

June 9, 1998

, MD
Medical Director
Upper Arlington Surgery Center, Ltd.
dba Riverside Outpatient Surgery Center
2240 North Bank Drive
Columbus, OH 43220

Dear Dr.

Your letter dated April 8, 1998, addressed to Dr. Bhati, concerning under what circumstances podiatrists may perform histories and physicals on surgical patients in your facility, was discussed by the Scope of Practice Committee and referred to me for response.

The scope of practice of a podiatrist is set forth in Section 4731.51, Ohio Revised Code, and further amplified by Rules 4731-20-01 and -02, Ohio Administrative Code (OAC). In brief, podiatrists are authorized to treat (which includes performance of surgery) ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma. They may employ the medicines and drugs necessary for such treatment, but may only employ general anesthetics in approved colleges of podiatry and in approved hospitals. Regardless of the location of their practice or activities, podiatrists must remain within the parameters of their license.

Chapter 3701-83, OAC, sets forth specific requirements for ambulatory surgical facilities (ASF). Rule 3701-83-03 states that all health care facilities (including ASF) must comply with all state statutes and rules, and that nothing in this chapter of the OAC shall be construed as authorizing individuals to provide services outside their licensed scope of practice. Rules 3701-83-08 and -09, OAC, also emphasize that personnel working in any HCF may only provide services within their scope of practice as defined by state law.

Rule 3701-83-17, OAC, speaks to the requirements of pre-admission histories and physicals, immediate pre-procedure examinations, and pre-anesthesia evaluations, and the persons authorized to provide these services. Additionally, Rule 4731-18-01, OAC, adopted by the State Medical Board in 1995, addresses the responsibilities of the surgeon of record. (Copies of the applicable statutes and rules enclosed.)

Based upon the committee's review of the above statutes and rules, it is the committee's opinion that a podiatrist may properly perform the pre-admission history and physical on patients scheduled for surgical procedures that are within the podiatrist's scope of practice; the surgeon of record has the responsibility to perform the immediate pre-procedure examination. Additionally, the person accepting the responsibility of providing or supervising the provision of anesthesia must determine the appropriate anesthetic agents and assess the risks of anesthesia for the particular patient. A podiatrist may provide or supervise the provision of anesthesia within the scope of his or her license as a podiatrist.

I hope that this response is helpful to you. This letter is not a written legal opinion, but is merely meant to give you guidance in considering your questions. You may wish to consult private legal counsel to assist you further.

Very truly yours,

Diann K. Thompson
Chief Enforcement Coordinator

Enclosures

Dr. Jimelle Rumberg

From: Debolt, Sallie [Sallie.Debolt@med.state.oh.us]
Sent: Wednesday, July 25, 2007 9:45 AM
To: Dr. Jimelle Rumberg
Cc: Joan.Wehrle@med.state.oh.us; davebuchan75@yahoo.com
Subject: RE: copy of Ohio Law for H&P
Attachments: History & Phys.pdf

The scope of practice of a podiatrist is set out in Section 4731.51, Ohio Revised Code, to include, among other services, the medical, mechanical, and surgical treatment of ailments of the foot and the muscles and tendons of the leg governing the functions of the foot. Podiatrists are authorized to treat, perform surgery, and employ medicines and drugs necessary for such treatment. Ohio law does not explicitly authorize a podiatrist to perform histories and physicals.

While the performance of history and physicals is not specifically addressed in Ohio statute or rule, the Medical Board has provided guidance in the past that a podiatrist may perform the pre-admission history and physical for surgical procedures that are within the podiatrist's scope of practice. In a letter dated June 9, 1998, written on behalf of the Scope of Practice Committee and approved by the Medical Board, Diann Thompson, then Chief Enforcement Coordinator and now Assistant Executive Director, expressed the committee's opinion that a podiatrist may properly perform the pre-admission history and physical on patients scheduled for surgical procedures that are within the podiatrist's scope of practice and the surgeon of record is responsible for performing the immediate pre-procedure examination.

Pursuant to the Medical Board's surgery standards, the podiatrist who is the surgeon of record would also be responsible for performing the immediate pre-procedure examination. Rule 4731-18-01, Ohio Administrative Code, states in pertinent part as follows:

(A) The surgeon of record in an operative case shall personally:

3. Determine, based on his own evaluation, and, as necessary, on consultation with other physicians involved in the patient's care, that the patient is a fit candidate for the operation to be performed;

Where the pre-admission and/or pre-procedure history and physical detect a condition other than a podiatric condition that may affect the patient's fitness for podiatric surgery, the podiatrist should seek consultation from other physicians involved in the patient's care as part of the evaluation of whether the patient is a fit candidate for the operation to be performed.

