# TENNESSEE BOARD OF MEDICAL EXAMINERS

# DELEGATION TASKFORCE

**Tuesday, May 23, 2017**

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**MINUTES**

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The Delegation Taskforce meeting of the Tennessee Board of Medical Examiners was called to order by Dr. Melanie Blake in the Poplar Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243. Dr. Blake chaired the meeting.

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| Members Present: | Neal Beckford, MD<br>Melanie Blake, MD<br>Deborah Christiansen, MD |
| Staff Present: | Mary Katherine Bratton, JD, Chief Deputy General Counsel<br>Andrea Huddleston, JD, Deputy General Counsel<br>Maegan Carr Martin, JD, Executive Director<br>Rene Saunders, MD, Medical Consultant, BME |

Ms. Martin referred the Taskforce to a rule that affects this policy. Rule 0880-02-.14(12) states that physicians who are required to have control over and responsibility for medical services being provided by any allied health professional must have an unencumbered license just as is currently required for physicians who supervise physician assistants and advanced practice registered nurses. Dr. Beckford spoke in favor of changing that rule. The group acknowledged that this would effectively take physicians who have an unencumbered license out of solo practice. Ms. Huddleston added that this rule has been in effect for over a decade, so she can't provide any historical context.

Dr. Blake asked that the last line, which was previously stricken, be retained.

Dr. Blake asked the group what their thoughts on the protocol requirement. Dr. Christiansen voiced her opinion that it just isn't practical. Having a protocol for every task completed in the office, whether it's collecting urine or checking vitals, is going to be very onerous. Dr. Beckford and Dr. Blake agreed. Dr. Christiansen thinks there are a lot of situations where they may be appropriate: when there's a possibility of harm or an exercise of clinical judgment is required. Dr. Blake thinks that it is probably has the most application in the institutional setting, and that it's probably best left to the institutions.

The group turned next to its discussion of whether written documentation of the delegatee's qualifications must be retained. Dr. Christiansen asked whether this implies ongoing documentation or an attestation. Ms. Huddleston answered that the reality is that if an investigator came to the office and sought this documentation, the physician would need to have it at that time.

Ms. Martin recognized the taskforce's interest in adopting a policy that is reflective of physician practice; however, if an allegation is made that a physician has been improperly delegating medical tasks, the physician will need to be able to refute that allegation with credible evidence. This policy is an opportunity to put physicians on notice and educate them on what constitutes credible evidence.

Dr. Saunders was asked to provide an example of the type of complaints we get about improper delegation. She responded that most recently it seems that we are getting questions regarding whether someone can perform a delegated cosmetic medical procedure, injecting botox, for example. Dr. Blake discussed this scenario hypothetically. Either the physician has written a protocol or they haven't. If they have a medical assistant doing the injection and they don't have a protocol, the physician still may be liable. If there is no protocol requirement, the physician would be able to say that they have observed this procedure a hundred times and this has been the only bad outcome. Ms. Martin agreed. She said that if an employee is performing a delegated task, the physician has faith that he or she can perform that task. If there's a bad outcome and an investigation, it would be against the physician's interest to decline to attest to their employee's competency. Dr. Christiansen expressed doubt that this reflects physician practice across the state. Dr. Beckford agreed and added that even if a physician had a protocol and did not permit an employee to perform a delegated task that he or she ended up performing, the physician would still be liable. They will always be liable because they're the responsible party.

Ms. Huddleston reminded the group that we aren't talking about liability here, we're talking about what constitutes unprofessional conduct.

Ms. Martin asked Ms. Huddleston whether the policy is routinely relied upon. Ms. Huddleston stated that it is. She stated that it's awkwardly worded because it seems to be referring to APRNs and PAs, but certainly pieces where it talks about being on-site and having expertise – that is particularly useful.

Ms. Huddleston read an email she had received from an APRN who has some concerns about the sorts of procedures and oversight currently being provided in medical spas in Tennessee. Dr. Christiansen endorsed one point raised by the author of the email: that it would be appropriate for a patient who will be receiving cosmetic medical services from an unlicensed person to have been examined and have an existing relationship with the physician. She suggested that the group consider adding that to the document.

The group discussed this policy from the perspective of a physician operating a small, medical office and from the perspective of someone that is in a large or institutional setting. Dr. Christiansen is concerned about over-burdening small offices. Dr. Blake pointed out that the requirement for protocols has been a part of this policy since 2002. Dr. Beckford did not think that protocols were categorically unreasonable. He suggested that examples be provided along with the policy. He wants to minimize the burden to licensees.

Ms. Huddleston pointed out that we can't use the label "employee" because if we're talking about large institutions, the supervising physician is not employing the supervisee.

Dr. Blake directed the group to number 7 and asked that they work to make this more palatable. She referred specifically to the language referring to a "system of documentation". She thought that employee files would be a sufficient "system of documentation." For example, it wouldn't be in appropriate to say "RNs do this; MAs do this."

Dr. Blake asked Ms. Huddleston what the legal staff and consultants would be looking for in reviewing the protocols. Ms. Huddleston replied that it would be something specifically developed for these individuals, in this practice, and the work that they do.

Dr. Christiansen recalled reviewing materials for this meeting and there being a distinction drawn between collecting information and exercising medical judgments. Dr. Beckford spoke in favor of providing examples of what sort of things are minor.

The group agreed to reconvene for one last meeting to finalize this document and a list of examples regarding what constitutes a minor medical task.

There being no other business, the meeting adjourned.