Supervision & Delegation
KAMSS Spring Conference

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General Counsel
Who do you supervise?
What do you delegate?
How you avoid problems.
DELEGATION & SUPERVISION AUTHORITY:

• Where does it come from?
  • KSA 65-28,127

• What are the consequences for improper delegation & supervision?
  • KSA 65-2837(b)(14)
  • 65-2837(b)(26)
  • KSA 65-2837(b)(30)
DELEGATION & SUPERVISION AUTHORITY:

- Where does it come from?
  - KSA 65-28,127
  - Scope of authority to delegate & supervise
  - Requirements & limitations
KSA 65-28,127: 6 requirements for physicians

1. Be actively engaged in practice in Kansas
2. Current protocols & collaborative agreements
3. Only delegate what you know can competently be performed by the person you are delegating to
KSA 65-28,127: 6 requirements for physicians

4. Only delegate acts within your normal scope & competence
5. Provide qualified substitute in your absence
6. Comply with statutory & regulatory limits on delegation & supervision
Delegation & Supervision Authority:

- What are the consequences for improper delegation & supervision?

KSA 65-2837(b)(14): Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.
Delegation & Supervision Authority:

• What are the consequences for improper delegation & supervision?

KSA 65-2837(b)(26): Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

Supervision
Delegation
How you avoid problems
Delegation & Supervision Authority:

• What are the consequences for improper delegation & supervision?

KSA 65-2837(b)(30): Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.
• Professions & people
  • PA, APRN, ND, AT, acupuncture, other unlicensed persons
  • Who can supervise who?

• Delegation & supervision in specific situations
  • Prescribing, Med spas, school sports head injuries
• **PA vs. APRN**
  - Comparison chart of requirements & limitations
  - Statutes and regulations related to PA supervision & delegation
  - Statutes and regulation related to APRN collaborative agreements
<table>
<thead>
<tr>
<th>Issue</th>
<th>PA</th>
<th>APRN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of supervisees</td>
<td>2 (unless in a medical care facility)</td>
<td>No limit</td>
</tr>
<tr>
<td>Scope of practice</td>
<td>No independent scope</td>
<td>Independent nursing scope</td>
</tr>
<tr>
<td>Type of agreement</td>
<td>RP form filed with KSBHA</td>
<td>CA not filed with KSBN</td>
</tr>
<tr>
<td>Prescribing</td>
<td>Protocol (filed with KSBHA)</td>
<td>Protocol</td>
</tr>
<tr>
<td>Practice location</td>
<td>Specific requirements if at a different practice location</td>
<td>None</td>
</tr>
<tr>
<td>Nature of supervision</td>
<td>Method of supervision specified by regulation</td>
<td>None specified outside of KSA 65-28,127</td>
</tr>
<tr>
<td>Ownership in a medical practice</td>
<td>Can’t own more than 49% of medical practice</td>
<td>No limit on % of ownership</td>
</tr>
</tbody>
</table>
Responsible physician ("RP")
KSA 65-28a02(a)(5):

A physician who has accepted continuous & ultimate responsibility for the medical services rendered & actions of the PA while performing under the direction & supervision of the RP
Responsible physician ("RP")

KSA 65-28a10 & KAR 100-28a-17:

Limitation on number of PA that can be supervised

- Generally, each RP can only supervise 2 full-time PAs (variations must have KSBHA approval)

- Exception for services performed in a “medical care facility” (defined by KSA 65-425- hospital, ASC or recuperation center)
Designated physician ("DP")

KSA 65-28a02(a)(6), KSA 65-28a00 & KAR 100-28a-12:
A physician designated by the RP to ensure direction & supervision of the PA
- Functions as back-up supervisor to the RP
- Same duties & responsibilities as the RP
- No statutory or regulatory limit on how many DPs can be back-up for a single PA

Supervision
Delegation
How you avoid problems
PA practice authority:
KSA 65-28a08 & KAR 100-28a-16

- Practice in a dependent role
- May only perform what is delegated & supervised by the RP
- May practice only in a setting authorized by the RP
- May prescribe drugs pursuant to a written protocol with the RP that is filed with KSBHA
- Must be identified to patients & others as the PA for RP
PA scope of practice:
KAR 100-28a-6:

PAs can practice medicine & surgery in accordance with their RP request form which has been filed with the Board. See: http://www.ksbha.org/forms/padrugprot.pdf

