

Request from the Texas State Board of Podiatric Medical Examiners for Information Relating to a Podiatrist Delegating the Authority to Provide Medical Aspects of Care to APNs

Summary of Request: Consider a request from the Texas State Board of Podiatric Medical Examiners (TSBPME) for information relating to advanced practice nurses providing medical aspects of care under the delegated authority of a podiatrist.

Historical Information: In September 2005, staff received a letter from Hemant Makan, Executive Director of the TSBPME, regarding a nurse practitioner's scope of practice related to the care of patients with ingrown toenails. The TSBPME requested clarification regarding whether it is within the scope of practice of nurse practitioners to provide such care. Additionally, the question was raised whether nurse practitioners may be employed by podiatrists. A copy of this letter is included as Attachment A. (Please note that the article referred to in the TSBPME letter has not been included as part of the attachment as it is eleven pages in length. A copy of the article will be available for review on the day of the Board meeting should Board members wish to review it).

A written response was submitted to the TSBPME by Katherine Thomas (Attachment B). Ms. Thomas clarified that it would likely be within the scope of practice of the nurse practitioner who wrote the article to care for patients with ingrown toenails. On the latter question regarding the employment issue, Ms. Thomas agreed to place this issue on the Board's January 2006 agenda for discussion.

In addition to the above issue, staff became aware of a question and answer posted on the TSBPME's web site addressing podiatrists writing orders for anesthesia to be carried out by nurse anesthetists (Attachment C). Although Section 301.002(c) of the Nursing Practice Act clearly states that registered nurses may accept orders for administration of medications and treatments as ordered by a podiatrist, it is not entirely clear whether approval from the TSBPME is the only requirement that must be met for a nurse anesthetist to carry out orders for administration of anesthesia by a podiatrist. It is not clear whether the podiatrist has the authority to prescribe/administer medications and apply medical devices for the purpose of inducing and maintaining anesthesia at any level. Additionally, it is not clear whether a podiatrist has the authority to delegate the ordering of such drugs and devices to individuals such as nurse anesthetists, nor is it clear that it is within the podiatrist's scope of practice to manage complications that fall outside the nurse anesthetist's scope of practice. Staff have attempted to obtain information regarding the TSBPME's position from Mr. Makan but have not received a response as of the writing of this agenda item. Staff will provide Board members with any additional information received at the Board meeting.

Given the significant implications regarding scope of practice, it is staff's recommendation that the Board not take action on these issues at this time. The additional time would allow staff the opportunity to further research the podiatrist's scope of practice and any statutory authority a podiatrist may have related to delegation to advanced practice nurses. These issues should also be discussed with the TSBPME and its staff as well as the Advanced Practice Nursing Advisory Committee to obtain input from affected stakeholders. The results of staff's research along with comments from stakeholders would then be brought back to the Board for its consideration at a future meeting.

Pros and Cons: Delaying action on this issue would allow additional time for research and stakeholder input. Staff cannot currently provide any assurance to the Board regarding the podiatrist's scope of practice or authority to delegate to advanced practice nurses.

Staff Recommendation: Move to direct staff to research the issues related to advanced practice nurses providing medical aspects of care in collaboration with podiatrists, discuss these issues with appropriate stakeholders, and provide a recommendation to the Board for consideration at a future Board meeting.



TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

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"Assuring Quality Podiatric Medicine For The Citizens Of Texas"

INVESTIGATIONS DIVISION

September 15, 2005

Katherine Thomas, MN, RN; Executive Director
Board of Nurse Examiners for the State of Texas
333 Guadalupe; Ste. #3-460
Austin, Texas 78701

**RE: Dual Scope of Practice Requests (Case No. 06-005)
NP Performance of Ingrown Toenail Procedures (Keith W. Seidel, NP)**

Dear Ms. Thomas,

The Texas State Board of Podiatric Medical Examiners has the authority to regulate Podiatrists and the practice of Podiatric Medicine in the State of Texas (Texas Occupations Code Chapter 202 and Title 22, Part 18 Texas Administrative Code).

The scope of practice for Podiatric Medicine in the State of Texas is as follows:

Section 202.001(4) of the Texas Occupations Code (Statute) provides: "Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

Section 375.1(2) of the Texas Administrative Code, Title 22, Part 18, (Rules) provides: "Foot"-- The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.

