

**FAQ's on the Nurse's Role with the Emergency Medical Treatment & Labor Act (EMTALA):  
Performance of Medical Screening Exams**

**Summary of Request:**

This report is to request review and approval of new FAQs on the role of the nurse regarding the Emergency Medical Treatment and Labor Act (EMTALA), primarily as it relates to performance of a medical screening exam by a registered nurse.

**Historical Perspective:**

In the late 1970's and early 1980's, publicity focused on the unethical practice of some U.S. hospitals that were refusing to accept and treat emergency patients who could not pay for treatment, and attempting to transfer these patients to other facilities. In response to this practice, in 1986 Congress passed the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) statute more commonly known as the "antidumping" law. In 1989 President Bush signed into law amendments that made the previous COBRA restrictions even more stringent. The original provisions have been revised a number of times, including in 1994, 2000, and 2003.

The essential provisions of the law are that any patient who comes to a hospital (or who presents within 250 yards of the hospital campus) must be provided with "an appropriate medical screening examination" to determine if he or she is suffering from an "emergency medical condition." If the person is determined to have an emergency medical condition, then the hospital is obligated to provide him or her with treatment until stabilization or transfer to another hospital in conformance with the current COBRA regulations. If the patient is deemed not to have an "emergency medical condition," the statute imposes no further obligation on the hospital.

Secondary to both cost constraints and availability of emergency room physicians, there is increasing pressure to expand the roles of experienced RNs to perform the required medical screening exams. This impacts primarily RNs employed in the Emergency Department (ED) as well as Labor and Delivery (L&D); however, the statute relates to psychiatric as well as physical medical conditions, and applies to all types of hospitals.

The BNE's previous position has been that determination (presence or absence) of a medical condition through a medical screening exam (MSE) was beyond the scope of practice for a RN who was not educated and authorized in an appropriate advanced practice role and specialty. The purpose of performing the MSE was to determine that a medical (not nursing) condition or diagnosis did or did not exist, and if it did, whether or not emergency treatment was necessary.

Terminology used in the Code of Federal Regulations [42 CFR §489.24(a) is non-specific, and requires that the person performing the medical screening exam be a "qualified medical person" by the hospital bylaws. The hospital must make the designation in its bylaws or rules and regulations. Information on various EMTALA-related web pages now includes discussions on the ability of a non-physician, including a RN who is not an advanced practice nurse, to engage in performance of a medical screening exam. The revised BNE FAQs elaborate the fact that the RN cannot determine a medical diagnosis, and that availability of a physician (telephonically and physically) and standing orders are vital pieces to utilizing RNs successfully in the performance of medical screening examinations.

The increasing numbers of inquiries to Board staff on this topic, as well as concerns voiced by external stakeholders prompted staff to revisit and reconsider the previous position. Most other

State Boards of Nursing do not have specific guidance on this topic. For reference purposes, copies of State Board positions on nurses performing EMTALA medical screening exams are attached (Appendix A) for Kansas, North Dakota, South Dakota, and Oregon.

**Pros & Cons:**

**Pros:** New FAQs on EMTALA medical screening exams will provide needed guidance to nurses and acute care facilities who must comply with the requirements of the Federal (COBRA) Law. Given that the federal interpretation of who may perform a medical screening exam now more explicitly permits a competent RN who is authorized by the facility to perform this function, staff believe aligning the Board's stance with this broader interpretation is needed. This information would be posted on the BNE web page in the Nursing Practice Information section.

**Cons:** Currently the BNE web page provides a link to the EMTALA web page only. Guidance on application of EMTALA to performance of medical screening exams has been provided through emails previously. Lack of current FAQs on the web page makes the BNEs application of this information to nurses in Texas more difficult.

**Recommendations:**

Move to approve new FAQs on the *Nurse's Role with the Emergency Medical Treatment & Labor Act (EMTALA): Performance of Medical Screening Exams*. Also, move to permit Board legal counsel to make non-substantive editorial changes if deemed necessary for purposes of clarification.

**Frequently Asked Questions (FAQ's) on the Nurse's Role with the Emergency Medical Treatment & Labor Act:**

**Performance of Medical Screening Exams**

**Background Information:**

An understanding of what "EMTALA" is and what is meant by performing a "medical screening exam" is essential to the RN performing this task. The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law established in 1986 that requires hospitals/acute care facilities who offer emergency services to provide each person presenting to the Emergency Department (ED) a "medical screening examination" (MSE). A MSE is done to determine whether or not an emergency "medical" (not "nursing") condition exists. EMTALA requires the assessment of a patient for the existence of an emergency medical condition before the patient can be transferred or released from the ED. Interpretive guidelines for EMTALA make it clear that a medical screening is not the same as "triage" [See question #3 below].