OR if.....(con’t)
PA scope of practice:

**KAR 100-28a-6:**

Or if directly ordered, authorized or coordinated by RP or DP when:

1. The RP or DP is immediately or physically present;
2. Through telecommunication from the RP or DP

**Supervision**

**Delegation**

**How you avoid problems**
PA scope of practice:

KAR 100-28a-11:
PA has a duty to communicate with RP or DP if a patient needs treatment the PA hasn’t been authorized to perform.
Direction & supervision of PAs:

KSA 65-28a02(a)(2):

Includes guidance, direction & coordination of the PA’s activities

- Does not require immediate physical presence of physician
- Can be written or verbal
- Can be immediate or by prior arrangement
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 1 of 7)

- RP must practice in Kansas
- RP must verify PA has current Kansas license
- RP must provide for a DP for times when RP will be unavailable
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 2 of 7)

- RP must review & authenticate the patient record of emergency treatment by the PA within 48 hours if the treatment exceeded the authority granted to the PA
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 3 of 7)

• RP must report any discipline taken against the PA to the Board within 10 days
• RP must report termination of responsibility for the PA or litigation against the PA that is grounds for license discipline within 10 days.
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 4 of 7)

- RP must only delegate what the RP believes the PA is competent to perform
- RP must annually review & evaluate PA’s competence in performing patient services
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 5 of 7)

- RP must develop & implement a written method of evaluating professional competency of PA
  - During first 90 days of supervisory relationship, review & authenticate all charts of each patient evaluated or treated by the PA within 14 days
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 6 of 7)

- RP must develop & implement a written method of evaluating professional competency of PA
- After first 90 days, document periodic review & evaluation of PA’s performance, which may include chart reviews
What is adequate supervision of a PA?

KAR 100-28a-10: (slide 7 of 7)

• RP must develop & implement a written method of evaluating professional competency of PA
  • The evaluation & review must be signed by both & maintained at each practice location
  • No requirement to co-sign orders or prescriptions written by PA
PA prescribing authority:

KAR 100-28a-13:
PA may prescribe prescription drugs if authorized by “drug prescription protocol” entered with RP & filed with Board
A PA may administer drugs if authorized by the protocol or if directly ordered/authorized by RP or DP.
PA prescribing authority:

KAR 100-28a-13 – PA prescribing limitations:

• Cannot exceed the quantity or strength that is the normal & customary practice of the RP
• May prescribe controlled substances
• Specific written prescription contents required
• May supply prescription-only drugs to patients under specific conditions

Supervision
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How you avoid problems
PA practice at a “different practice location”
KAR 100-28a-14:

“Different practice location means an office or location maintained or utilized by the RP to regularly meet patients or receive calls, but is not the RP’s primary practice location.”

3 requirements:

• PA has had at least 80 hours of immediate or physical supervision by a Kansas physician
• A Kansas physician periodically sees & treats patients there
• Written notice is posted about location being primarily staffed by a PA
PA ownership of medical practice:

KAR 100-28a-18:

- PA cannot own more than 49%
PA required forms to be filed with the Board:

KSA 65-28a08(d), 65-28a09 & KAR 100-28a-9

- RP request form & drug prescription protocol (all-in-one)
- RP must notify Board if PA supervision is terminated
- PA cannot perform professional services unless RP request form has been filed with the Board
PA required forms to be filed with the Board:
KSA 65-28a08(d), 65-28a09 & KAR 100-28a-9

- Written drug prescription protocol between RP & PA must include categories of drugs allowed to prescribe & those not allowed
- Form: http://www.ksbha.org/forms/padrugprot.pdf
- PA cannot prescribe unless drug prescription protocol is on file with the Board (website has form to change)
APRN scope of practice:

KAR 60-11-101(a):

• Provides for a dual scope of practice
  ➢ Independent decisions about advanced practice nursing
  ➢ Medical decisions based on authorization for collaborative practice with physician(s)
APRN authorization for collaborative practice

KAR 60-11-101(b):

• An APRN is authorized to develop & manage the medical plan of care for patients or clients based upon an agreement developed jointly & signed by the APRN & one or more physicians

• Physician – means either an MD or DO licensed by KSBHA
APRN authorization for collaborative practice

KAR 60-11-101(b):

