

DISPENSING BY NURSES

I have been asked to research two related questions. (1) May an APRN delegate the act of handing a medication to a patient to an RN or LPN? (2) May a physician do the same thing?

Handing a medication to a patient is part of the act of dispensing. By law, a pharmacist and a physician have virtually unlimited authority to dispense legend and controlled medications. KRS 315.010(19), 315.040(6). An APRN may only dispense sample legend medications. KRS 314.011(17)(b).

It has been argued that delegating an act within a professional's scope of practice could be interpreted as the assistance in the unlawful practice of that profession. However, it can also be argued that when a profession has explicit or implicit legal authority to delegate, such is an exception from the prior argument. For example, one state (Michigan) has defined delegation in statute as "an authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee and which, in the absence of the authorization, would constitute illegal practice of a licensed profession. M.C.L. Sec. 333.16104(1); M.S.A. Sec. 14.15(16104)(1)." *People v. Ham-Ying*, 142 Mich. App. 831, 371 N.W.2d 874 (1985).

APRNs are also RNs. KRS 314.010(6)(d) defines "registered nursing practice" to include the delegation to other personnel of the performance of activities relating to nursing care. In my opinion, the law would allow APRNs to delegate the handing of sample legend drug to a patient to an RN or LPN.

Whether a physician has the same authority is more difficult to answer. There is no specific grant of the right to delegate in the Medical Practice Act. However, the Board of Medical Licensure has a written opinion on the delegation of school health services to school employees and held that physicians have such authority. See, "Board Opinion Regarding Training of and Delegation to School Employees", Kentucky Board of Medical Licensure, 12/17/2009. Consequently, it can be argued that a physician also has the authority to delegate the handing of a medication to a patient to an RN or LPN. It should be noted that insofar as controlled substances are concerned, KRS 218A.180 has been interpreted by the Cabinet for Health and Family Services to require that a physician hand the medication directly to the patient. (Email communication from Lee Guice, CHFS, Office of the Inspector General, 8/6/2010.)

A related question concerns whether an APRN can provide over the counter medications to patients or is this considered dispensing. KRS 217.905 defines "legend drugs" which does not include over the counter medications. Dispensing as defined in KRS 314.011(17) and KRS 315.010(19) relates to legend and scheduled drugs, according to the Board of Pharmacy. The Board of Pharmacy does not interpret "issuing" or "providing" over the counter medications as dispensing. (Based on a telephone conversation with Board of Pharmacy staff.)

However, it is not within the scope of registered nursing practice or licensed practical nursing practice to make an independent determination of a medication or prescribe or order a

medication, either over the counter or prescription. RNs and LPNs may implement standing orders or protocols which are written and have been agreed upon by a physician or APRN for conditions that can be treated with over the counter medications.

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