

Jamie J. Resch

From: Louis Ling [lling@medboard.nv.gov]
Sent: Tuesday, February 17, 2009 2:26 PM
To: Jamie J. Resch
Subject: Unlicensed Practice of Medicine

Jamie:

Good news. I found out that the Board has been stating publicly through its staff that only people recognized in NRS 454.213 can administer dangerous drugs, including Botox, and that this cannot be delegated to people not on the list in NRS 454.213. This is based on NRS 454.213 and NRS 630.369. You will note that NRS 630.369 is a confused mess, but it does clearly prohibit injections by anybody who is not licensed to do so (i.e. those in NRS 454.213), and we have argued that it applies in the Botox arena.

Additionally, NAC 630.230(1)(h) prohibits a physician from allowing "any person to act as a medical assistant in the treatment of a patient of the physician or physician assistant, unless the medical assistant has sufficient training to provide the assistance," and NAC 630.230(1)(i) prohibits a physician from failing "to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant." A medical assistant is defined by NAC 630.230(2)(d) to mean a person who: "(1) Is employed by a physician or physician assistant; (2) Is under the direction and supervision of the physician or physician assistant; (3) Assists in the care of a patient; and (4) Is not required to be certified or licensed by an administrative agency to provide that assistance." In other words, by definition, a medical assistant provides a lesser standard of care than people who would be required to have licensure to render the care; the medical assistant may merely "assist" a physician under that physician's "direction and supervision" and only to the extent that the care rendered does not require licensure. Because the administration of Botox (or any other dangerous drug) requires licensure per NRS 454.213, a medical assistant could not render the injections AT ALL.

To the extent that I informed you guys otherwise this morning, I was wrong. Our position has been consistent for years that medical assistants cannot perform injections based upon the above analysis. I am glad that I checked with our staff after calling you so that I can now not only correct my earlier statement to you and so that also, on a going forward basis, I can accurately portray the law should you need me so to do in the future.

Because this appears to be a matter solely of legal interpretation, I do not see a need to involve Board members as witnesses because I can testify as to the law and the Board's interpretation and application of the law. Of course, if you decide you still need a physician, let me know. I came up with another physician who would make a dynamite witness if you need one.

If there is anything else you need, let me know.

Louis