

1978 S.C. Op. Atty. Gen. 129 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-100, 1978 WL 27774

Office of the Attorney General

State of South Carolina

Opinion No. 78-100

May 23, 1978

***1 N.B. HEYWARD**

Executive Director

State Board of Medical Examiners

QUESTION: Does a physician have to be present or in the immediate vicinity of a physician's assistant whenever that physician's assistant is performing an approved task for the physician?

STATUTES AND CASES:

Regulation Number 81–100(2) and (7) of the State Board of Medical Examiners.

DISCUSSION:

Numerous inquiries concerning Opinion No. 220 of August 12, 1977, have been received, warranting further explanation of the control over the physician's assistant by the physician. Opinion No. 220 concerns the question of whether a physician's assistant can legally write patient care orders in a hospital environment and focused on [Regulation No. 81–100\(7\)](#) (formerly Regulation No. 17.1), which reads, “Assistants shall not: (a) examine any new patient not previously examined by the supervising physician or his/her referring physician; (b) diagnose diseases or ailments; (c) write prescriptions; (d) bill patients; (e) perform any task which has not been listed or approved on his/her application currently on file with the Board; (f) perform any task without the supervising physician being either physically present or immediately available to provide further guidance.”

The phrase “immediately available” was interpreted narrowly in conjunction with the phrase “physically present,” so as to require the presence of a physician in the immediate vicinity of the physician's assistant. The purpose of the interpretation was to give effect to the primary purpose of the regulations for physicians' assistants, namely to insure that independent medical judgment and action may not be exercised by the physician's assistant, but rather originate and are directed by the physician himself. Under the facts as presented Opinion No. 220 of August 12, 1977 remains unchanged.

The above, however, is achieved by a less stringent interpretation of the phrase “immediately available” in some circumstances. [Regulation No. 81–100\(2\)](#) reads in part: “A supervising physician must clearly list in detail all tasks he requests the Board to approve for his physician's assistant, both in his presence and when he is not actually physically present. According to this subsection, a physician's assistant is impliedly authorized to perform well defined and narrow tasks outside the presence of the physician which have been individually and specifically approved by the State Board of Medical Examiners. To require the physical presence of a physician in the immediate vicinity in all instances is not within the contemplation of the regulation.

The patient's health and safety are the essential concerns of the regulation, and the activities of the physician's assistant toward the patient must be clearly controlled and delineated by the physician. The degree of immediate control by the physician over his physician's assistant depends, however, upon the circumstances of each individual task; and it is in this light that the phrase “immediately available” is interpreted. It is the nature of the physician's assistant's activity and

the concern for the patient that defines “immediate available”. If the physician's assistant merely interviews or visits a patient for the sole purpose of obtaining a case history or other basic information, the physician may be immediately available if he may be reached by telephone. In this case, the physician's assistant is essentially performing a task that requires no physical acts upon the patient, no independent diagnosis, or poses any immediate potential danger to the patient's health or safety.

*2 On the other hand, where a physician's assistant performs an act upon the patient or directs that such be done, the availability of the physician must be more “immediate” than in the case where the physician's assistant performs a purely administrative task. In this instance, the physician must be exercising “immediate” control of the physician's assistant.

CONCLUSION:

Therefore, the phrase “immediately available” is not interpreted so narrowly as to require the presence of the physician in the immediate vicinity in all instances. Instead, it is dependent upon the circumstances of the particular case. The nature of the acts performed by the physician's assistant and the immediacy of a potential danger to the patient define the phrase “immediately available.”

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