

OSTEOPATHIC MEDICAL PRACTICE ACT - OMNIBUS AMENDMENTS

Act of Oct. 7, 2021, P.L. 412, No. 78

CL. 35

Session of 2021

No. 2021-78

SB 397

AN ACT

Amending the act of October 5, 1978 (P.L.1109, No.261), entitled "An act requiring the licensing of practitioners of osteopathic medicine and surgery; regulating their practice; providing for certain funds and penalties for violations and repeals," further providing for definitions, for State Board of Osteopathic Medicine, for practice of osteopathic medicine and surgery without license prohibited and for licenses, exemptions, nonresident practitioners, graduate students, biennial registration and continuing medical education; and abrogating regulations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "physician assistant" and "primary supervising physician" in section 2 of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, are amended to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

"Physician assistant." [A person licensed by the board to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.] **An individual who is licensed as a physician assistant by the board.**

"Primary supervising physician." An osteopathic physician who is registered with the board and designated in a written agreement with a physician assistant under section 10(g) as having primary responsibility for [directing and personally] supervising the physician assistant.

\* \* \*

Section 2. Sections 2.1(a) and 3(b) of the act are amended to read:

Section 2.1. State Board of Osteopathic Medicine.

(a) The State Board of Osteopathic Medicine shall consist of the Commissioner of Professional and Occupational Affairs or [his] **a** designee; the Secretary of Health or [his] **a** designee; two members appointed by the Governor who shall be persons representing the public at large; **one member appointed by the Governor who is a physician assistant**; one member appointed by the Governor who shall be a respiratory therapist, a perfusionist[, a physician assistant] or a licensed athletic trainer; and [six] **seven** members appointed by the Governor who shall be graduates of a legally incorporated and reputable college of osteopathic medicine and shall have been licensed to practice osteopathic medicine under the laws of this Commonwealth and shall have been engaged in the practice of osteopathy in this Commonwealth for a period of at least five

years. All professional and public members of the board shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. The Governor shall assure that respiratory therapists, perfusionists[, physician assistants] and certified athletic trainers are appointed to four-year terms on a rotating basis.

\* \* \*

Section 3. Practice of osteopathic medicine and surgery without license prohibited.

\* \* \*

(b) Nothing in this act shall be construed to prohibit services and acts rendered by a qualified physician assistant, technician or other allied medical person if such services and acts are rendered under the supervision, direction or control of a licensed physician. It shall be unlawful for any person to practice as a physician assistant unless licensed and approved by the board. It shall also be unlawful for any physician assistant to render medical care and services except under the supervision [and direction] of the supervising physician. A physician assistant may use the title physician assistant or an appropriate abbreviation for that title, such as "P.A.-C."

Section 3. Section 10(g), (g.1), (g.2), (j), (j.1), (k) and (l) of the act are amended and the section is amended by adding a subsection to read:

Section 10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration and continuing medical education.

\* \* \*

(g) **(1)** The **primary** supervising physician shall file, or cause to be filed, with the board [an application to utilize a physician assistant including a written agreement containing a description of] **a written agreement that identifies** the manner in which the physician assistant will assist the [supervising physician in his practice, the method and frequency of supervision, including, but not limited to, the number and frequency of the patient record reviews required by subsection (j.1) and the criteria for selecting patient records for review when 100% review is not required, and the geographic location of the physician assistant.] **primary supervising physician, according to subsection (g.4).** The written agreement and description may be prepared and submitted by the primary supervising physician, the physician assistant or a delegate of the primary supervising physician and the physician assistant. It shall not be a defense in any administrative or civil action that the physician assistant acted outside the scope of the [board-approved] **board-filed** description or that the supervising physician utilized the physician assistant outside the scope of the [board-approved] **board-filed** description because the supervising physician or physician assistant permitted another person to represent to the board that the description had been approved by the supervising physician or physician assistant. [Upon submission of the application, board staff shall review the application only for completeness and shall issue a letter to the supervising physician providing the temporary authorization for the physician assistant to begin practice. If the application is not complete, including, but not limited to, required information or signatures not being provided or the fee not being submitted, a temporary authorization for the physician assistant to begin practicing shall not be issued. The

temporary authorization, when issued, shall provide a period of 120 days during which the physician assistant may practice under the terms set forth in the written agreement as submitted to the board. Within 120 days the board shall notify the supervising physician of the final approval or disapproval of the application. If approved, a final approval of the written agreement shall be issued to the supervising physician. If there are discrepancies that have not been corrected within the 120-day period, the temporary authorization to practice shall expire.]

**(2) The written agreement becomes effective upon submission by the primary supervising physician, the physician assistant or a delegate of the primary supervising physician and the physician assistant to the board. The board shall review 10% of all written agreements submitted to the board after the effective date of this paragraph. A written agreement subject to a review shall remain in effect for two weeks after the board notifies the primary supervising physician and the physician assistant with remedies, if necessary, on the outcome of the review. The primary supervising physician, physician assistant or delegate to the primary supervising physician and physician assistant must submit a new written agreement which shall be effective upon submission to the board. A written agreement submitted to the board during the declaration of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), or any renewal of the declaration of disaster emergency, shall be deemed approved. This paragraph shall apply to written agreements submitted to the board before the effective date of this paragraph.**

**(3) No later than 120 days from the effective date of this paragraph, the board shall submit the review process for the written agreements under paragraph (2) to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.**

**(4) There shall be no more than [four] ~~four~~ six** physician assistants for whom a physician has responsibility or supervises pursuant to a written agreement at any time. In health care facilities licensed under the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act," a physician assistant shall be under the supervision [and direction] of a physician or physician group pursuant to a written agreement, provided that a physician supervises no more than [four] ~~four~~ six physician assistants at any time. A physician may apply for a waiver to employ or supervise more [than four] physician assistants at any time under this section for good cause, as determined by the board. In cases where a group of physicians will supervise a physician assistant, the names of all supervisory physicians shall be included on the application.

