

Risk Management Hotline



What May I Safely Delegate?

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The “practice of medicine” is defined in each state’s medical practice act and clarified in regulations. Sometimes, even after researching state laws and regulations, you may not be sure of what medical tasks you may delegate to non-physicians. The official curriculum provided at the school where the employee trained is a good indication of normal scope of services or practice of that employee. However, state law may preempt those qualifications or experience if the employee trained out of state. Use the training, licensure/certification process, state law, and the principles discussed in this article to develop protocols that will keep you, your patients, and your staff safe, and improve the defensibility of care rendered under your supervision.

Q What distinguishes a cosmetic from a medical procedure?

A Are estheticians (skin care therapists) trained to perform this procedure in esthetician schools? May they perform the procedure in a salon that has no affiliation with a physician? If the answer to both questions is yes, the treatment is probably a cosmetic one with few or minimal patient safety risks. On the other hand, if the device needed to perform the procedure may only be purchased by a medical doctor (MD) or doctor of osteopathy (DO), or if the product is labeled as a drug by the FDA, the treatment is a medical one with risks that must be disclosed, recognized, and mitigated. If not performed by a physician, it must be ordered, delegated, and supervised by a physician.

Q May I delegate prescriptive authority to my staff?

A Each state limits the ability to write prescriptions to certain licensed health care personnel and provides a “sliding scale” of authority. MDs and DOs are at the top of the scale; with the proper Drug Enforcement Agency (DEA) approval for controlled substances, they have unlimited prescriptive authority to order FDA-approved drugs and devices. All other licensed health care providers have restrictions. Others with prescriptive authority and likely to be in an ophthalmology practice include physician assistants and nurse practitioners. They may prescribe only medications normally used by their supervising physician that are also listed in the formulary that comprises part of the standardized protocols directing their actions. If the standardized protocol addresses drugs such as injectables, and the drugs are in the formulary, physician assistants and nurse practitioners may prescribe and administer them, as well as supervise staff who are qualified to administer them. In some states, optometrists with special training and licensure have limited prescriptive authority, but it would not include these drugs and devices. While registered nurses are licensed, they have no prescriptive authority. Like unlicensed ophthalmic personnel, their role is limited to implementing orders or transmitting them to a pharmacy or health care facility. In offices with no physician assistant or nurse practitioner, therefore, only an ophthalmologist may prescribe drugs such as injectables.

Q Who may determine if a patient is a candidate for a medical procedure?

A It takes considerable knowledge and judgment to determine the cause of presenting complaints, what if any treatment is indicated, and whether the findings from the patients’ history or examination signal increased risk or constitute contraindications. In other words, assessing patients to determine

treatment is the practice of medicine. Registered nurses are trained in nursing school and then licensed to perform assessments of patient conditions, interpret orders and test results, implement treatment orders, and make ongoing decisions about how to modify procedures as needed based upon the patient’s condition. Nearly all states also have legal mechanisms for registered nurses to perform tasks that are considered the practice of medicine, such as Botox injections and some types of laser surgery. With sufficient training and the appropriate standardized protocols that delineate indications, contraindications, treatments, and consultation requirements, registered nurses may usually elicit the history, perform the initial examination, and discuss a proposed course of treatment with the patient as a prelude to presenting their recommendations to the supervising physician. If the physician approves the patient’s candidacy and orders the treatment or series of treatments, the registered nurse may implement the order.

Q What may I delegate to unlicensed ophthalmic personnel?

A Does the state’s medical practice act define laser procedures as the practice of medicine or surgery? Does performing the procedure require the staff member to assess the patient’s condition or make modifications from one patient to the next? If the answer to either of these questions is yes, the procedure is best performed by a licensed health care staff member. Did the school at which the staff member studied include the procedure in the official curriculum? Is the procedure included in the tasks for which the staff member can receive JCAHCO certification? If yes, then it is probably safe to delegate the task and supervise the unlicensed staff member if you or another ophthalmologist determines candidacy and orders the treatment for the specific patient each time it is administered.