Copies of the June 9, 1998 letter and pertinent excerpts from the June 10, 1998 minutes of the Scope of Practice Committee and the Medical Board are attached for your review. Also

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attached is Rule 4731-18-01, Ohio Administrative Code. Please contact me if you are unable to open the attached PDF document.

This response is only a guideline and should not be interpreted as being all inclusive or exclusive. The Board will review all possible violations of the Medical Practices Act and/or rules promulgated thereunder on a case by case basis.

Sincerely,

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MINUTES SCOPE OF PRACTICE COMMITTEE

Dr. Bhati, Chair, called the meeting to order at 11:28 a.m. on Wednesday, June 10, 1998.

Committee members present: Dr. Agresta, Dr. Bhati, Dr. Buchan and Ms. Noble.

Visitors present: Kate Hunter, Ohio State Medical Association (OSMA) and Dr. S. K. Bhandan.

Staff members present: Sandy Caldwell, Lisa Emrich, Penny Grubb, Barbara Sibla and Diann Thompson.

Review of Minutes

Dr. Buchan moved to approve the Minutes of May 13, 1998; Dr. Agresta seconded the motion; all members voted aye.

Response to Inquiry Regarding Podiatrist Performing H & Ps in Ambulatory Surgical Centers

Dr. Bhati referred the committee members to Ms. Thompson's letter drafted in response to Dr. Doug Yunker, Medical Director of the Upper Arlington Surgery Center. Dr. Yunker had inquired about the Medical Board's position regarding a podiatrist's authority to perform histories and physicals and to administer sedatives to patients having surgery at ambulatory surgical centers. Dr. Bhati stated that Ms. Thompson's response properly addressed his questions, especially in regards to the legalities of the actions. Dr. Bhati asked the committee members for their comments.

All committee members agreed that the letter correctly addressed Dr. Yunker's questions.

Ms. Thompson said that she would then sign and mail the letter to Dr. Yunker.

Adjournment

There being no further issues, Dr. Bhati asked for a motion to adjourn. Dr. Buchan moved to adjourn the meeting at 11:32 a.m. on Wednesday, June 10, 1998; Dr. Agresta seconded the motion; all members voted aye.

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Dr. Steinbergh stated that she thinks the O.O.A. just wanted to let the Board know its concerns that osteopathic physicians and podiatric physicians are being solicited by this school.

LIMITED BRANCH AND ALTERNATIVE MEDICINE COMMITTEE

Dr. Heidt stated that the Committee met that morning with about 40 massage therapists and went over many things, including setting up standardized education for massage therapists. The Committee also discussed reorganizing the Board's licensure examination so that students will know what is on the test so that they can pass it if they study.

Dr. Heidt stated that rules changes will be necessary to address education. These rules would allow for certification after 600 hours of training, an associate degree, and possibly a full degree in massage therapy.

Dr. Heidt continued that Mr. Bumgarner has become quite an authority on alternative medicine forms over the last few years. The Committee will try to list the different types of alternate therapies, and designate which would be appropriate for certification requirements.

MEDICAL PRACTICES ACT AND RULES REVISION COMMITTEE

Mr. Sinnott stated that he has nothing further to report.

DISCIPLINARY POLICY AND GUIDELINES COMMITTEE

Dr. Egner stated that the Committee met and is working on taking the word "probation" out of C.M.E. violations.

Dr. Egner reported that the Committee's quarterly reports will be entered into the computer in the future so that Board members will have the report right at their fingertips.

IMPAIRMENT COMMITTEE

Mr. Albert stated that there was very little discussion at the meeting this month. The Committee is awaiting the rules hearing in August.

Mr. Albert continued that the Committee did discuss "therapeutic slips." Doctors who have one slip that is reported to the Board within 24 hours of the occurrence and does not involve their practice could appear before the Board Secretary for evaluation. The Secretary could then add time to the consent agreement or take other appropriate action. The Committee may have something in writing in this regard by July.

LEGISLATIVE LIAISON COMMITTEE

Mr. Sinnott stated that he has nothing to report beyond what was reported earlier.

CONSENT AGREEMENT COMMITTEE

Dr. Agresta stated that the Committee is working on developing a standard agreement to use in out-of-state actions. This will be brought to the full Board when it is finished.