• Collaborative agreement must be jointly reviewed annually by APRN & physician(s)
• Collaborative agreement must include a cover page with their names, phone numbers, signatures & dates of review
APRN authorization for collaborative practice
KAR 60-11-101(b):

- Collaborative agreement can be maintained in either hard copy or electronic format
- Collaborative agreement must be maintained at the APRN’s principle place of practice
K.A.R. 60-11-102: Categories of APRNs

- Clinical nurse specialist, scope K.A.R. 100-60-107
- Nurse anesthetist, scope K.A.R. 100-60-106
- Nurse–midwife, scope K.A.R. 100-60-105
- Nurse practitioner, scope K.A.R. 100-60-104
Nurse Practitioner functions:
K.A.R. 60-11-104:

- Health promotion & maintenance, disease prevention, and independent nursing diagnosis & treatment of acute & chronic disease
- Develop & manage medical plan of care based on authorization for collaborative practice
- Provide health care services
APRN prescribing authority:
K.S.A. 65-1130:

- May prescribe drugs pursuant to a written protocol authorized by a responsible physician who is a Kansas-licensed MD or DO
- May not dispense drugs, but can distribute samples pursuant to protocol
APRN prescribing authority:
K.S.A. 65-1130:

- Can prescribe controlled substances if the APRN has a DEA number & notifies the Board of Nursing of the name & address of the RP
- Scope of prescribing cannot exceed normal & customary practice of RP

Supervision
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How you avoid problems
APRN drug protocols:
K.A.R. 60-11-104a

- A written protocol is required for prescribing, administering, or supplying prescription-only drugs
- Must specify each classification of disease or injury & the corresponding class of drugs the APRN is permitted to prescribe
- Maintained in a book of published protocols
APRN drug protocols:
K.A.R. 60-11-104a

- Cover page must have names, phone numbers & signatures of APRN & RP, date adopted or last reviewed
- Must be kept at APRN’s principal place of practice
- Must be reviewed by APRN & RP annually
APRN prescription order requirements:
K.A.R. 60-11-104a (c)

• Name, address, & phone number of practice location of APRN
• Name, address, & phone number of RP
• Signed by the APRN with the letters “A.P.R.N.”
APRN prescription order requirements:
K.A.R. 60-11-104a (c)

- Be from a class of drugs prescribed pursuant to the protocol
- Contain the APRN’s DEA registration number when a controlled substance is prescribed
Athletic Trainers (ATs)

- K.S.A. 65-6902(a) and KAR 100-69-9

- Profession has independent scope of practice and can also practice delegated “healing arts” services
- Services provided that are the practice of the healing arts must be delegated pursuant to a practice protocol with an MD, DO or DC that is filed with the KSBHA
- Regulation details protocol contents and process
- DC can only delegate chiropractic services
Special issues relating to Acupuncture

- May be performed by an MD, DO or DC (or ND)
- May be delegated and supervised by an MD, DO or DC (not an ND)
- Supervisor must comply with K.S.A. 65-28,127
  - Can only delegate performance of services in which you are also competent to practice
Who can supervise who:

• Chiropractor can’t delegate to or supervise a PA or APRN
• PAs can’t supervise/collaborate with APRNs
• Unlicensed professional can’t “practice under” another professional’s license
Written protocols with Naturopathic Doctors

- **K.S.A. 65-7202 and K.A.R. 100-72-8, 9 & 10**
  - NDs can administer drugs and substances (IM or IV) specified on the naturopathic formulary approved by the KSBHA pursuant to a written protocol with an Kansas-licensed MD or DO
  - Written protocol is filed with KSBHA
  - K.A.R. 100-72-10 contains protocol’s required content and process
Exemption from licensure as an LRT for persons performing radiologic technology procedures under supervision of a licensed practitioner

- K.S.A. 65-7304(f) & K.A.R. 100-73-9
  - Must be supervised by an MD, DO, DC, DDS or DPM
  - Must be properly trained
  - Must obtain 12 CEUs annually in specified areas
Delegation & Supervision Authority:

- **People & professions**
  - PA, APRN, ND, AT, acupuncture
  - Who can supervise who.