Furthermore, section 202.605 of the Texas Occupations Code (Statute) provides: (a) A person commits an offense if the person professes to be a podiatrist or practices or assumes the duties incident to the practice of podiatry without holding a license to practice podiatry. (b) An offense under this section is punishable by: (1) a fine of not less than \$50 or more than \$500; (2) confinement in the county jail for not less than 30 days or more than six months; or (3) both the fine and confinement.

Attached is an article by Keith W. Seidel, NP (Ft. Stockton Texas Correctional Facility; Texas Tech University) on the performance of "ingrown toenail" procedures performed by Nurse Practitioners published in "Advance for Nurse Practitioners."

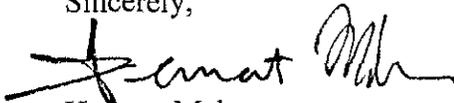
The Board is requesting a review of the article by the Board of Nurse Examiners for a determination of what a Nurse Practitioner's scope of practice is with regard to the (independent) performance of ingrown toenail procedures as detailed in the publication.

The Board is not familiar with a Nurse Practitioner's scope and what procedures may be performed independently without physician (MD, DO) delegation.

Lastly, the Board, on occasion, receives requests from Nurse Practitioners inquiring whether or not they can be employed by a Doctor of Podiatric Medicine (DPM). Historically, after consulting with the Texas Medical Board and the Medical Practices Act, the Board's response has been "No," as there is no specific statutory provision in the Podiatric Medical Practice Act that authorizes such employment of an NP by a DPM. Therefore, the Board is requesting clarification of this issue from the Board of Nurse Examiners if the Board's position is consistent with your Board's interpretation of authorized delegation/employment for NP's.

Thank you for your attention to this matter.

Sincerely,



Hemant Makan

Investigator

(512)-305-7005

Hemant.Makan@foot.state.tx.us

CC: Paul Kinberg, DPM; Board Secretary



KT

Board of Nurse Examiners For the State of Texas

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Katherine A. Thomas, MN, RN
Executive Director

14 November 2005

Hemant Makan
Investigator
Texas State Board of Podiatric Medical Examiners
PO Box 12216
Austin, TX 78711-2216

Dear Mr. Makan:

This letter is in reference to your request for information regarding the scope of practice for nurse practitioners related to performance of ingrown toenail procedures.

The term "advanced practice nurse" is defined in the Nursing Practice Act (*Texas Occupations Code, Sec. 301.152*). This definition is further expanded upon in 22 Tex. Admin. Code, § 221. Rule 221.1(3) defines an advanced practice nurse as:

" . . . A registered nurse approved by the board to practice as an advanced practice nurse based on completing an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services."

The scope of practice and core standards for the advanced practice nurse are defined later in Rule 221. The complete text of the applicable sections follows.

§221.12. Scope of Practice.

The advanced practice nurse provides a broad range of health services, the scope of which shall be based upon educational preparation, continued advanced practice experience and the accepted scope of professional practice of the particular specialty area. Advanced practice nurses practice in a variety of settings and, according to their practice specialty and role, they provide a broad range of health care services to a variety of patient populations.

(1) The scope of practice of particular specialty areas shall be defined by national professional specialty organizations or advanced practice nursing organizations recognized by the Board. The advanced practice nurse may perform only those functions which are within that scope of practice and which are consistent with the Nursing Practice Act, Board rules, and other laws and regulations of the State of Texas.

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(2) The advanced practice nurse's scope of practice shall be in addition to the scope of practice permitted a registered nurse and does not prohibit the advanced practice nurse from practicing in those areas deemed to be within the scope of practice of a registered nurse.

§221.13. Core Standards for Advanced Practice.

(a) The advanced practice nurse shall know and conform to the Texas Nursing Practice Act; current board rules, regulations, and standards of professional nursing; and all federal, state, and local laws, rules, and regulations affecting the advanced role and specialty area. When collaborating with other health care providers, the advanced practice nurse shall be accountable for knowledge of the statutes and rules relating to advanced practice nursing and function within the boundaries of the appropriate advanced practice category.

(b) The advanced practice nurse shall practice within the advanced specialty and role appropriate to his/her advanced educational preparation.

(c) The advanced practice nurse acts independently and/or in collaboration with the health team in the observation, assessment, diagnosis, intervention, evaluation, rehabilitation, care and counsel, and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; and in the promotion and maintenance of health or prevention of illness.