SCOPE OF PRACTICE COMMITTEE

Dr. Bhati stated that the Committee reviewed a response to a letter from the Medical Director of Upper Arlington Surgery Center concerning podiatrists doing histories and physicals for surgical patients. The response indicated that it is appropriate for

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podiatrists to do histories and physicals in podiatry cases.

MINIMAL STANDARDS COMMITTEE

Dr. Agresta stated that the Committee continues to discuss issues concerning the use of lasers. It will attempt to draft rules for the Board's consideration. The Committee feels that lasers are another surgical modality. Because of the change in climate and the advent of more and more laser procedures, rules are needed.

Dr. Somani asked whether the Board has the legislative authority to write rules. He believes the Department of Health is also looking at setting a standard for laser use.

Mr. Bumgarner stated that the Board does have authority, but its direction in terms of rules may be different.

Dr. Somani stated that he is not so sure that the Department of Health is in the process of writing rules. The question he has is whether the Board has the statutory authority to write rules.

Mr. Bumgarner stated that the issue the Board will address is assuring utilization of lasers stays within minimal standards of care. That authority rests with the Board, in addition to any authority that the Department of Health has to regulate the equipment.

Dr. Somani agreed, but stated that this is a little bigger issue, and that question will come up. If the Board writes rules in relation to use of laser machines, it also has to assure that the lasers conform to certain standards.

Mr. Bumgarner stated that that is where any mutual work should tie together.

Dr. Somani stated that to be able to have some sort of oversight of license, you would need, at least for the Department of Health, the statutory authority.

Mr. Bumgarner stated that the Board's rules could refer to or incorporate the Department of Health's rules and authority over regulation of equipment.

Dr. Bhati stated that the F.D.A. has already classified the lasers according to their level of work. The F.D.A. has already suggested maintenance, the degree of work, the amount of work, and approval of these machines. That already exists.

Dr. Somani stated that the F.D.A. does not come and inspect these machines. They give the authority to the Department of Health and each state has to decide how they will be inspected to ensure minimal standards.

Dr. Agresta stated that the Board's approach is not so much as to how to standardize the equipment or how to approve the equipment. The Board's approach is who is using the machine, and how.

SPOKEN ENGLISH EVALUATIONS

Dr. Agresta advised that the spoken English evaluation was administered the previous morning in compliance with Section 4731.142 (A)(2), Ohio Revised Code. Eight physicians who received borderline scores on the T.S.E. administered by the Educational Testing Service were evaluated.

Dr. Agresta continued that the evaluators found that the eight candidates tested, Mukut Sharma, M.D., Abdulla Akfaly, M.D., Muhammad M. Alam, M.D., Vanisree Suverna, M.D., Arif Showkat, M.D., Mahmood G. Aijazi, M.D., Yatish Goyal, M.D., and Quadrat U. Shareef, M.D., are able to speak English well enough to practice medicine in the State of Ohio. The evaluators recommend that the Board approve these individuals as having passed the Board's spoken English evaluation.

4731-18-01 Standards for surgery.

(A) The surgeon of record in an operative case shall personally:

(1) Evaluate the patient sufficiently to formulate an appropriate preoperative diagnosis; and

(2) Select the operation to be performed in consultation with the patient or with a person authorized to act on his behalf; and

(3) Determine, based on his own evaluation, and, as necessary, on consultation with other physicians involved in the patient's care, that the patient is a fit candidate for the operation to be performed; and

(4) Assure that the patient or a person authorized to act on his behalf gives informed consent before the surgery begins; and

(5) Comply with division (B)(6) of section 4731.22 of the Revised Code; and

(6) Perform or personally supervise the surgery, except those portions of the surgery, if any, which are performed or supervised by another qualified surgeon with the informed consent of the patient.