- **Delegation & supervision in specific situations:**
  - Med spas, school sports head injuries, light-based treatments,
PHYSICIAN OVERSIGHT OF MEDICAL PROCEDURES AT MEDICAL SPAS
Medical spas

• **Medical spa:** offers aesthetic procedures that constitute the practice of medicine & are delegated & supervised by a physician.
  - Medical spas can’t be owned by non-professionals & must have a physician owner

• **Non-medical spa:** cosmetology, hair, nails, pedicure, massage

**Supervision**

**Delegation**

**How you avoid problems**
Medical spas:

- **Examples of medical procedures / treatments:**
  - Botox, laser hair removal, laser fat reduction, laser skin treatments, medical weight loss programs

- **Who can perform medical procedures at a medical spa, other than an physician?**
  - PA, APRN, other nurses & unlicensed persons who are properly trained

Supervision

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How you avoid problems
Special issues relating to supervision in med-spas:

• Light-based treatment supervision
  • KAR 100-27-1
• Board policy on Ultrasound & Laser Fat Reduction
Light-based treatment supervision

• K.A.R; 100-27-1
• Heightened supervision requirements depending on class or type of device
  • Written protocol
  • Physician is immediately available
  • Physician is physically present
Board Policy on Ultrasound & Laser Fat Reduction (Policy No. 13-01)

- Is considered surgery
- Limited to MDs, DOs and supervised individuals
- Additional requirements in policy
- Does not have the effect of law
- Still being discussed by KSBHA
- Board intends to do regulations on med spa issues

Supervision
Delegation
How you avoid problems
Special issues relating to evaluation of student athletes with suspected head injuries:

• **K.S.A. 72-135**
• Only an MD or DO can perform evaluation and clearance of student athlete
• **No** delegation permitted to anyone else (PA, APRN, AT)
<table>
<thead>
<tr>
<th>Profession</th>
<th># Limit</th>
<th>DC delegation</th>
<th>Scope of Practice</th>
<th>Agreement or Written Protocol</th>
</tr>
</thead>
<tbody>
<tr>
<td>PA</td>
<td>2, unless in medical care facility</td>
<td>No</td>
<td>Medicine and surgery as delegated</td>
<td>RP form and drug protocol filed with KSBHA</td>
</tr>
<tr>
<td>APRN</td>
<td>No limit</td>
<td>No</td>
<td>Independent nursing scope of practice and medical plans of care in collaboration with MD/DO</td>
<td>Collaborative Agreement and drug protocol, not filed with a Board</td>
</tr>
<tr>
<td>AT</td>
<td>No limit</td>
<td>Yes, for chiropractic</td>
<td>Independent scope of practice and acts that constitute medicine or chiropractic</td>
<td>Practice protocol filed with KSBHA</td>
</tr>
<tr>
<td>ND</td>
<td>No limit</td>
<td>No</td>
<td>Independent scope of naturopathy practice and administration of IM and IV medication</td>
<td>Protocol filed with KSBHA</td>
</tr>
<tr>
<td>Non-LRT licensed persons</td>
<td>No limit</td>
<td>Yes</td>
<td>Radiologic technology procedures by delegation</td>
<td>None, but Supervisor reports on renewal</td>
</tr>
<tr>
<td>Unlicensed Persons</td>
<td>No limit</td>
<td>Yes, for chiropractic</td>
<td>K.S.A. 65-28,217 or other regulations</td>
<td>Required for light-based treatments</td>
</tr>
</tbody>
</table>
Potential Problem Areas:

- Allowing different practice settings to turn into “different practices”
- Treating supervision/delegation as just a formality
- Being lax in delegation/supervision because of mid-level’s experience or long-working history
- Confusion about line of authority because of number of practitioners or staffing schedules
- Being overwhelmed and overextended
Physician Best Practices for Success:

- Know and follow the requirements for the profession you are delegating to/supervising
- Be aware of your responsibilities under K.S.A. 65-28,127 and ensure you are in compliance with them
- Don’t overextend yourself by supervising too many persons
- Be aware of any particular requirements based on the services being delegated and incorporate them into practice (ex. light-based treatments)
Physician Best Practices for Success (cont.):

• Be clear in documenting and verbalizing the practice authority you are delegating
• If delegating broad practice authority in a written document, make sure to include any specific limitations
• Be cautious about using boilerplate and one-size-fits-all protocols and agreements
• Don’t allow written protocols and agreements to become outdated
• Have frequent communication with those you delegate authority to or supervise
WHO / WHAT / HOW

Supervision
Delegation
How you avoid problems
MAIN AGENCY CONTACTS

• Legal Information Requests:  legalquestions@ksbha.ks.gov
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