**(g.1) In health care facilities licensed under the "Health Care Facilities Act," the attending physician of record for a particular patient shall act as the primary supervising physician for the physician assistant while that patient is under the care of the attending physician. Nothing in this act shall be construed to authorize an employer or other entity to require a physician to supervise more physician assistants when the physician, in his or her clinical judgment, determines that supervising more physician assistants will compromise patient care or otherwise affect the physician's ability to properly supervise another physician assistant in accordance with the**

**requirements of this act or regulations promulgated by the board.**

(g.2) (1) Except as limited by paragraph (2), and in addition to existing authority, a physician assistant shall have authority to do all of the following, provided that the physician assistant is acting within the supervision [and direction] of the supervising physician:

- (i) Order durable medical equipment.
  - (ii) Issue oral orders to the extent permitted by a health care facility's bylaws, rules, regulations or administrative policies and guidelines.
  - (iii) Order physical therapy and dietitian referrals.
  - (iv) Order respiratory and occupational therapy referrals.
  - (v) Perform disability assessments for the program providing Temporary Assistance to Needy Families (TANF).
  - (vi) Issue homebound schooling certifications.
  - (vii) Perform and sign the initial assessment of methadone treatment evaluations in accordance with Federal and State law, provided that any order for methadone treatment shall be made only by a physician.
- (2) Nothing in this subsection shall be construed to:
- (i) Supersede the authority of the Department of Health and the Department of [Public Welfare] **Human Services** to regulate the types of health care professionals who are eligible for medical staff membership or clinical privileges.
  - (ii) Restrict the authority of a health care facility to determine the scope of practice and supervision or other oversight requirements for health care professionals practicing within the facility.

\* \* \*

**(g.4) A physician assistant shall provide medical services according to a written agreement which provides for all of the following:**

- (1) Identifies and is signed by the primary supervising physician.**
- (2) Describes the physician assistant's scope of practice.**
- (3) Describes the nature and degree of supervision the primary supervising physician will provide the physician assistant.**

\* \* \*

(j) Nothing in this act shall be construed to permit a licensed physician assistant to practice [osteopathic medicine] **as an osteopathic physician assistant** without the supervision [and direction] of a licensed physician approved by the appropriate board, but such supervision [and direction] shall not be construed to [necessarily] require the personal presence of the supervising physician at the place where the services are rendered.

(j.1) [(1) The approved physician shall countersign 100% of the patient records completed by the physician assistant within a reasonable time, which shall not exceed ten days, during each of the following time periods:

- (i) The first 12 months of the physician assistant's practice post graduation and after the physician assistant has fulfilled the criteria for licensure set forth in subsection (f).

(ii) The first 12 months of the physician assistant's practice in a new specialty in which the physician assistant is practicing.

(iii) The first six months of the physician assistant's practice in the same specialty under the supervision of the approved physician, unless the physician assistant has multiple approved physicians and practiced under the supervision of at least one of those approved physicians for six months.

(2) In the case of a physician assistant who is not subject to 100% review of the physician assistant's patient records pursuant to paragraph (1), the approved physician shall personally review on a regular basis a selected number of the patient records completed by the physician assistant. The approved physician shall select patient records for review on the basis of written criteria established by the approved physician and the physician assistant. The number of patient records reviewed shall be sufficient to assure adequate review of the physician assistant's scope of practice.]

**(3) The primary supervising physician shall determine countersignature requirements of patient records completed by the physician assistant in a written agreement, except as provided for in paragraph (4).**

**(4) The approved physician shall countersign 100% of the patient records completed by the physician assistant within a reasonable time, which shall not exceed 10 days, during each of the following time periods:**

**(i) The first 12 months of the physician assistant's practice post graduation and after the physician assistant has fulfilled the criteria for licensure set forth in subsection (f).**

**(ii) The first 12 months of the physician assistant's practice in a new specialty in which the physician assistant is practicing.**

**(5) The board may not require, by order, regulation or any other method, countersignature requirements of patient records completed by a physician assistant that exceed the requirements specified under this subsection.**

(k) This act shall not be construed to prohibit the performance by the physician assistant of any service within [his] **the physician assistant's** skills, which is delegated by the supervising physician, and which forms a usual component of that physician's scope of practice.

(l) Nothing in this act shall be construed to prohibit the employment of physician assistants by a health care facility where such physician assistants function under the supervision [and direction] of a physician or group of physicians.

\* \* \*

Section 4. The State Board of Osteopathic Medicine shall promulgate final rules and regulations necessary to carry out this act within 180 days of the effective date of this section.

Section 5. Any and all regulations at 49 Pa. Code §§ 25.142, 25.162, 25.178 and 25.181 are abrogated to the extent of any inconsistency with this act.

Section 6. This act shall take effect immediately.

APPROVED--The 7th day of October, A.D. 2021.

TOM WOLF