An "emergency medical condition" is defined under federal law, 42CFR §489.24, and may be readily viewed in its entirety at <http://www.emtala.com> or the Code of Federal Regulations web page at <http://www.gpoaccess.gov/cfr/retrieve.html>. This definition as cited from the statute is as follows (Figure 1):

**Figure 1: What is an emergency medical condition?"**

*The definition provided under the statute is:*

- *"A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part, or*
- *"With respect to a pregnant woman who is having contractions – that there is inadequate time to effect a safe transfer to another hospital before delivery, or that the transfer may pose a threat to the health or safety of the woman or her unborn child."*

Frequently asked questions (FAQs) on the EMTALA.com web page include the question "**Does the medical screening examination need to be done by a physician?**" Key points from the answer to this question include:

- *"...any assessment which is done by any person other than a physician has a much higher risk of being found insufficient under EMTALA..."* but a hospital may designate specific non-physician staff as "qualified medical personnel."
- *Tailoring the provisions of "qualified medical personnel" to particular areas of nursing specialty, such as permitting OB nurses to examine patients who may be in labor, would probably be found reasonable.*
- *Designating appropriate "physician substitutes" such as physicians' assistants or nurse-midwives is often reasonable, but it is recommended that the bylaws provide for phone consultation with the supervising physician and also identify the situations in which the supervising physician must come in to see the patient personally. [See*

**Question #1: EMTALA requires that all patients presenting to the Emergency Room must have a Medical Screening Exam. The Medicaid guidelines state "Qualified Medical Personnel must do the appropriate medical screen." As a registered nurse with no advanced practice authorization, can I perform a medical screening exam" in my Emergency Department? What about a RN in Labor and Delivery performing a medical screening exam for a pregnant patient?**

**Answer:** Given the background above on EMTALA, the answer to the question "can a RN perform a medical screening exam (MSE)" is "it depends." The EMTALA guidelines and frequently asked questions (FAQs) indicate that a facility may credential specific registered nurses and develop bylaws specifying which RN nursing staff are considered to be "qualified medical personnel" and under what circumstances a physician must be consulted and/or must physically come to the unit/facility. In addition to being permitted by an employing facility, however, the RN must also be competent to carry out the assigned task in a manner that complies with the NPA and Board Rules.

The Board advises a nurse accepting the responsibility for performing a medical screening exam to assure he/she has the experience and knowledge, adequate guidelines for performing this task from the responsible physician(s), and ready access to an on-call physician who is also available to respond in person if needed. While it may sound both exciting and challenging to be one of the RNs "chosen" to perform MSEs in the ED (or Labor/Delivery unit for obstetrical patients), remember that a physician cannot delegate a task that requires independent medical judgement, as this is the practice of medicine—not the practice of nursing. Thus, even if a physician is willing and facility policy permits a RN to be responsible for performing medical screening exams, the RN retains accountability for only accepting assignments that fall within the nurse's scope of practice.

The nurse always has a duty to advocate for the best interest and safety of the patient, and no facility policy or physician supervision can diminish the nurse's duty. Position Statement 15.14 *Duty of a Nurse in Any Setting* [<http://www.bne.state.tx.us/position.htm#15.14>] elaborates on this requirement.

In performing a MSE, it is also crucial to note that a physician cannot delegate, and a facility cannot require by policy or bylaws a RN to independently make a medical diagnosis or prescribe therapeutic or corrective measures. The nurse can participate in the screening process by performing a nursing assessment. A nurse could also initiate diagnostic and/or laboratory tests under standing delegation orders, if in existence at the facility. The nurse may communicate his/her nursing assessment and objective test results to the physician, who may then choose to make a "medical" determination based upon the nurse's data collection and nursing assessment. It may also be possible for the nurse to initiate certain treatments to stabilize a patient and prevent complications based on standing delegation orders authorized by the physician or medical staff of the facility until the physician is able to attend to the patient, or otherwise direct staff in the disposition and treatment deemed medically necessary. The Board's Position Statement 15.5 addresses nursing responsibilities for initiating Physician Standing Orders [<http://www.bne.state.tx.us/position.htm#15.5>].\*

The Texas Medical Board's Rule 193 on physician delegation states in part that "...in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment" [Rule 193.4]. The Medical Board's rules can be

viewed on either their web page (<http://tmb.state.tx.us>) or at Texas Legislature Online (<http://info.sos.state.tx.us>). In addition, the Hospital Licensing Rules under the Department of State Health Services address the requirements for each patient to be evaluated by a physician [Rule 133.44(a)(4)] [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rl oc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=133&rl=44](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rl oc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=133&rl=44).

