

Analysis of Physician Delegation Rules
C. David Paragas, J.D. – Columbus

In January, 2001, the Ohio General Assembly passed Sub. H.B. 585 which, among other things, required the State Medical Board ("Board") to adopt rules establishing standards and procedures to be followed by physicians who delegate medical tasks to unlicensed personnel. That portion of the bill, codified at R.C. § 4731.053, stated that the rules must provide for: 1) on-site supervision when the delegation occurs in a healthcare facility; 2) evaluation of whether delegation is appropriate according to patient acuity; 3) training and competency requirements that must be met by the person administering drugs; and 4) any other standards the Board considers relevant. The act also prohibits the Board from adopting certain rules including: 1) rules that authorize a physician to transfer a physician's responsibility for supervising an individual who is performing a delegated medical task to someone other than another physician and 2) rules that authorize an individual to whom a medical task is delegated to delegate that task to another.

In response to this mandate, the Board adopted various rules, on September 30, 2001 and amended the rules effective May 31, 2002, governing the delegation of medical tasks which can be found in Ohio Administrative Code Chapter 4731-23. The Board has defined 'delegate' to mean to transfer authority for the performance of a medical task to an unlicensed person, a person who is not authorized by the Revised Code to perform the delegated medical task. OAC 4731-23-01(B) & (F). 'On-site supervision' is defined to mean the physical presence of the physician is required in the same location as the unlicensed person to whom the medical task has been delegated while the task is being performed. However, 'on-site supervision' does not require the physician's presence in the same room. OAC 4731-23- 01(C).

Under the rules, a physician can not delegate a medical task unless that physician has complied with all of the requirements of the rule and the delegation conforms to minimal standards of care of similar physicians under the same or similar circumstances. OAC 4731-23-02(A). Prior to any delegation the physician must determine each of the following: 1) that the task is within the physician's authority; 2) that the task is indicated for the patient; 3) the appropriate level of supervision; 4) that no law prohibits the delegation; 5) that the person to whom the task is delegated is competent to perform the task; and 6) that the task is one that can be appropriately delegated. OAC 4731-23-02(B). With the last element, several factors must be considered. Can the task be performed without using judgment based on medical knowledge? Are the results predictable? Can the task be performed according to exact, unchanging directions? Can the task be performed without the need for critical decisions or repeated medical assessments? If the task is performed improperly, would it present life threatening consequences or immediate and serious harm to the patient? OAC 4731-23-02(B)(6). With any delegation, the supervising physician always retains responsibility for the manner in which the delegated task is carried out. OAC 4731-23-03(G).

With regard to the delegation of the administration of drugs, the physician must provide on-site supervision. Exceptions to this rule include: 1) when the physician transfers responsibility for the on-site supervision to another physician who has knowingly accepted that responsibility on a patient-by-patient basis; 2) routine administration of topical drugs, such as a medicated shampoo; and 3) when there are written policies and procedures that have been adopted for the distribution

of drugs by an unlicensed person to individuals incarcerated in state correctional institutions as defined in Revised Code 2967.01(A), other correctional facilities including county and municipal jails, workhouses, minimum security jails, halfway houses, community residential centers, regional jails and multi-county jails, or any other detention facility pursuant to the Revised Code 2921.01(F). OAC 4731-23-02(C).

Four situations exist wherein the rules in Chapter 4731-23 do not apply. They do not apply to situations which would: 1) prevent activities from being performed for a handicapped child, as identified in the individualization education program developed under Revised Code 3323; 2) conflict with any statute that authorizes a person to perform the particular task; 3) conflict with any rule adopted already in effect specifically authorizing a person to perform a particular task; and 4) prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist. OAC 4731-23-02(D).

The rules also establish prohibited delegations. A physician can not delegate the practice of medicine as defined in Revised Code 4731.34, tasks that are beyond the unlicensed person's competence, or tasks which are not within the physician's authority or beyond the physician's normal course of practice. OAC 4731-23-03(A)-(C). A physician is also prohibited from transferring his responsibility for supervising an unlicensed person except to another physician who has knowingly accepted that responsibility. OAC 4731- 23-03(D). A physician can not authorize an unlicensed person to delegate a task to another person and can not delegate the administration of anesthesia, controlled substances, or drugs administered intravenously. OAC 4731-23-03(E) & (F).

Violations of any rule will constitute 'a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in [Revised Code 4731.22(B)(6)]." OAC 4731-23-04(A). Violations of any rule that pertains to the administration of drugs shall constitute 'failure to maintain minimal standards applicable to the selection or administration of drugs,' as that clause is used in [Revised Code 4731.22(B)(2)]." OAC 4731-23-04(B)