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November 5, 2018

Kathy Hoebelheinrich
Nurse Practice Consultant
Nebraska Department of Health & Human Services Licensure

Dear Ms. Hoebelheinrich:

I am writing on behalf of the Nebraska Society of Medical Assistants (Nebraska SMA) and the American Association of Medical Assistants (AAMA). We have strong disagreements with some of the statements in your “Ask the Practice Consultant: The Medical Assistant” article (pages 14-16) in the Fall 2018 *Nebraska Nursing News*, an official publication of the Nebraska Board of Nursing (attached).

I.

The first **Inquiry** in your article is as follows:

Inquiry: Medical Assistants do not have a scope of practice; therefore, can they perform any task that is delegated to them by another health care professional?

I agree that Nebraska law (and the law of every other state) does not permit medical assistants to perform “*any task* that is delegated to them by another health care professional.” It would have been helpful to have included the following excerpt from the Nebraska Nurse Practice Act, which permits “persons carrying out duties under the direction of a licensed practitioner” such as medical assistants to provide “auxiliary patient care services” under the direction of a licensed practitioner, such as a physician:

38-2218. Nursing; practices permitted.

The Nurse Practice Act confers no authority to practice medicine or surgery. The Nurse Practice Act does not prohibit:

.....

(4) Auxiliary patient care services provided by persons carrying out duties under the direction of a licensed practitioner;

II.

You make the following statement in the next section of the first column of page 14:

Response:

Medical Assistants support the practice of licensed health care professionals. They may appropriately perform administrative duties like scheduling and computer entry—or clinical support tasks like rooming patients and collecting data and information from the patient that



45 nursing and medical providers require to inform their plan of care (Nebraska Board of
46 Nursing, July 2018a).

47
48 It is my legal opinion that Nebraska law permits physicians to delegate to medical assistants the
49 duties and tasks referenced in the above paragraph. However, it is also my opinion that the Nebraska
50 Medical Practice Act and the regulations and opinions of the Nebraska Board of Medicine and
51 Surgery do not limit the tasks delegable by physicians to knowledgeable and competent unlicensed
52 professionals such as medical assistants (under the legally-required physician supervision) to
53 “rooming patients and collecting data and information.”

54
55 III.

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57 The following statements are made in the third column of page 14:

58 **Response:** Verbal orders are prescriptions from APRNs and medical providers responsible
59 for the care of a particular patient with licensure authority to prescribe medications,
60 diagnostic tests and therapeutic interventions. Medical Assistants, like other unlicensed
61 persons, may not accept verbal orders from a licensed prescriber (Nebraska Board of
62 Nursing, 2018b). They may, however, accept and complete a task for which they are
63 otherwise qualified and may lawfully perform in response to a written order from a provider,
64 e.g., phlebotomy to obtain a laboratory specimen.

65
66 The Nebraska Board of Nursing has the authority to forbid all nurses from issuing verbal orders to
67 unlicensed allied health professionals such as medical assistants. However, the Nebraska Board of
68 Nursing does not have the authority to forbid other licensed prescribers (such as physicians) from
69 issuing appropriate verbal orders to knowledgeable and competent medical assistants.

70
71 IV.

72
73 The Nebraska SMA and the AAMA are in agreement that the Nebraska law forbids anyone other
74 than registered nurses and licensed practical nurses from using the word “nurse” in a professional
75 title—even in a generic sense (page 16, column 1). Please see my attached article.

76
77 V.

78
79 The last **Inquiry** in the article is whether medical assistants are permitted to administer medications
80 (pages 15 and 16). The following four (4) assertions and the supporting excerpts from the
81 regulations of the Nebraska Department of Health & Human Services (attached) may provide
82 additional clarification:

83
84 1. Nebraska law permits medical assistants working under onsite-licensed-provider supervision to
85 meet the legal requirements, register as medication aides, and be placed on the Medication Aide
86 Registry.

87 96-004 Competency Assessment for Placement on the Registry: The requirements for
88 demonstration of competence and the required documentation are set forth below:

89 96-004-01 Medication aides providing services in all settings except an assisted-
90 living facility, ICF/MR, or nursing home must successfully pass a competency
91 assessment as identified in 172 NAC 96-005.