See Figure 2 for a synopsis of the answer to Question #1.

**Figure 2: The Answer To  
“Can a RN Perform A Medical Screening Exam?”  
In A Nut Shell**

The answer to this question is “It depends.” A RN may be able to perform a medical screening exam if he/she possesses adequate knowledge/skills and there are adequate support systems and standing orders in place; however, the RN should always have telephonic access to a physician who is also capable of physically responding to do a hands-on evaluation if needed/requested by the RN. A medical screening exam is not the same as triage. RNs who do not hold advanced practice authorization cannot independently engage in medical diagnosis or prescription of therapeutic or corrective measures, as this is beyond the scope of practice for a RN.\*

*NOTE: Review of the answer to Question #1 in its entirety is recommended to fully understand the responsibility and accountability of the RN who chooses to accept an assignment where he/she is responsible for performing medical screening exams.*

**Question #2: Can a LVN perform a medical screening exam?**

**Answer:** The Board believes that the performance of a medical screening exam is not within the scope of practice for a LVN, regardless of years of experience or continuing education post-licensure as a LVN. The Board believes a comprehensive nursing assessment would be the minimum level of assessment acceptable to conduct a medical screening exam, and a LVN may only perform a focused assessment on individual clients.

**Question #3: Is a “medical screening exam” the same as “triage”?**

**Answer:** No, a "medical screening exam" is not the same as "triage." The differentiation is discussed in depth under the "Interpretive Guidelines for Enforcement for 42CFR §489.24" on the EMTALA web page [ <http://www.emtala.com/ig.pdf> ] Page 8 of this 23 page document addresses how the Center for Medicare and Medicaid Services (CMS) defines various terms. This guideline to surveyors states in part that *"Individuals coming to the emergency department must be provided a medical screening examination beyond initial triaging. Triage is not equivalent to a medical screening examination. Triage merely determines the "order" in which patients will be seen, not the presence or absence of an emergency medical condition."*

**Question #4: How do the NPA and Rules apply to RNs performing medical screening exams under EMTALA?**

**Answer:** The definition of professional nursing in Section 301.002(2) of the NPA states that the practice of professional nursing "...does not include acts of medical diagnosis or prescription of therapeutic or corrective measures." This means an act must not require the RN to exercise independent medical judgment or medical diagnosis, as

this is the practice of medicine--not nursing. Rule 217.11 "Standards of Nursing Practice" is one of the main rules applied to nursing practice. Some of the standards in Rule 217.11 that would apply to EMTALA medical screening exams performed by a RN include (but are not limited to):

- (1) (A) know and conform to the NPA, rules,...as well as federal, state, or local laws affecting the nurse's current area of practice;
- (1) (B) maintain a safe environment for clients and others;
- (1) (D) accurately and completely report and document...(I)-(vi);
- (1) (P) collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;
- (1) (T) accept only those nursing assignments that take into consideration patient safety and that are commensurate with one's own educational preparation, experience, knowledge and physical and emotional ability.

Regardless of practice setting, the nurse's duty to keep patients safe cannot be superseded by physician orders or facility policies [see Position Statement 15.14 Duty of a Nurse in Any Practice Setting <http://www.bne.state.tx.us/position.htm#15.14> ]. To assist in determining if a task is within an individual nurse's scope of practice, Board staff direct nurses to utilize the Board's Six-Step Decision-Making Model for Determining Nursing Scope of Practice. This document is under "Scope of Practice" in the "Nursing Practice Information" section of the web page at <ftp://www.bne.state.tx.us/dectree.pdf>.

Among other issues, the decision-making model asks if, in the event of a negative outcome, actions within the nurse's scope of practice could correct the problem. In the case of a medical screening exam (MSE), if a RN missed a critical piece of information on patient assessment and sent a patient away without further evaluation or treatment, there may not be a "second chance" to prevent a potentially negative outcome. Nursing practice can and does change over time; however, the Board advises any RN considering accepting an assignment to perform MSEs to review and apply applicable documents listed in this article as well as on the BNE web page under "Scope of Practice" in the Nursing Practice Information section <http://www.bne.state.tx.us/gen-practice.htm>.

