

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 7, 2013  
 ATTENTION: Board Members  
 SUBJECT: Medical Assistants Performing Basic  
 Pulmonary Function Testing  
 FROM: Kerrie Webb, Staff Counsel

REQUESTED ACTION:

Staff Counsel recommends the Medical Board of California (Board) approve Option 1 as a way to obtain a definitive answer from the Attorney General's Office (AG). This would be a joint effort between the Respiratory Care Board (RCB) and the Board, so that the AG may make a well-informed decision that the respective parties will stand behind and respect.

ISSUE:

Are medical assistants legally permitted to perform basic pulmonary function testing, such as spirometry? The RCB has taken a position that they are not allowed to perform such basic screening tests. Staff at the Board, in consultation with a medical consultant, disagree.

BACKGROUND:

On June 28, 2013, Stephanie Nunez, Executive Officer for the RCB, wrote a letter to Ms. Kirchmeyer to inform the Board that the RCB has instructed its staff to begin educating the health care community that medical assistants are not allowed to perform spirometry and other basic pulmonary function tests. The Board was informed that this educational push was being instituted as a precursor to citation and fine of medical assistants performing these tests. As part of this educational effort, Ms. Nunez asked the Board to post a Frequently Asked Question and Answer on its Web site stating the following:

**Question:** Are medical assistants allowed to conduct any level of pulmonary function testing, including, but not limited to, the most basic and limited type of testing, such as spirometry, peak flows, and lung volumes?

**Response:** No. Pulmonary function testing is a component of the respiratory care practitioner scope of practice. The Respiratory Care Practice Act (Business and Professions Code, Section 3700, et seq.) provides that only licensed respiratory care practitioners may perform pulmonary function testing with limited exemptions provided to other *licensed* personnel. In addition, all levels of pulmonary function testing

require assessment. Even the more basic and limited type of testing such as spirometry and peak flow are effort-dependent, as well as technically-dependent upon instruction and coaching patients for reliable results. Personnel performing these tests must assess whether the patient is providing the correct effort. Because pulmonary function testing requires assessment, and the Respiratory Care Practice Act prohibits this practice by unlicensed personnel, it must be performed by licensed and qualified personnel pursuant to the Respiratory Care Practice Act.

In response to the request, Board counsel, executive staff, and a medical consultant reviewed the matter. Based on this review, Board staff did not agree with the RCB's request for the reasons discussed below.

### 16 CCR 1366 RULEMAKING PROCESS

16 California Code of Regulations (CCR) section 1366 was adopted more than 20 years ago in response to thousands of inquiries from medical assistants, and the physicians who employed them, about what they are legally permitted to do. The Board noted that there were many simple tasks which were routinely performed in medical offices by medical assistants, but which were technically illegal. Throughout the rulemaking process, there was considerable controversy among other health professions about an appropriate scope of practice for medical assistants. In light of the controversy, it took several attempts over an approximate two-year period to adopt 16 CCR 1366.

Part of the rulemaking process included the recognition that many tasks are common to more than one health occupation. Such coincidental overlapping scopes of practice are accepted throughout the health care community. For example, the fact that a service may be performed by registered nurses does not automatically preclude its inclusion in the scope of practice for medical assistants.

Many comments were received and considered regarding scope of practice issues. Members of the Respiratory Care Examining Committee and RCB expressed opposition to the addition of the phrase "by inhalation" to a list of routes by which medical assistants may administer medications as part of additional supportive services. They argued that the inclusion of this phrase was in opposition to the Respiratory Care Practice Act (RCPA), section 3760, which states in part, "Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy or inhalation therapy..."

The Board did not agree that the administration of medications by inhalation constituted the practice of respiratory therapy any more than the administration of medications by injection constituted the practice of nursing. Moreover, since the law specifically allowed medical assistants to administer medications by the most potentially hazardous route – injections – it was not logical to prohibit administration by the less hazardous routes included in the regulation.

Members of the Respiratory Care Examining Committee and RCB also objected to the provision in 16 CCR 1366(b)(2) permitting medical assistants to perform plethysmography tests, stating

that this could be interpreted to permit body plethysmography, which requires extensive training. The Board agreed to prohibit medical assistants from performing full body plethysmography, but found that other forms of plethysmography were reasonable tasks for medical assistants to perform.

Plethysmography is frequently used to measure extremities, but can also be used to measure lung volume without employing full body testing. This is further evidence of an overlapping scope of practice between respiratory care therapists and medical assistants specifically permitted by law.

With the adoption of 16 CCR 1366, the Board did not attempt, nor would it have been feasible, to identify every simple, non-hazardous task, and variations thereof, that a medical assistant could perform. Through the rulemaking process, the Board worked to strike a balance between those who objected to rigid regulations, and the need to establish parameters in setting forth and describing the technical services that can be safely performed by a medical assistant. The applicable statutes and regulations provide structure so that procedures that are more complicated and invasive than those specifically permitted should be performed by licensed practitioners, and those that are in the equivalent range may be performed by appropriately-trained and supervised medical assistants, provided all the other requirements are met.

### APPLICATION

Considering the tasks that medical assistants are specifically allowed to perform pursuant to statute and regulations, including, but not limited to, electrocardiograms, electroencephalograms, plethysmography tests, applying orthopedic appliances, drawing blood, and giving injections, the Board's counsel, consultant, and staff find that trained medical assistants are capable of performing basic pulmonary function tests, such as screening spirometry.

The Board's medical consultant pointed out that while not all office-based practices have the capacity for performing these pulmonary function tests, many offices do. Thus, to require patients needing a peak flow or spirometry test to see a respiratory care therapist would place an undue burden on patients, and create an unnecessary hurdle to access to care.

In order for a medical assistant to be able to perform any technical supportive service under 16 CCR 1366, the service has to be a usual and customary part of the medical practice where the medical assistant is employed. Accordingly, it is conceivable that a medical assistant may not perform such testing in a dermatologist's office, but may routinely do so in a primary care physician's or a pulmonologist's office. This provides another layer of quality assurance, to ensure proper training, experience, and oversight.

### CURRENT STATUS OF DISCUSSIONS

Following initial discussions, the RCB agreed that medical assistants are capable of performing peak flow tests, but the Board and RCB have not yet reached an agreement on other types of basic pulmonary function tests.

OPTIONS:

Board staff have identified options for the members to consider, including the following:

- 1) Seek a joint, formal legal opinion from the Attorney General's Office with the RCB.
- 2) In the alternative, if Board members agree with the RCB that medical assistants should not perform basic pulmonary function tests, the members can instruct Board staff to assist the RCB in educating physicians and medical assistants, such as by posting a FAQ on the topic on the Board's Web site.