

What tasks are delegable to—and performable by—medical assistants?

Part I

The following is adapted from the handout for my presentation of the same title for the 2020 American Academy of Ambulatory Care Nursing Annual (Virtual) Conference.



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Definition of medical assistants

Medical assistants are allied health professionals who work predominately under licensed provider authority in outpatient settings—including outpatient departments of primarily inpatient institutions. Medical assistants may be delegated certain clinical, patient-communication, and administrative tasks by licensed providers. The category of *licensed providers* most often includes physicians, nurse practitioners, and physician assistants.

Expanded scope of work during the COVID-19 pandemic

The scope of work for most health professionals has expanded during the COVID-19 pandemic. And medical assistants are no exception. They are being delegated nasopharyngeal swabbing for COVID-19 testing, which has been authorized by gubernatorial executive orders and a Centers for Medicare & Medicaid Services (CMS) final rule.¹ Additionally, medical assistants' role in telemedicine had been increasing under the Medicare Chronic Care Management (CCM) and Transitional Care Management (TCM) programs and quickly expanded even further during the pandemic. This expansion is consistent with written guidance issued by the Centers for Disease Control and Prevention (CDC). Furthermore, medical assistants have been called to work in inpatient environments, including acute care delivery settings.

Legal authority for scope of work

All health professionals must have a source of legal authority to practice their specific

professions. In most states, medical assistants' scope of work is determined by the delegation provisions of the practice acts and regulations applicable to the delegating licensed providers. Consequently, the medical assisting scope of tasks may vary depending on whether the delegating provider is a physician, nurse practitioner, or physician assistant (or another licensed provider, such as a podiatrist, optometrist, or dentist).

National Guidelines for Nursing Delegation

The National Council of State Boards of Nursing and the American Nurses Association released the document *National Guidelines for Nursing Delegation*,¹ effective as of April 29, 2019, to clarify responsibilities associated with delegation. This document contains the following definition of *assistive personnel*:

Any assistive personnel trained to function in a supportive role, regardless of title, to whom a nursing responsibility may be delegated.²

Such personnel include medical assistants, particularly those who are credentialed.²

Delegation to supervise

Licensed *providers* are authorized to delegate to licensed *professionals*—who have the requisite knowledge and skills—the supervision of medical assistants performing tasks that licensed providers delegated to those medical assistants. Examples of licensed professionals are registered nurses, radiologic technologists, and medical laboratory technologists.

Legal axiom 1

Medical assistants must never refer to themselves as “office nurses,” “doctors’ nurses,” or as nurses of any kind. In every U.S. jurisdiction, this is a violation of the nurse practice act, the regulations of the state board of nursing, or both. This is a criminal or quasi-criminal offense and is punishable by, in some cases, serious sanctions.

Legal axiom 2

Medical assistants must not perform any task for which they are not knowledgeable and competent, and they must perform all tasks in a manner that meets or exceeds that of a competent medical assistant. In other words, medical assistants must meet or exceed the applicable standard of care. Failure to do so constitutes negligence and may be a basis for a civil lawsuit.

Legal axiom 3

Medical assistants must not perform tasks that are restricted in state law to other health professionals—often licensed professionals. For example, because physical therapists are licensed in all states, medical assistants are forbidden from performing the full range of physical therapy duties.

Application of legal axioms 1, 2, and 3

- If a medical assistant performs a task in a negligent manner, both the medical assistant and the delegating provider may be held civilly liable for negligence.

- If a medical assistant performs a task not permitted by state law (even if the task is performed competently), the medical assistant may be charged with exceeding the legal scope of practice for medical assistants. The delegating provider may be charged with unlawful delegation. In such a situation, both the medical assistant and the provider may be subject to criminal or quasi-criminal sanctions.
- If a medical assistant performs a task negligently and the task is not permitted by state law, both the medical assistant and the delegating provider may be subject to both civil and criminal or quasi-criminal consequences.

Legal axiom 4

Medical assistants must not perform any tasks that require them to (a) exercise independent clinical judgment or (b) make clinical assessments, evaluations, or interpretations.

Application of legal axiom 4

What duties require the exercise of independent clinical judgment or the making of clinical assessments? In my opinion, the following *do not* and therefore *are delegable* to medical assistants:

- Receiving, documenting, and conveying information *verbatim* for the delegating provider
- Following provider-approved decision trees, algorithms, and protocols that do not require clinical judgment to execute
- Providing patient education, the content of which is approved by the provider, that does not require the exercise of clinical judgment

Myth 1

Myth—The Joint Commission *Standards for Ambulatory Care*³ does not permit medical assistants to be delegated injections.

Truth—The Joint Commission (a) *Standards for Ambulatory Care* and (b) *Comprehensive Accreditation Manual for Hospitals*⁴ defer to state delegation law. They do not override or supersede state law.

Myth 2

Myth—The tasks physicians are permitted to delegate to medical assistants are limited by state nursing law.

Truth—The (a) state medical practice act and (b) regulations, policies, and decisions of the state board of medical examiners establish what tasks physicians are permitted to delegate to which health professionals—including medical assistants. State nursing law has no authority over what tasks physicians are permitted to delegate.

Myth 3

Myth—The state medical practice act limits the tasks nurse practitioners are permitted to delegate to medical assistants.

Truth—The (a) state nurse practice act and (b) regulations, policies, and decisions of the state board of nursing establish what tasks advanced practice registered nurses (including nurse practitioners) are permitted to delegate to which health professionals—licensed or unlicensed—including medical assistants. The state medical practice act has no authority over what tasks nurse practitioners are permitted to delegate.

Questions for determining the legal delegability of a task

- Does state law specifically authorize or forbid the delegation of the task to medical assistants?
- Is the task usually and customarily delegated to medical assistants in the state and in other states? If so, the task is more likely to be legally delegable to medical assistants.
- Is the task listed in Appendix B (“Core Curriculum for Medical Assistants”) of the Commission on Accreditation of Allied Health Education Programs (CAAHEP) *Standards and Guidelines*

*for the Accreditation of Educational Programs in Medical Assisting*⁵? If so, the task is more likely to be legally delegable to medical assistants.

- Will the malpractice insurance carrier for the practice/health system/clinic cover any negligence by a medical assistant performing the task? If not, the task is less likely to be legally delegable to medical assistants.
- Does the task require the exercise of independent clinical judgment or the making of clinical assessments, evaluations, or interpretations? If so, the task is not delegable to medical assistants.

Order entry

My legal opinion is that medical assistants are permitted to enter and pend prescription/medication, laboratory, and diagnostic imaging orders into the computerized provider order entry (CPOE) system based on the delegating provider’s verbal or standing order. The delegating provider must review and approve the pended order before it can become actionable and be transmitted. This is a conservative opinion; however, I believe it reflects the best practice. ♦

Questions about this adapted presentation may be directed to AAMA CEO and Legal Counsel Donald A. Balasa, JD, MBA, at dbalasa@aama-ntl.org.

References

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