INTRODUCTION

A. Basis. The general authority for promulgation of these rules by the State Board of Medical Examiners is set forth in §§ 12-36-104(1)(a), C.R.S. and 24-4-103, C.R.S.

B. Purpose. The following rules have been adopted by the State Board of Medical Examiners to clarify the provisions of § 12-36-106(3)(l), C.R.S. regarding the delegation and personal and responsible direction and supervision of medical services to a person who is not otherwise exempt pursuant to § 12-36-106, C.R.S. from holding a license to practice medicine.

RULES

Scope of these rules:

1. These rules apply to the delegation of services constituting the practice of medicine to a person who is not otherwise exempt pursuant to § 12-36-106, C.R.S. from holding a license to practice medicine. Therefore, these rules would not apply to any person who is otherwise exempt pursuant to § 12-36-106, C.R.S. from holding a license to practice medicine and who is practicing within the scope of practice specified by the person’s specific exemption under § 12-36-106. These rules also would not apply to a person performing services that do not constitute the practice of medicine as defined by the Medical Practice Act.

For example, a dentist practicing dentistry as defined by article 35 of title 12, C.R.S. would not be construed to be performing delegated medical services as set forth in § 12-36-106(3)(l) and would not be bound by these rules. Also by way of example, a registered or other nurse rendering nursing services or delegated medical functions pursuant to the Nurse Practice Act would not be bound by these rules.

2. These rules do not apply to the delegation of nursing tasks by a nurse in compliance with § 12-38-132 and the Board of Nursing Rules related to such delegation.

3. Section 12-36-106(3)(l), C.R.S. does not allow delegation of medical services to the following individuals:

   a. Any person who is otherwise qualified to be licensed by the Board to practice medicine but who is not so licensed, including but not limited to any physician with an inactive, lapsed, revoked, restricted, suspended or surrendered license and any physician who meets all qualifications for licensure but who is not licensed in Colorado.

   b. Any person who is otherwise qualified to be licensed by the Board as a physician assistant but who is not so licensed, including but not limited to any physician assistant with an inactive, lapsed, revoked, restricted, suspended or surrendered license and any physician assistant who meets all qualifications for licensure but who is not licensed in Colorado.

   c. Any person who holds a physician training license pursuant to § 12-36-122, C.R.S.

4. Section 12-36-122(7)(c), C.R.S. provides in part that physician training licensees do not have the authority to delegate medical services to a person who is not licensed to practice medicine pursuant § 12-36-106(3)(l), C.R.S.

5. Section 12-36-106(3)(l), C.R.S. does not allow the delegation of medical services to an emergency medical technician (“EMT”) in a prehospital care environment acting beyond the EMT acts allowed. Instead, pursuant to Board Rule 500, a physician advisor of an EMT in a prehospital
care environment must apply to the Board for a waiver to allow additional medical acts for the EMT under the physician advisor's supervision in specific circumstances. In an office or hospital setting it is not necessary to apply for a waiver pursuant to Board rule 500 so long as the use of an EMT as a delegatee is in compliance with these rules.

**Interpretation of § 12-36-106(3)(l), C.R.S.**

Section 12-36-106(3)(l), C.R.S. provides that the Medical Practice Act does not require a license to practice medicine for the rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this state.

The Board interprets the provisions of this statutory subsection as follows:

**Services:**

As provided by the Medical Practice Act, “services” generally include suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition or defect of any person. The definition of medical services under the Medical Practice Act does not encompass the gathering of data. Medical services also do not include acting as an intermediary by communicating a physician’s message or order to another person.

Delegated services under § 12-36-106(3)(l), C.R.S. cannot include the prescribing of drugs. The prescribing of drugs does not include the ordering a prescription refill by a delegatee pursuant to a written protocol-driven refill procedure developed by one or more supervising physician(s).

Delegated services must be consistent with the delegating physician's education, training, experience and active practice. Delegated services must be the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate; therefore, delegated services should be routine, technical services not requiring the special skills of a licensed physician. A physician may only delegate services that the physician is qualified and insured to perform and services that the physician has not been legally restricted from performing. Any services rendered by the delegatee will be held to the same standard that is applied to the delegating physician. Delegated services cannot be subsequently delegated to another party.

**Qualified by education, training or experience:**

It is the responsibility of the physician to ensure that the delegatee has the necessary education, training or experience to perform the delegated services. Upon request, the delegatee’s qualifications shall be documented in writing and provided to the Board. Such documentation may include, but not be limited to, copies of diplomas, certificates or professional degrees from bona fide training program(s) appropriate to the specific services delegated and/or documentation of direct observation of the repeated and successful performance of the delegated services and/or appropriate credentialing by a bona fide agency or institution.

Any person holding a license, certification or registration in a limited field of the healing arts may not perform medical services beyond the scope of that license, certification, or registration unless the person has additional education, training or experience qualifying the person to perform the medical service in question and the delegation of the medical service is in compliance with these rules.

**Personal and responsible direction and supervision:**
One or more physicians shall have explicitly agreed, although not necessarily in writing, to provide the necessary direction and supervision of the delegatee(s). The delegating physician is accountable for the acts of the delegatee.

The direction and supervision shall be sufficient to limit the need for the exercise of the judgment required of a physician and to provide ongoing inspection, evaluation, advice and control. The physician must make decisions as to the necessity, type, effectiveness and method of treatment and must devote sufficient time to on-the-spot inspection to determine that the physician's directions are regularly being followed.

Delegated services should be provided in the context of an appropriate physician/patient relationship. Ongoing care of a particular patient without direct physician involvement is inappropriate.

It is the responsibility of the delegating physician to provide personal and responsible direction and supervision that is consistent with generally accepted standards of medical practice.

Generally, personal and responsible direction and supervision requires that a delegating physician should be on the premises and readily available.

Where a delegatee is operating pursuant to specific and detailed written protocols and where adequate written emergency protocols are in place, the presence of the delegating physician on the premises may not be necessary. However, a delegating physician must be available to attend the patient in person within thirty (30) minutes.

A delegating physician shall assure that there is a timely chart note for all patient contacts.

**Identification of authority to act:**

The delegating physician should provide information to patients regarding delegatees in the physician's practice.

**Unlicensed practice of medicine:**

Pursuant to § 12-36-106(2), C.R.S., any person who performs any of the acts constituting the practice of medicine as defined by § 12-36-106(1), C.R.S. and who is not licensed by the Board to practice medicine or exempt from licensure requirements by some provision of § 12-36-106 shall be deemed to be practicing medicine without a license. Such person may be held criminally liable pursuant to § 12-36-129(1), C.R.S. and/or may be the subject of injunctive proceedings by the Board in the name of the people of the state of Colorado pursuant to § 12-36-132, C.R.S.

**Unprofessional conduct:**

It shall be unprofessional conduct pursuant to § 12-36-117(1)(u), C.R.S. for any licensee to delegate medical services or to have performed delegated medical services pursuant to § 12-36-106(3)(l), C.R.S. without complying with the provisions of these Rules.

It shall also be unprofessional conduct pursuant to § 12-36-117(1)(u), C.R.S. for any person who is not licensed by this Board but who applies for licensure by this Board to have performed delegated medical services or to have delegated medical services pursuant to § 12-36-106(3)(l), C.R.S. without complying with the provisions of these Rules.

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