(B) Management of postoperative medical care is the responsibility of the surgeon of record. The surgeon of record shall fulfill this responsibility by:

(1) Personally performing the postoperative medical care; or

(2) Delegating postoperative medical care to another physician or physicians who are qualified by training and experience to provide the level of care required, provided that the surgeon of record shall remain primarily responsible for the patient's overall care unless the patient and the other physician have agreed in advance to shift that responsibility to the other physician; or

(3) Delegating defined aspects of the postoperative medical care to appropriately trained and supervised allied health care personnel in compliance with applicable standards, provided that the surgeon of record shall retain personal responsibility for the quality of the care rendered by personnel who are under his supervision and control. The surgeon of record shall obtain the patient's fully informed consent, or the consent of a person authorized to act on the patient's behalf, in advance of surgery, before delegating aspects of patient care to allied health care personnel under this paragraph. The surgeon of record need not obtain the patient's informed consent for aspects of care to which the patient has already consented, such as consent to treatment and care by hospital personnel under an informed consent form signed upon the patient's admission to the hospital; or

(4) Delegating defined aspects of the postoperative medical care to licensees of other health regulatory boards who are licensed to independently provide the scope of practice and the level of care required, provided that the surgeon of record shall remain primarily responsible for the patient's overall care and must examine the patient during the postoperative period.

(C) This rule shall not be read to transfer any responsibility which currently rests with any other physician, allied health care provider, or institution to the surgeon of record.

(D) This rule shall not be read to prohibit or interfere with the appropriate training of medical students and physicians in post-graduate training programs, or other personnel.

(E) The provisions of this rule requiring consultation with or obtaining the informed consent of the patient or a person legally authorized to act on his behalf do not apply to the extent they would prevent the performance of surgery or other procedures under emergency circumstances.

Effective: 5-4-95

The online versions of legislation provided on this website are NOT official. The official version of bills are available from the LSC Bill Room located at the north end of the Ground Floor of the Statehouse. Enrolled bills are the final version passed by the Ohio General Assembly and presented to the Governor for signature. The official version of acts signed by the Governor are available from the Secretary of State's Office in the Borden Building, 180 East Broad St., Columbus.

**As Reported by the Senate Health, Human Services and Aging
Committee**

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 189

**REPRESENTATIVES Blasdel, Schneider, S. Smith, Olman,
Harwood, Martin, Fessler, Reidelbach, G. Smith, Hoops, Allen,
Barrett, Beatty, Bocchieri, Book, Brown, Calvert, Carano,
Carmichael, Cirelli, Daniels, DeBose, Distel, Domenick, Driehaus,
C. Evans, Flowers, Hartnett, Hollister, Hughes, Jolivette, Kearns,
Key, Latta, Miller, Oelslager, S. Patton, T. Patton, Perry, Peterson,
Price, Schaffer, Schlichter, Schmidt, Setzer, Sferra, D. Stewart,
J. Stewart, Walcher, Widener, Wilson, Woodard**

A BILL

To amend section 3727.06 of the Revised Code to allow podiatrists to make independent hospital admissions.

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

Section 1. That section 3727.06 of the Revised Code be amended to read as follows:

Sec. 3727.06. (A) As used in this section:

(1) "Doctor" means an individual authorized to practice medicine and surgery or osteopathic medicine and surgery.

(2) "Podiatrist" means an individual authorized to practice podiatric medicine and surgery.

~~(B) Only a doctor of medicine who is a member of the medical staff, doctor of osteopathic medicine who is a member of the medical staff, or dentist who is a member of the medical staff, or podiatrist who is a member of the medical staff may admit a patient to a hospital, but a podiatrist who is a member of the staff of a hospital may co-admit a patient with a doctor of medicine who is a member of the medical staff or doctor of osteopathic medicine who is a member of the medical staff.~~

(C) All hospital patients shall be under the medical supervision of a doctor of medicine or doctor of osteopathic medicine, except that services that may be rendered by

a licensed dentist pursuant to Chapter 4715. of the Revised Code provided to patients admitted solely for the purpose of receiving such services shall be under the supervision of the admitting dentist and that services that may be rendered by a podiatrist pursuant to section 4731.51 of the Revised Code provided to patients admitted solely for the purpose of receiving such services shall be under the supervision of the admitting podiatrist. If treatment not within the scope of Chapter 4715. or section 4731.51 of the Revised Code is required at the time of admission by a dentist or podiatrist, or becomes necessary during the course of hospital treatment by a dentist or podiatrist, such treatment shall be under the supervision of a ~~doctor of medicine who is a member of the medical staff or a doctor of osteopathic medicine~~ who is a member of the medical staff. It shall be the responsibility of the admitting dentist or podiatrist to make arrangements with a doctor of ~~medicine who is a member of the medical staff or a doctor of osteopathic medicine~~ who is a member of the medical staff to be responsible for the patient's treatment outside the scope of Chapter 4715. or section 4731.51 of the Revised Code when necessary during the patient's stay in the hospital.

Section 2. That existing section 3727.06 of the Revised Code is hereby repealed.