

**Substantive Changes to Board Position Statement 15.9,
Performance of Laser Therapy by RNs or LVNs**

Summary of Request

During the annual review of the Board Position Statements, Position Statement 15.9, Performance of Laser Therapy by RNs or LVNs, was not approved and was to be re-examined and brought back to the Board for consideration in April of 2013.

Historical Background

A brief summary of proposed rules, lawsuits, legislation, and resultant rules related to aspects of laser therapy:

2003 Texas Medical Board (TMB) proposed, and adopted, rules that would not allow a physician to delegate laser use in ablative procedures but did provide the means for physicians to delegate non-ablative use of lasers to a non-physician.

Prior to enforcement of the TMB rules, two lawsuits were filed, subsequently a Temporary Restraining Order and an Order for Injunctive Relief were granted to the plaintiffs in the Laser Stakeholders Case. As a result, TMB did not begin enforcement of the TMB laser rules.

In both the 79th and 80th Legislative Sessions – legislation was introduced relating to Lasers but did not pass. In the 81st Legislative Session, HB 449 was passed resulting in regulation of Laser Hair Removal by the Department of State Health Services (DSHS).

DSHS adopted rules relating to Laser Hair Removal. Within those rules, the physician, advanced practice registered nurse or physician assistant under the delegated authority of the physician (or another designated physician) may perform the quarterly audits of laser hair removal facilities to ensure compliance of the facility.

Overview of Proposed Changes

In January, Position Statement 15.9, Performance of Laser Therapy by RNs or LVNs was not adopted with proposed substantive changes and is being brought back for further review by the Board. (The Position Statement as proposed in January is included as Attachment B for your convenience.) All proposed changes, as presented in Attachment A, are discussed below.

The first change proposed is editorial in nature, and is located in the first sentence, to change the wording from “technology of lasers has changed” to “use of...and the technology of...laser use have...” as both the technology and application through use have evolved over time. In the same sentence a duplicate word is eliminated by changing the last “use” to “purposes.”

A discussion point in January was the use of the words treatment and procedure in the third sentence of the position statement. The Nursing Practice Act states that RNs administer a “medication or treatment” [NPA 301.002 (2) (C)], and Board Rule 217.11 (1) (D) states that RNs and LVNs document the administration of a medication or treatment. Therefore to align with the NPA and Board Rules the word “procedure” is being replaced with the word “treatment.”

When there were proposed and adopted (but not enforced) rules from the TMB that clearly delineated that only a physician could use lasers, Position Statement 15.9, Performance of Laser Therapy by RNs or LVNs, reflected and reiterated this stance by including the phrase that “It is not within the scope of nursing practice to perform the delivery of laser energy on a patient as an independent nursing function.” Since passage of HB 499 in the 81st Legislative Session, and subsequent passage of rules by the Department of State Health Services, advanced practice registered nurses are faced with a dilemma in that they are not allowed to

perform services yet they are allowed to audit Laser Hair Removal Facilities to ensure the services are being performed in accordance with applicable regulations. The substantive proposed change would remove this dilemma for the advanced practice registered nurse and provide direction for nurses, provided the nurse has a valid order, the education, experience, and knowledge to perform the assignment [22 TAC §217.11 (1) (T)].

The proposed changes to the 5th sentence, deletes the references to the TMB Rules (since there are no longer any specific rules related to laser use) and reiterate requirements for nurses in the Nursing Practice Act and Board Rules.

The first sentence of the second paragraph reinforces the role of the physician and provides an example of nonablative laser therapy where there are specific rules and statutes to be followed. There is a proposed new bullet point number 5 to provide a reference to the statutes and rules related to laser hair removal.

In January there was discussion related to delegation and re-delegation. Advanced Practice Registered Nurses and Physician Assistants have delegated authority from physicians to perform the medical aspects of care that are within the scope of practice of the Advanced Practice Registered Nurse or the Physician Assistant. The mechanisms for granting medical authority (defined by the Texas Medical Practice Act as protocols) do not require the physician to examine each patient nor are the protocols required to be specific. Advanced Practice Registered Nurses and Physician Assistants are authorized to order or prescribe medications and treatments via their protocols, and nurses are permitted to carry out these orders if they have the knowledge, education and experience to do so. A new statement has been proposed to prevent any further delegation by RNs, including APRNs, to unlicensed personnel to address the concerns of the Board related to re-delegation of laser use.

At the end of the position statement there is a proposed new sentence that will refer nurses to the information found in Position Statement 15.11, Delegated Medical Acts as this is supplemental and reinforcing information related to physician delegation of acts such as the use of lasers.

Pros:

Adoption of Position Statement 15.9, Performance of Laser Therapy by RNs or LVNs, will provide updated guidance to nurses based on current laws related to laser therapy, and will offer clarification on frequently asked questions.

