

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 15, 2014
ATTENTION: Board Members
SUBJECT: Physician Assistant Regulation, 16 CCR 1399.541
FROM: Kerrie Webb, Senior Staff Counsel

REQUESTED ACTION:

After review and consideration of the attached proposed language modifying Title 16, California Code of Regulations (CCR) section 1399.541 (Attachment A), make a motion to approve the modified language, and refer the matter back to the Physician Assistant Board for consideration. If the language is approved without substantive changes, authorize the modified language to be noticed for another 15-day comment period.

BACKGROUND:

At the February 2014 meeting of the Medical Board of California (Board), Board Members held a hearing and reviewed the comments received during the 45-day comment period on the proposed modifications to 16 CCR 1399.541, addressing physician supervision of physician assistants acting as first or second surgery assistants. Members voted to make a small modification to the language by striking an “or” from the last sentence. The proposed modification was noticed for a 15-day comment period on March 13, 2014 (see Attachment B).

The comments received during this 15-day period, included herewith as Attachment C, are not related to the specific modification prompting the re-notice. Nonetheless, the Board has the discretion to reopen and reconsider the language. Following consideration of the comments received and discussions with counsel from the Department of Consumer Affairs and Health Quality Enforcement Section, staff recommends further clarifying the definition of “immediately available,” and submits the attached proposed language (see Attachment A).

If the Board Members vote to support this further modification, the proposed regulation should be referred back the Physician Assistant Board for review and approval. If the Physician Assistant Board approves the modified language, it will be noticed for another 15-day comment period. If no adverse comments are received, the Executive Director will submit the regulation to the Office of Administrative Law and complete the rulemaking process.

**MEDICAL BOARD OF CALIFORNIA
SPECIFIC LANGUAGE OF PROPOSED CHANGES
MEDICAL SERVICES PERFORMABLE**

AMENDED MODIFIED TEXT

Legend

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation
<u>Red underlined</u>	Indicates additional proposed amendments to the originally proposed language.
Strikeout	Indicates proposed deletions to the existing regulation.
Double strikeout	Indicates additional deletions to the originally proposed language

Amend Section 1399.541 of Article 4 of Division 13.8 as follows:

§ 1399.541. Medical Services Performable.

Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

- (a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.
- (b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.
- (c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.

(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.

(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.

(i)(1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of an ~~approved~~ supervising physician.

(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an ~~approved~~ supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically accessible and able to return to the patient, without any delay, upon the request of the physician assistant or to address any situation requiring the supervising physician's services.

Note: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code.
Reference: Sections 2058, 3502 and 3502.1, Business and Professions Code.

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that Medical Board of California has proposed modifications to the text of section 1399.541 in Title 16 Cal. Code Reg. which was the subject of a regulatory hearing on February 7, 2014. A copy of the modified text is enclosed. Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before March 28, 2014, to the following:

Glenn L. Mitchell, Jr.
Physician Assistant Board
2005 Evergreen Street, Suite 1100
Sacramento, CA 95815

Telephone Number: 916. 561.8783
Fax Number: 916.261.2671
E-Mail Address: glenn.mitchell@mbc.ca.gov

DATED: 3/13/14



Christine Valine, Regulations Coordinator

**MEDICAL BOARD OF CALIFORNIA
SPECIFIC LANGUAGE OF PROPOSED CHANGES
MEDICAL SERVICES PERFORMABLE**

MODIFIED TEXT

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In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

- (a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.
- (b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.
- (c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.
- (d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.

(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

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(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an ~~approved~~ supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means able to return to the patient, without delay, upon the request of the physician assistant ~~or~~ to address any situation requiring the supervising physician's services.

Note: Authority cited: Sections 2018, 3502 and 3510, Business and Professions Code.
Reference: Sections 2058, 3502 and 3502.1, Business and Professions Code.

From: Troy Lair [<mailto:troylair@thecompliancedoctor.com>]
Sent: Thursday, March 13, 2014 7:55 PM
To: glen.mitchell@mbc.ca.gov
Subject: regulation changes regarding physician assistants comment

Mr. Mitchell:

As always, I appreciate anyone in a position such as yourself in that the task of trying to please many paralleled with the task of protecting the integrity of professional credentials is most challenging.

In so much as I understand the importance of the clarification of this regulatory suggested change, I still feel that there is too much interpretive conclusions that are being left up to a many that may exercise poor judgement in their understanding of what "immediately available" should mean.

We have seen this over the years with post operative patients and their surgeons and anesthesia providers wishing to vacate the premises post PACU transfer and report. Likewise, the same issue the CRNAs and Anesthesiologist and the Governorship involvement in the matter.

My suggestion is simple, immediately available could be interpreted into telephonic or face to face. With telephonic, immediately available should never pose a threat nor problem. But, with face to face- it is a dreaded and obvious failure. In California alone, traffic would be the underlying issue for anyone trying to reach a destination with the sense of urgency. So I think there should be more clarity in defining the term immediate leaving less chance for multiple interpretations of the physicians being they are the ones that will see their roles compromised by the ethical definition of being immediately available. Lives could be saved by adding just this simple two part clarity.

Best to you.

Troy Lair, PhD



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March 14, 2014

LICENSING
PROGRAM

Medical Board of California
The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Dear Board Members:

I am writing to you regarding the regulatory proposal to amend Title 16, California Code of Regulations (CCR) Section 1399.541, which seeks to update and clarify physician assistant supervision requirements.

Following the regulatory hearing held on February 7, 2014, members of the Medical Board of California, after public comment and discussion, modified the language by deleting the word "or" from the originally proposed text. The Board voted to approve the proposed amendment to the text. Because of this amendment, a 15-day comment period will take place to allow for further public comment regarding this change.

At the Physician Assistant Board meeting on February 24, 2014, Physician Assistant Board members reviewed the modified text of Title 16, CCR Section 1399.541 as approved by the Medical Board of California. The Physician Assistant Board asked that I inform you that it supports this suggested amendment to the proposed text of the regulation.

I would like to thank the Medical Board of California for their support of this regulatory proposal to amend Title 16, California Code of Regulations Section 1399.541.

Thank you.

Sincerely,

Glenn L. Mitchell, Jr.
Executive Officer

cc: Members, Physician Assistant Board

From: S. Ross [mailto:qrsw@comcast.net]
Sent: Friday, March 21, 2014 3:36 PM
To: Mitchell, Glenn@MBC
Cc: bjohnson@cmanet.org
Subject: Modified PA Supervision Language

Dear Mr. Mitchell:

I am concerned that the modified text of Sec. 1399.541 in title 16 CA. Code Reg. loosens the supervisory responsibilities of the physician. In (i) 1 it clearly states that a PA can only perform "surgical procedures" in the "**personal presence** of a supervising physician" when the patient is under any form of anesthetic other than procedures that are **customarily** performed under local anesthetic (incidentally that would NOT include wound closure for open procedures conducted under general or regional anesthesia). This means that the **supervising physician** must be **right there** i.e. in the **same** operating/procedure suite with eyes on the procedure and the PA.

In (i)2 the language now states that the PA can do exactly the same procedures under the same anesthetic conditions with the supervising physician ONLY "immediately available" (which could of course mean a delay), and only when the PA requests h/er, which is clearly intended to mean that s/he is not in the "personal presence" of the now unsupervised PA as required by (i)1.

Any language change as it relates to patient care should always err in the patients favor. This is clearly not the case here. A physician assistant is exactly that - an assistant - and when the physician is away from the patient the PA now becomes the **de facto** surgeon. Surely this not the intent of the modified language. Please reconsider this language change. Thank you

Stephen Ross, M.D.
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