



**Testimony before the Joint Committee on Administrative Rules and Regulations
Regarding Proposed Regulations K.A.R. 100-28a-1a,
100-28a-6, 100-28a-9, 100-28a-9a, 100-28a-10, 100-28a-11,
100-28a-12, 100-28a-13, 100-28a-14, 100-28a-15, and 100-28a-17
Implementing Statutory Changes to the Physician Assistant Practice Act**

January 7, 2016

Madam Chair and Honorable Committee Members:

I am Kelli Stevens, General Counsel for the Kansas State Board of Healing Arts ("Board"). I am here on behalf of the Board to address any concerns the Committee may have regarding eleven proposed regulations that implement statutory changes to the Physician Assistant Licensure Act ("PA Act") during the 2014 and 2015 legislative sessions.

Summary of Legislative Amendments:

During the 2014 and 2015 legislative sessions, several substantive and technical amendments were made to the PA Act. In the 2014 Session, amendments included terminology changes for physicians who supervise PAs; replacement of the "protocol" as the document describing a PA's scope of practice with a "written agreement;" authority to dispense prescription-only drugs under limited conditions; and repeal of the strict two-PA limit on the number of PAs a physician may supervise that was replaced with Board authority to adopt regulations limiting the number of PAs a physician may supervise.

In the 2015 Session, many of the 2014 amendments' effective dates were delayed from July 1, 2015, to January 11, 2016, to allow the Board to continue to meet with stakeholders on regulation development. Amendments to K.S.A. 65-4941 granted authority for a PA to write a "do not resuscitate" ("DNR") order. Additionally, amendments were made to a licensure statute that replaced the word "expire" with "cancelled" to remove prior confusion about whether a PA licensee was still licensed and able to practice with an expired license.

Summary of Proposed New and Amended Regulations:

Temporary regulations mirroring the proposed new and amended regulations adopted were adopted by the Board on November 19, 2015, and approved by the State Rules and Regulations Board on December 11, 2015. The Board adopted the temporary regulations in order to implement the statutory changes that go into effect January 11, 2016. The proposed permanent regulations are awaiting a public hearing on February 11, 2016.

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Date 1-7-2016

Both the temporary and proposed permanent regulations reflect substantive and technical changes that include new definitions and elimination of arbitrary requirements and limitations. The regulations clarify existing and new terms that are used throughout the regulations. A prior two-PA supervision cap is replaced with more qualitative and substantive obligations for supervision requirements. DNR order and dispensing authority for PAs are incorporated and other technical amendments are made to update and add clarity to the regulations.

The following is more specific information about each regulation:

K.A.R. 100-28a-1a. Definitions. (New) This new regulation defines terms used in the PA Practice Act and implementing regulations including terms for different practice locations, levels of supervision, emergency medical conditions, supervision, substitute supervising physician and the required forms for a PA to practice.

K.A.R. 100-28a-6. Scope of practice. This regulation sets forth the scope of practice for PAs. The amendments implement pending January 11, 2016 statutory change in title from “responsible” to “supervising” physician; update language regarding physician-PA communication methods; clarify when a PA has authority to practice for patients with emergency medical conditions; and make other minor language clarifications.

K.A.R. 100-28a-9. Active practice request form; content. This regulation sets forth the form requirements used to delineate a physician-PA supervisory relationship that is filed with the agency prior to a PA being permitted to practice. The amendments add more substantive and detailed information regarding each practice location, the supervising physician-PA relationship, delegated services and types of supervision, if applicable, substitute supervisor information, and include prescription drug dispensing authority which was added to K.S.A. 65-28a08 in the 2015 legislative session.

K.A.R. 100-28a-9a. Active practice request form; requirements. (New) This new regulation provides for a date of July 1, 2016, by which current PA licensees already practicing under the prior “responsible physician request” form and a “protocol” will be required to submit the new “active practice request form” that includes a “written agreement.” It also contains requirements for submitting amendments and maintaining the forms.

K.A.R. 100-28a-10. Supervising physician. This regulation details a physician’s requirements for supervision of a PA. The amendments alter the nature of the regulation from one that sets a standard for adequate supervision to merely being a set of requirements. The rationale for this change is that the adequacy of supervision is often subjective and correlates closely with the standard of care for treating patients. The amendments also add PA dispensing authority to implement 2015 legislation. An added new requirement is that the supervising physician may only delegate acts that are within the physician’s own competence and customary practice.

K.A.R. 100-28a-11. Duty to communicate; emergency medical conditions. This regulation specifies the communication requirements between PAs and physicians. The amendments update physician titles and add “any treatment that exceeds the physician assistant’s competence” as a new circumstance requiring a PA to communicate with their supervising physician. New subsection (b) is added to the required procedure if a PA has to provide treatment beyond the scope of their authorized practice to a patient with an emergency medical condition.

K.A.R. 100-28a-12. Substitute supervising physician. This specifies the requirements for a substitute supervising physician in the supervising physician's absence. The amendments to the regulation update physician titles and remove unnecessary language.

K.A.R. 100-28a-13. Prescription-only drugs. The purpose of this regulation is to specify PAs' prescription drug authority. The amendments to the regulation add dispensing authority to implement the corresponding 2015 statutory amendment in K.S.A. 65-28a08. Other minor language clarifications and updates are made throughout to conform to pharmacy regulation language and/or actual practice.

K.A.R. 100-28a-14. Different practice location. This regulation sets requirements for a PA to practice at a different practice location. The amendments to the regulation update physician titles, clarify terms and add a requirement that a Kansas physician practice at the different location at least once every 30 days and that different practice locations be specified in the PA's active practice request form and written agreement.

K.A.R. 100-28a-15. Licensure; cancellation. This regulation specifies the timeframe for when a PA license is cancelled. The amendments implement 2015 legislative changes to K.S.A. 65-28a03(b) replacing the word "expire" with "cancelled" to remove prior confusion about whether a licensee was still licensed and able to practice with an expired license.

K.A.R. 100-28a-17. Number of physician assistants supervised; limitation for different practice location. This regulation specifies the limit on how many PAs a physician may supervise. The amendments effectuate the repeal of K.S.A. 65-28a10, which contained a strict 2-PA per physician limit, and implement the amendments to K.S.A. 65-28a08(d) which give the Board authority to adopt regulations limiting the number of PAs that a supervising physician may supervise. Consequently, these amendments replace the 2-PA limit with substantive factors for a physician to consider in determining the number of PAs he or she is able to supervise. The amendments also place a 3-PA limit on the total number of PAs a supervising physician may supervise that practice at a different practice location, unless prior Board approval is received for up to 5 PAs. It is important to note that medical care facilities defined under K.S.A. 65-425(h) are not subject to the limitation on the number of PAs a physician may supervise at a different practice location.

Anticipated Economic Impact:

Costs to the State Board of Healing Arts will include legal, licensing and information technology staff time to change electronic and paper forms to conform to new and amended requirements. Additionally, staff time will be required to provide licensees with assistance in complying with new form requirements. Staff time will also be necessary to educate licensees and stakeholders on the regulations' changes.

Costs to private businesses and individuals are anticipated to be minimal, and primarily involve administrative time to complete new forms that are required. It is anticipated that the amended regulations will provide a positive economic impact on private individuals in that more PAs may have expanded practice opportunities in Kansas due to greater latitude afforded in their physician supervisory relationships and scope of practice which, in turn, should improve the general public's access to healthcare provided by these individuals.

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