity for cauterization or surgery

# Chiropractors

- “Practice chiropractic” means to use a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.
- “Practice chiropractic” includes the diagnosing and locating of misaligned or displaced vertebrae and, through the manual manipulation and adjustment of the spine and other skeletal structures, treating disorders of the human body.
- Except as otherwise provided in this title, “practice chiropractic” does not include the use of drugs or surgery, or the practice of osteopathy, obstetrics, or any other branch of medicine.
- The definition of “practice chiropractic” does not prohibit a chiropractor from selecting diet and hygiene measures for an individual.

# Podiatry

"Practice podiatry" means to diagnose or surgically, medically, or mechanically treat the human foot or ankle, the anatomical structures that attach to the human foot, or the soft tissue below the mid-calf.

"Practice podiatry" does not include:

- Surgical treatment of acute ankle fracture;\* or
- Administration of an anesthetic, other than a local anesthetic.

\*But see HB746/SB541

# Not a health occupation

- “Medical Assistants” (but may be delegated non-cosmetic duties pursuant to delegation regulations)
- Naturopaths (not licensed in Maryland)
- Lay midwives (not licensed in Maryland)

# The Last Slide

## Conclusion:

- Health care is the practice of medicine. It may not be performed by those who are not licensed in this state to practice medicine except pursuant to specific exceptions or carve-outs. It may not be delegated to others except where what is being delegated also falls within the scope of their health profession or pursuant to specific exceptions.