#### **Question #5: Can an Advanced Practice Nurse Perform A Medical Screening Exam?**

**Answer:** Advanced practice nurses (APNs) are RNs who have completed a formalized education program (Master's or Post-Master's APN curriculum) that enables them to engage in certain aspects of medical diagnosis and medical management within their advanced practice role and specialty.

In addition, advanced practice recognition is not sufficient on its own to qualify a RN-APN to perform any type of medical screening exam (MSE). The APN would have to be authorized in an appropriate role and specialty--such as Acute Care Nurse Practitioner or Family Nurse Practitioner for evaluation of general medical conditions of adults [a FNP could also evaluate pediatric patients.] A Certified Nurse Midwife, Women's Healthcare Nurse Practitioner, or Clinical Nurse Specialist in Women's Health would have appropriate educational preparation to perform MSEs on obstetrical patients. Conversely, a Psychiatric-Mental Health Nurse Practitioner (PMH-NP) would not be able to determine the presence or absence of general medical (non-psychiatric) conditions or obstetrical conditions of patients as this is not part of the PMH NP's advanced educational preparation.

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Other sources of information on EMTALA include:

- Texas Medicaid Office through the Health and Human Services Commission of Texas at <mailto:contact@hhsc.state.tx.us>, or locate the office nearest to you by calling 2-1-1 or using the HHSC web page to find your Area Information Center (AIC) at <http://www.hhs.state.tx.us/tirn/aicsearch.asp>;
- EMTALA web page at [www.emtala.com](http://www.emtala.com); EMTALA FAQs <http://www.emtala.com/faq.htm>; Interpretive Guidelines for Medicare Participating Hospitals in Emergency Cases <http://www.emtala.com/ig.pdf>
- Centers for Medicare and Medicaid Services at <http://www4.cms.hhs.gov/EMTALA/> or national toll free number 1-822-267-2323.
- Emergency Nurses Association <http://www.ena.org/government/emtala/article2.asp>
- Code of Federal Regulations Home Page <http://www.gpoaccess.gov/cfr/index.html>
- American Academy of Emergency Medicine <http://www.aaem.org/emtala/index.shtml>

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\*This article is for informational purposes and is not to be construed as legal advice or as interpretation of laws or regulations beyond the NPA and Board Rules & Regulations. This document is not an endorsement of any organization or web page, public or private, and no attempt has been made to be all-inclusive of web sites providing information on the Emergency Medical Treatment and Labor Act (EMTALA).

# Kansas State Board of Nursing



## KANSAS STATE BOARD OF NURSING

### GUIDELINE

#### Medical Screening Exams The Role Of Kansas Licensed Nurses

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Can nurses licensed in Kansas perform a medical screening exam (MSE) for the purposes of meeting Medicare requirements? The State laws that deal with this issue are in the Kansas Nurse Practice Act at K.S.A. 65-1113, K.S.A 65-1120 and K.A.R 60-3-110. The Federal Laws are found in the Social Security Act, sections 1866 and 1867, the Consolidated Omnibus Reconciliation Act of 1987 (COBRA) and the Emergency Medical Treatment and Active Labor Act (EMTALA). The Federal laws are often referred to as the Anti-dumping or Dumping laws.

The Practice Committee met with HCFA Representatives on February 22, 2000. The KSBN Board discussed the issue on February 23, 2000. The consenses of the board was as follows:

The Kansas Nurse Practice Act allows a nurse to participate in a medical screening exam by performing an assessment and making a nursing diagnosis. Nurses may not make a medical diagnosis. Nurses can contact a Physician, Physician's Assistant or Advanced Registered Nurse Practitioner and relay their findings to that health care provider. A Physician, Physician's Assistant or Advanced Registered Nurse Practitioner can make a medical diagnosis and direct care based upon that contact. A nurse can reduce that diagnosis and direction to writing in the form of an order. A nurse can carry out those orders at that time.

**The paper on this issue has been written to serve as a guideline on the recognized standard of nursing practice and does not carry the weight and force of law.**

## Oregon State Board of Nursing Policy Statement

# Registered Nurse Role in the EMTALA Medical Screening Examination

### **Statement of Purpose**

The purpose of this policy is to provide scope of practice clarification for Registered Nurses who may be in a position to provide medical screening examinations.

### **RN Role and Requirements**

The Oregon State Board of Nursing affirms that it is within the role and scope of practice for the Registered Nurse (RN) to perform a medical screening examination (MSE). Further, the Board believes that MSEs are beyond the scope of practice for the Licensed Practical Nurse, or the tasks allowed for unlicensed assistive personnel. It also is the Board's position that the RN completing the MSE is establishing the presence or absence of an emergency medical condition, and is not engaged in making an independent medical diagnosis or developing a medical treatment plan.