(d) When providing medical aspects of care, advanced practice nurses shall utilize mechanisms which provide authority for that care. These mechanisms may include, but are not limited to, Protocols or other written authorization. This shall not be construed as requiring authority for nursing aspects of care.

(1) Protocols or other written authorization shall promote the exercise of professional judgment by the advanced practice nurse commensurate with his/her education and experience. The degree of detail within protocols/policies/practice guidelines/clinical practice privileges may vary in relation to the complexity of the situations covered by such Protocols, the advanced specialty area of practice, the advanced educational preparation of the individual, and the experience level of the individual advanced practice nurse.

(2) Protocols or other written authorization:

(A) should be jointly developed by the advanced practice nurse and the appropriate physician(s),

(B) shall be signed by both the advanced practice nurse and the physician(s),

(C) shall be reviewed and re-signed at least annually,

(D) shall be maintained in the practice setting of the advanced practice nurse, and

(E) shall be made available as necessary to verify authority to provide medical aspects of care.

(e) The advanced practice nurse shall retain professional accountability for advanced practice nursing care.

Hemant Makan
14 November 2005
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As relates to your specific inquiry, Mr. Keith Seidel is licensed by the Board of Nurse Examiners (Board) as a registered nurse and is authorized to practice as an advanced practice nurse in the role and specialty of family nurse practitioner. A family nurse practitioner's educational preparation generally includes formal preparation related to primary care of patients across the lifespan that includes well-patient care as well as prevention and management of commonly occurring acute illnesses and chronic conditions. Patient management may include but not be limited to performing procedures within the specific scope of practice as well as ordering and interpreting laboratory and diagnostic testing.

I have reviewed Mr. Seidel's article, and it does not suggest that he is in violation of the Nursing Practice Act or Board of Nurse Examiners' rules. It is likely his family nurse practitioner educational program included content related to diagnosis and management of conditions related to ingrown toenails as this condition is commonly seen in many primary care settings. His article provides information relevant to diagnosing and treating such conditions by a primary care provider as well as recommendations for appropriate referral. The article does not indicate that he provides medical aspects of care without Protocols or other written authorization to do so from the collaborating physician; rather, the article describes the care and management he provides related to ingrown toenails. A physician is not required to be physically present at all times that an advanced practice nurse is providing care nor is the physician required to personally diagnose the patient and/or approve the plan of care prior to the advanced practice nurse instituting a management plan. It is not reasonable to presume that Mr. Seidel is providing medical aspects of care without appropriate physician delegation simply because he does not address the physician's role in the article.

As relates to your request for information regarding the appropriateness of nurse practitioners employed by podiatrists, the Board has never set requirements regarding employment practices. Employment practices are not, however, synonymous with delegated authority to provide medical aspects of care. The Board has never discussed this particular issue and, therefore, does not have a position on the issue at this time. Board staff is unaware of any statutory language granting podiatrists explicit authority to delegate the provision of podiatric medical aspects of care, including authorizing or issuing prescription drug orders, to advanced practice nurses; however, all nurses, including advanced practice nurses, may accept and carry out orders from podiatrists. Staff will research this issue further and present information concerning this issue for the Board's consideration at its January 2006 meeting. Members of the Texas State Board of Podiatric Medical Examiners and/or its staff would be welcome to attend that meeting and may participate in the discussion as permitted by the President of the Board of Nurse Examiners.

I hope you find this information helpful. Please be advised that this response to your inquiry is not a "position statement" or "advisory opinion" of the Board; rather, this is an opinion from board staff based solely on representations made in your written correspondence dated September 15, 2005.

Sincerely,



Katherine A. Thomas, MN, RN
Executive Director

16. Can a Podiatrist order the administering of anesthesia by a CRNA (Certified Registered Nurse Anesthetist)?

First, Section 202.001(4) of the Texas Occupations Code (Statute) states: "Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

Second, Section 375.1(2) of the Texas Administrative Code, Title 22, Part 18 (Rules) states: "Foot"--The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.

Notwithstanding local controls of privileging requirements, "Yes," it is in a Podiatrist's scope of practice to order a "consult for anesthesia," as that constitutes treating the foot/ankle "by any system or method." The administering of anesthesia by a CRNA per Podiatrist order is also authorized.