

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

<b>In re:</b>	)	
	)	
<b>AGENCY: PHYSICIAN ASSISTANT COMMITTEE</b>	)	<b>DECISION OF DISAPPROVAL OF REGULATORY ACTION</b>
	)	
<b>REGULATORY ACTION:</b>	)	<b>(Government Code section 11349.3)</b>
<b>Title 16,</b>	)	
<b>California Code of Regulations</b>	)	<b>OAL File No. 07-0221-02 S</b>
<b>Amend section 1399.540</b>	)	
	)	
	)	

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**SUMMARY OF REGULATORY ACTION**

The Physician Assistant Committee (Committee) proposed amendment to Title 16, California Code of Regulations (CCR) section 1399.540(a) to specify a requirement that the written delegation of medical services already required in this subdivision be signed and dated by the supervising physician and the physician assistant and to formally name the document a delegation of services agreement.

On April 4, 2007, the Office of Administrative Law (OAL) disapproved this regulatory action and notified the Committee of the disapproval. OAL disapproved the action because the imposition of a requirement that appears to affect the scope of practice of the supervising physician and their physician assistant under their respective licenses exceeds the authority granted to the Committee by the Legislature. Accordingly, the action failed to satisfy the authority standard required by Government Code section 11349.1.

**DISCUSSION**

Committee regulatory actions must be made pursuant to the California Administrative Procedure Act (APA) before the regulation may become effective. Any regulatory act a state agency adopts through the exercise of its statutory-delegated power is subject to the APA unless a statute expressly exempts or excludes the act from the requirements of the APA. (Gov. Code, sec. 11346.) No exemption or exclusion applied to this action. Thus, pursuant to its authority under the APA, OAL reviewed this action for compliance with both the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1.

Title 16, CCR, section 1399.540 affects the scope of practice for both physicians and physician assistants by limiting medical services by a physician assistant to those consistent with his or her competency, education, training and experience, and "which are delegated in writing by a

supervising physician who is responsible for the patients cared for by that physician assistant.” (Tit. 16, CCR, sec. 1399.540(a).) The Committee proposed additional requirements affecting the scope of practice for physicians and physician assistants, in addition to the required written delegation, by adding that “[t]he writing which delegates the medical services shall be signed and dated by the supervising physician and the physician assistant and shall be known as a delegation of services agreement.” The Committee intended for this amendment to apply to both physicians and physician assistants, as shown in the following two paragraphs from the initial statement of reasons for this action:

Requiring both parties to sign the document [would] make it more likely they understand and agree to the contents of the document and the nature of their relationship. Consumer protection would be enhanced by ensuring complete and full understanding of the contents of the delegation of services agreement.

Additionally, a document signed by the physician assistant and supervising physician would assist the committee with enforcement duties. Neither party could claim that they didn’t agree to the delegated medical tasks or the existence of the document. (Initial Statement of Reasons, pg. 2.)

### **AUTHORITY**

Business and Professions Code section 3510 provides:

The committee may adopt, amend, and repeal regulations as may be necessary to enable it to carry into effect the provisions of this chapter; provided, however, that the board shall adopt, amend, and repeal such regulations as may be necessary to enable it to implement the provisions of this chapter under its jurisdiction. . . .

Regulatory authority over physician assistants is split between the Committee and the Board, as set forth in the chapter 7.7 provisions of the Business and Professions Code. The Committee’s rulemaking authority is limited to regulating physician assistants and, more specifically, to such matters as establishing standards and issuing licenses of approval for programs for the education and training of physician assistants (Bus. and Prof. Code, sec. 3509(a)) and requiring the examination of applicants for licensure as a physician assistant (Bus. and Prof. Code, sec. 3509(d)). Regulatory authority over physicians lies almost exclusively with the Board or its statutory divisions under the California Medical Practice Act. (Bus. and Prof. Code, secs. 2000 et seq.) Business and Professions Code section 3510 requires the Board to adopt regulations that govern physician assistant actions that fall within the Board’s jurisdiction.

Title 16, CCR, section 1399.540 was originally adopted by the Board to implement Business and Professions Code section 3502,<sup>1</sup> pursuant to its authority under Business and Professions Code section 3510. While the Committee is authorized to make recommendations to the Board over such matters as the scope of practice for physician assistants (Bus. and Prof. Code, sec. 3509(b)),

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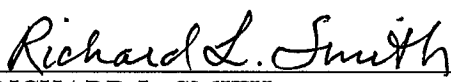
<sup>1</sup> Business and Professions Code section 3502(a) states, in pertinent part, “Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the board, . . .”

jurisdiction over the scope of practice for physician assistants lies solely with the Board. (Bus. and Prof. Code secs. 3502(a) and 3510.) It does not appear that the Legislature intended to extend any manner of regulatory authority to the Committee over the scope of practice of physician assistants or supervisory physicians.

CONCLUSION

Since jurisdiction over the scope of practice for both physicians and physician assistants lies with the Board, the Committee was acting outside its statutory authority in promulgating this action. The Committee's proposed amendment of Title 16, CCR, section 1399.540(a), therefore, fails to meet the authority standard in Government Code section 11349.1. For these reasons, OAL disapproved the proposed amendment to Title 16, CCR, section 1399.540(a).

April 11, 2007

  
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