### **Background Information**

In 1986, the Emergency Medical Treatment and Active Labor Act (EMTALA) was passed by Congress as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA). Other changes in the law have occurred since that time. EMTALA was enacted to define requirements for the screening of patients to determine whether a medical emergency exists, and to impose requirements for transfer of unstable patients from one facility to another. The purpose behind this law was to prevent hospitals from rejecting or transferring patients due to lack of insurance.

Specifically, EMTALA requires that any individual who presents to a dedicated emergency department with a request for medical examination or treatment, or to determine if active labor is present, must be provided an "appropriate medical screening examination" to determine whether or not an emergency medical condition exists. If an emergency condition exists, the hospital is obligated to provide care until stabilized, or to transfer that individual to another hospital in accordance with the provisions of the statute.

The individual who performs the medical screening examination must be a "qualified medical person" approved by the hospital governing body or bylaws. The examination must be thorough enough to determine whether an emergency medical condition exists. It should contain medical history, physical examination, appropriate diagnostic testing, consultation with other pertinent providers, and evaluation prior to discharge or transfer. Triage does not satisfy the EMTALA requirements for a medical screening examination.

The RN may perform the MSE, in the context of EMTALA, provided the following criteria are met:

1. The hospital/facility board of directors or governing body must approve the plan in order for RNs to function in this capacity.
2. The RN must function under protocols/algorithms that are approved by an interdisciplinary practice committee. These protocols/algorithms must specify at which point the provider would be contacted. The Board recommends that a RN

who will be performing the MSE be included as a member of the interdisciplinary practice committee.

3. There must be a provider with authority to independently medically diagnose and treat (i.e. Nurse Practitioner, Chiropractor, Dentist, Naturopath, Physician or Podiatrist), who has training or experience in emergency care, or in the specialty involved, on call and available by telephone, radio contact or in person.

4. The hospital/facility must have a training program for the RN to teach the elements of the facility's medical screening examination protocols/algorithms.

5. The RN must be able to demonstrate competency to perform the MSE prior to assignment as the qualified medical person responsible for completion of the MSE. This competency must be documented.

6. The hospital/facility must have a performance improvement program in place that will provide evaluation of the services rendered by RNs providing MSEs.

### **References**

1. 42 US Code § 1395dd.

2. 42 CFR § 489.24.

3. Centers for Medicare and Medicaid Services (CMS) "Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions," September 9, 2003.

4. 42 CFR § 485.618 (d).

**Adopted 2/05**

**SOUTH DAKOTA BOARD OF NURSING**  
**ADVISORY OPINIONS**

**Performance of Medical Screening Examinations by Registered Nurses**

It is within the scope of practice for a registered nurse to conduct a medical screening examination and determine whether a patient has an emergency medical condition, pursuant to EMTALA. Medical and nursing staff should be in agreement as to the written policies, procedures, and protocols regarding the nurse's responsibilities in assessing patient conditions and instituting appropriate nursing actions, including mutually agreed upon criteria for reporting the findings of assessments and life threatening conditions. Only nurses who have satisfactorily demonstrated competency in the area of practice in the clinical setting should be allowed to perform such functions.

This opinion was rendered by the Board of Nursing upon submission of a written request. Although advisory opinions are not judicially reviewable and do not have the force and effect of law, they do serve as guidelines for nurses who wish to engage in safe nursing practices. The South Dakota Board of Nursing adopted this advisory opinion at its November 18-19, 1999 meeting.



# North Dakota Board of Nursing


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## Opinions

### MEDICAL SCREENING EXAMINATION ADVISORY OPINION

It is within the Scope of Practice for a Registered Nurse to perform a medical screening examination including screening of women in labor within the capability of hospital's emergency department if the hospital includes this in their bylaws and the following requirements are met:

- A. A written policy and procedure is maintained by the facility.
- B. Is currently licensed as an RN by the Board of Nursing and credentialed by the hospital.
- C. The facility has included this in their bylaws and includes the definition of "qualified medical person".
- D. Has qualified back up available.
- E. Documentation of licensure is on file with the employer.

Reference:

Federal Register, Part II Department of Health and Human Services, Centers for Medicare & Medicaid Services: 42 CFR Parts 413, 482, and 489 Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals with Emergency medical Conditions; Final Rule. (2003)

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