Prescriptive Authority Agreements: The New Way to Delegate Prescriptive Authority in Texas

Prepared by Kelsey Sproull

As of November 1, 2013, the rules governing prescriptive authority delegated by physicians to advanced practice registered nurses (“APRNs”) and physician assistants (“PAs”) will change pursuant to Texas Senate Bill 406. The stated purpose of the changes is to improve the process by which physicians may delegate and supervise the prescribing and ordering of drugs or devices to APRNs and PAs. For purposes of this article, APRNs and PAs will be referred to collectively as “practitioners.”

I. The Repealed Prescriptive Authority Provision (Texas Occupations Code § 157.0541)

The repealed rule mandated certain site-based requirements. For instance, the delegating physician was required to be on-site with the practitioner at least 10 percent of the hours of operation of the healthcare site each month that the practitioners were acting with delegated prescriptive authority. The delegating physician was also required to review at least 10 percent of the medical charts.

Additionally, the physician was generally limited to delegating prescriptive authority to a maximum of four practitioners. This “one size fits all” approach embodied by the repealed rule was not the ideal system for many physicians and practitioners within the healthcare industry.

II. New Prescriptive Authority Provision (Texas Occupations Code § 157.0512)

The new rule governing prescriptive authority, codified in Texas Occupations Code § 157.0512, requires that the authorizing physicians and practitioners enter into a prescriptive authority agreement. Theoretically, the new rule provides more flexibility than the old rule because the parties are able to tailor the arrangement to their particular needs. While the new rule does
not mandate the site-based requirements of the previous rule, it does set minimum standards and requirements that the parties must include in the prescriptive authority agreement. The new rule also generally allows for physicians to delegate prescriptive authority to seven full-time practitioners instead of four.

A. Conditions for Execution of a Prescriptive Authority Agreement

Prior to entering into a prescriptive authority agreement, the physicians and practitioners must disclose to each other any prior disciplinary action taken by the Texas Medical Board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable. This is a continuing obligation, so the parties remain responsible for the disclosure of any investigations initiated by their respective licensing boards while the prescriptive authority agreement is in effect.

Another condition to entering into a prescriptive authority agreement is that the parties must hold active licenses that are in good standing with their respective licensing boards. The practitioners must not be prohibited by the Texas Board of Nursing or Texas Physician Assistant Board from executing a prescriptive authority agreement. And, if applicable, the Texas Board of Nursing must have approved the APRN’s authority to prescribe or order a drug or device.

B. Statutory Requirements for Prescriptive Authority Agreements

With these initial disclosures and conditions, the parties may enter into a prescriptive authority agreement. The rule lists nine components that these agreements must contain “at a minimum,” and these may be modified depending on the nature of the particular healthcare practice. For instance, prescriptive authority agreements are not required for a “facility-based practice,” which is defined as “a licensed hospital or licensed long-term care facility that serves as the practice location for the advance practice registered nurse.” Facility-based practices may continue using orders or protocols to delegate prescriptive authority.

The basic elements dictate that an agreement must:

1. Be in writing and signed by the parties to the agreement;
2. State the name, address, and all professional license numbers of the parties to the agreement;
3. State the nature of the practice, practice locations, or practice settings;
4. Identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;
5. Provide a general plan for addressing consultation and referral;
6. Provide a plan for addressing patient emergencies;
7. State the general process for communication and the sharing of information between the parties to the agreement related to the care and treatment of patients.
(8) If alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

a) Provide appropriate supervision on a temporary basis in accordance with the requirements in the agreement; and
b) Participate in the prescriptive authority quality assurance and improvement plan meetings; and

(9) Describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

a) Chart review, with the number of charts to be reviewed determined by the parties to the agreement;
b) Periodic face-to-face meetings\(^3\) between the parties at a location determined by the parties for purposes of sharing information related to patient treatment and care, needed changes in patient care plans, issues related to referrals and patient care improvement. These meetings must be documented.

C. Annual Review and Retention

Once the prescriptive authority agreement is executed, it must be reviewed annually by the parties. At the time of the annual review, the parties should re-execute the prescriptive authority agreement and add any desired changes. Amendments to the agreement may be made at any time as long as they are signed and dated by all parties. The parties should each keep copies of the prescriptive authority agreement and any amendments for at least two years after the date the agreement is terminated or for at least two years after the person is terminated as a party to the agreement.

D. How to Comply with the New Rule

Given the uncertain application of the rule, the parties should keep initial prescriptive authority agreements simple. While the parties should ensure that the minimum requirements are met, they should avoid complicating the agreement with many additional provisions. Adding extra information or detail to the agreement prior to seeing how the rule will be applied and enforced is unnecessary. Furthermore, as stated by the Coalition for Nurses in Advanced Practice, too much specificity or detail with regard to the requirements may result in the physician and practitioner being obligated to perform the task in the manner documented in 100 percent of cases.

In addition to reading this article, every physician and practitioner should also review the new rule periodically to ensure compliance. Modifications or requirements may be added or may become applicable, depending on the nature of the particular healthcare practice of the physician or practitioner.

---

1 “Full-time” means 50 hours per week. If the practitioners to whom the physician delegates work less than the 50 hours per week, the physician may delegate to additional practitioners until the combined hours of the practitioners reach 350 hours per week.

2 This section should be addressed to clarify the relationship between the physician and the practitioners by identifying any situations in which consultation or referral is expected.

3 The meetings must occur at least monthly until the third anniversary of the date the agreement is executed or
until the practitioner has been delegated authority by a physician for five of the past seven years. After either of these standards is met, the required monthly meetings may be held by remote electronic communications system and only quarterly meetings must be in person. Please see Texas Occupations Code § 157.0512(f)(2)(B) if you would like more specificity as to these relaxed requirements.

If you have any questions regarding this newsletter, please contact the author(s) at kelsey.sproull@strasburger.com.

About Strasburger & Price, LLP

Strasburger & Price, LLP is a full-service law firm with offices in Austin, Collin County, Dallas, Houston, and San Antonio, Texas (as Strasburger Price Oppenheimer Blend), New York City, Washington, D.C. and through Strasburger & Price, S.C., Mexico City. Strasburger serves as a trusted adviser to publicly and privately held companies, entrepreneurs, governmental entities and individuals. Strasburger attorneys represent a variety of companies including start up, middle market and international corporations. For more information about Strasburger, please visit www.strasburger.com.

DISCLAIMER: Articles contained within this media release provide information on general legal issues and are not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

ADVERTISEMENT NOTICE: This e-mail may constitute a commercial electronic mail message subject to the CAN-SPAM Act of 2003. If you do not wish to receive further commercial electronic mail messages from the sender, please send an e-mail to Strasburger@Strasburger.com and request that your e-mail address be removed from future mailings.