

DISPENSING BY NURSES

This opinion addresses the following questions:

- (1) May an APRN delegate the act of handing a medication to a patient to an RN or LPN?
- (2) May a physician delegate the act of handing a medication to a patient to an RN or LPN?
- (3) What is an APRN's legal authority to dispense?

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 Advanced Practice Registered Nurse (APRN) may only dispense labeled pharmaceutical 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).

An APRN is also licensed as a Registered Nurse (RN). 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. The law would allow APRNs to delegate the handing of a labeled pharmaceutical 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 Kentucky Medical Practice Act. However, the Kentucky 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 Kentucky Board of Pharmacy. The Kentucky 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.)

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.

As concerns the authority to dispense by APRNs, KRS 314.011(17) defines “dispense”, in applicable part, as “to receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party”. Other than this specific provision, an APRN does not have the legal authority to dispense medications. Drugs are, to a large part, regulated by the federal government. Federal rules, specifically 21 C.F.R. Section 203, deal with legend drug samples. They must be obtained by the APRN from a pharmaceutical manufacturer or a manufacturer’s authorize distributor, representative, or detailer, or delivered directly to the patient by the manufacturer or their authorized distributor, representative, or detailer pursuant to a prescriber’s written request. In addition, legend drug samples are required to be individually packaged, marked with lot numbers, and labeled as samples. See, KBN Connection, Edition 49, Fall 2016, “Dispensing Legend Drug Samples”, pp. 18-19. APRNs may never dispense controlled substances, even at the specific direction of a physician. APRNs may dispense legend drugs only in the form of individual pharmaceutically packaged legend drug samples, which are labeled as such and marked with lot numbers by the manufacturer or its agents. APRNs may not purchase legend drugs in bulk, repackage them in smaller quantities, call them samples, and dispense them to patients at no charge.

The attorneys for the Kentucky Board of Nursing provide legal opinions to assist the public in the interpretation of the provisions of KRS Chapter 314 and the regulations enacted in accordance with the provisions of KRS Chapter 314. These legal opinions do not have the force of law and should not be cited as legal authority. Rather, these opinions constitute the legal opinion of the KBN attorney who authored the legal opinion as of the date of the issuance of the opinion.

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