Cons:

None noted.

Recommendations:

Move to adopt Position Statement 15.9, Performance of Laser Therapy by RNs or LVNs, as found in Attachment A, with allowance for non-substantive word editing for purposes of clarity as may be deemed necessary by Board staff.

15.9 Performance of Laser Therapy by RNs or LVNs

The Board of Nursing (BON) recognizes that the use of laser therapy and the technology of lasers use ~~has~~ have changed rapidly since their introduction for medical ~~use purposes~~. Nurses fulfill many important roles in the use of laser therapies. These roles and functions change based upon the type of ~~procedure treatment~~ and the setting in which the treatment occurs. It ~~is not may be~~ within the scope of nursing practice to perform the delivery of laser energy on a patient with a valid order providing the nurse has as an independent nursing function, the education, experience, and knowledge to perform the assignment [22 TAC §217.11 (1) (T)]. RNs (including Advanced Practice Registered Nurses practicing within their educated role and specialty) or LVNs, with an appropriate clinical supervisor, who choose to administer laser therapy ~~under physician delegation~~ must know and comply with ~~the provisions set forth in the TMB's rules for delegates~~ all applicable laws, rules, and regulations, as well as the Nursing Practice Act (NPA) and Rules of the BON [22 TAC §217.11 (1)(A)].

Additional criteria applicable to the nurse who elects to ~~accept physician delegation~~ follow an appropriate order in the use of nonablative laser therapy (such as laser hair removal) include:

- (1) Appropriate education related to use of laser technologies for medical purposes, including laser safety standards of the American National Standards Institute and FDA intended-use labeling parameters;
- (2) The nurse's education and skill assessment is documented in his/her personnel record;
- (3) The procedure has been ordered by a currently licensed physician, podiatrist, or dentist or by an Advanced ~~Health Practitioner~~ Practice Registered Nurse (APRN) or Physician Assistant working in collaboration with one of the aforementioned practitioners; and
- (4) Appropriate medical, nursing, and support service back up is available, since remedies for untoward effects of laser therapy may go beyond the scope of practice of the nurse performing the procedure.

(5) Specific regulations related to laser hair removal, including training requirements, may be accessed on the Texas Department of State Health Services website (www.dshs.state.tx.us)

Registered Nurses, including APRNs, cannot delegate any aspects of the use of lasers to unlicensed persons. As in carrying out any delegated medical act, the nurse is expected to comply with the Nursing Practice Act and the Board's Rules and Regulations.

Additional Reference in relation to physician delegation: Position Statement 15.11, Delegated Medical Acts.

(Board Action, 05/1992; revised 11/1997; 01/2003; 04/2004; 01/2006; 01/2008; 01/2009; 01/2011; ~~04/2013~~)
(Reviewed - 01/2005; 01/2007; 01/2010; 01/2012)

15.9 Performance of Laser Therapy by RNs or LVNs

The Board of Nursing (BON) recognizes that the use of laser therapy and the technology of lasers has changed rapidly since their introduction for medical use. Nurses fulfill many important roles in the use of laser therapies. These roles and functions change based upon the type of procedure and the setting in which the treatment occurs. It ~~is not may be~~ within the scope of nursing practice to perform the delivery of laser energy on a patient with a valid order providing the nurse has ~~as an independent nursing function~~, the education, experience, and knowledge to perform the assignment [22 TAC §217.11 (1) (T)]. RNs (including Advanced Practice Registered Nurses practicing within their educated role and specialty) or LVNs, with an appropriate clinical supervisor, who choose to administer laser therapy ~~under physician delegation~~ must know and comply with ~~the provisions set forth in the TMB's rules for delegates~~ all applicable laws, rules, and regulations, as well as the Nursing Practice Act (NPA) and Rules of the BON [22 TAC §217.11 (1)(A)].

Additional criteria applicable to the nurse who elects to accept physician delegation in the use of nonablative laser therapy include:

- (1) Appropriate education related to use of laser technologies for medical purposes, including laser safety standards of the American National Standards Institute and FDA intended-use labeling parameters;
- (2) The nurse's education and skill assessment is documented in his/her personnel record;
- (3) The procedure has been ordered by a currently licensed physician, podiatrist, or dentist or by an Advanced ~~Health Practitioner~~ Practice Registered Nurse or Physician Assistant working in collaboration with one of the aforementioned practitioners; and
- (4) Appropriate medical, nursing, and support service back up is available, since remedies for untoward effects of laser therapy may go beyond the scope of practice of the nurse performing the procedure.

As in carrying out any delegated medical act, the nurse is expected to comply with the Nursing Practice Act and the Board's Rules and Regulations.

[Additional Reference in relation to physician delegation: Position Statement 15.11, Delegated Medical Acts.](#)

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