92
93 96-005.01B Competency assessments must be conducted by a licensed health care
94 professional or a registered medication aide. If the competency assessment is
95 conducted by a medication aide, the competency assessment must be designed,
96 directed, and reviewed by a licensed health care professional.

97
98
99 2. Medical assistants who are registered as medication aides may provide medications in outpatient
100 settings (under the required supervision) when delegated such provision by licensed health care
101 professionals such as physicians.

102 95-004 Provision of Direction and Monitoring: Medications may be provided by medication
103 aides and medication staff only when direction and monitoring is provided and documented.

104 95-004.01 Direction and monitoring must be provided by:
105 1. A competent recipient; or
106 2. A caretaker; or
107 3. A licensed health care professional. A licensed health care professional
108 who provides direction and monitoring must do so within the prevailing
109 practice standards of the profession...

110
111 3. Medical assistants registered as medication aides may provide *routine* medication by various
112 routes (under the required supervision) when delegated such provision by licensed health care
113 professionals such as physicians.

114 95-005 Usual Activities in the Provision of Medications
115 95-005.01 All medication aides and medication staff when directed and monitored in
116 accordance with 172 NAC 95-004 may provide routine medications by the following
117 routes:

- 118 1. Oral, which includes any medication given by mouth, including sublingual
119 (placing under the tongue) and buccal (placing between the cheek and gum)
120 routes and oral sprays;
121 2. Inhalation, which includes inhalers and nebulizers. Oxygen may be given
122 by inhalation;
123 3. Topical application of sprays, creams, ointments, and lotions and
124 transdermal patches; and
125 4. Instillation by drops, ointments, and sprays into the eyes, ears, and nose.

126
127 4. Medical assistants registered as medication aides may provide medications (under the required
128 supervision) *by other routes* if they are determined to be competent.

129 95-006 Additional Activities: In addition to the activities specified in 172 NAC 95-005.01,
130 items 1-4, medication aides and medication staff may provide optional additional activities in
131 accordance with this section. Any additional activity must be done under the direction and
132 monitoring required in 172 NAC 95-004.

133 95-006.01 The optional activities which may be provided by a medication aide or a
134 medication staff are:

- 135 1. Provision of PRN medications;
- 136 2. Provision of medications by routes in addition to those identified in 172
137 NAC 95-005 but not including provision of medications or fluids
138 intravenously. Acceptable additional routes may include gastrostomy tube;
139 injections, including subcutaneous, intradermal, and intramuscular; rectal;
140 and vaginal;
- 141

142
143 Based on the above legal analysis, the Nebraska Society of Medical Assistants and the American
144 Association of Medical Assistants have concluded that the tasks delegable by physicians to medical
145 assistants under Nebraska law have not been presented clearly in your article in the Fall 2018
146 *Nebraska Nursing News*. The Nebraska SMA and the AAMA request that you consider retracting or
147 clarifying some of your statements in this article.

148
149 I also wish to point out that medical assistants holding the CMA (AAMA) credential have graduated
150 from an accredited postsecondary medical assisting program and have passed a rigorous examination
151 that is accredited under the International Organization for Standardization (ISO) Standard 17024 as
152 well as under the Standards of the National Commission for Certifying Agencies (NCCA). The
153 Certifying Board of the AAMA retains the National Board of Medical Examiners (NBME)—the firm
154 that provides psychometric services for the United States Medical Licensing Examination (USMLE)
155 and several medical specialty examinations—for test construction, delivery, scoring, and analysis.
156 CMAs (AAMA) must recertify periodically in order to keep their credential current and be able to
157 use it.

158
159 Thank you for your consideration, Ms. Hoebelheinrich. I would be happy to discuss with you the
160 key points in this letter. See my below email address.

161
162 Very truly yours,

163 

164 Donald A. Balasa, JD, MBA
165 AAMA CEO and Legal Counsel
166 dbalasa@aama-ntl.org

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168
169 cc: Diane Jackson, APRN-FP, Chair, Nebraska State Board of Health
170 Bo Botelho, JD, Interim CEO, Nebraska DHHS
171 Britt Theding, MD, President, Nebraska Medical Association