

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons**

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.036 and 334.125, RSMo Supp. 2014, and section 334.037, RSMo Supp. 2015, the board adopts a rule as follows:

20 CSR 2150-2.240 Assistant Physician Collaborative Practice Agreements is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2016 (41 MoReg 987-990). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received four (4) comments on the proposed rule and seven (7) general comments.

COMMENT #1: A comment was received from the Missouri Academy of Family Physicians (MAFP) suggesting subsection (2)(D) be amended to state - The methods of treatment, including any authority to administer, dispense, or prescribe drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating assistant physician, shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that are specific to the clinical conditions treated by the collaborating physician and “collaborating” assistant physician.

RESPONSE AND EXPLANATION OF CHANGE: The board appreciates the comments and amends the language as suggested.

COMMENT #2: A comment was received from Employee Retirement Income Security Act (ERISA) Industry Committee (ERIC) supporting rules that recognize the potential benefits of telehealth as they relate to assistant physician collaborative practice agreements. ERIC represents large employers and welcomes the opportunity to share our support for leveraging telehealth to increase access to health care. ERIC thanks the board for thoughtfully developing regulations to maximize the benefits of telehealth and to express large employer’s interest on the issues. ERIC encourages the board, to the extent permitted by law to:

- Adopt technology-neutral requirements, permitting use of different types of technology platforms that are designed for telehealth;
- Adopt licensing policies that facilitate inter-state practice so providers, located in or out of the state, who deliver high-quality care, can serve patients located in Missouri;
- Avoid restrictions that require patients to visit specific location (e.g., “originating sites”) in order to access telehealth services;

- Avoid imposing additional requirements on providers that offer telehealth service that are not imposed on in-person visits; and
- Consider the needs of patients to have better access to care that can be provided via telehealth, either through a telehealth visit or remote monitoring of health conditions.

RESPONSE: The board appreciates the comments and makes no changes to the rule.

COMMENT #3: A comment was received from Washington University in St. Louis School of Medicine (WUSTL) stating the model of the assistant physicians relies exclusively on the collaborating physician taking responsibility for the supervision and training of the assistant physician. WUSTL is deeply concerned that the proposed rule does not provide adequate standards for supervision and training, especially for the recent medical graduate. The proposed rule under subsection (1)(B) allows an assistant physician to practice at a location fifty (50) miles away from the collaborating physician if not utilizing telehealth; if utilizing telehealth, there is no mileage restriction. Thus, an assistant physician could conceivably be providing health care services in Sikeston while the collaborating physician is in St. Joseph. Whereas these mileage standards might be appropriate for a well-trained medical professional, the only training required in the proposed rule – before the assistant physician can practice away from the collaborating physician—is a one- (1-) month period where the collaborating physician is continuously present. Aside from the above-mentioned biennial continuing medical education (CME) requirement, there is no other mention in the proposed rule regarding actual training for an assistant physician beyond this one-month apprenticeship. An earlier draft of the proposed rule, which was the basis of their July 14, 2015, comment letter, would have required the first six (6) months of licensure to involve one hundred percent (100%) supervision by the collaborating physician, followed by another six (6) months of at least two (2) half-days of supervision per week. This standard was recommended by a group of medical school representatives who determined this was an appropriate, albeit minimal, amount of supervision and training for individuals who will be given the ability to prescribe medical treatment. These requirements are essential to ensure both the development of the assistant physician’s ability to diagnose disease and recommend treatment, but also to ensure the safety of the patients they see. Moreover, the statute under 334.037(3) states that any patient being seen by an assistant physician retains the “right to see the collaborating physician.” A reasonable interpretation of this section could lead one (1) to conclude this right is to see the physician “in person,” and not via telehealth or via phone. It is unclear how the patient being seen by the assistant physician in Sikeston can exercise her or his right if the collaborating physician is in St. Joseph. WUSTL strongly urge the board to include more rigorous training and supervision standards in the final rule. At a minimum, the first six (6) months of collaborative practice should involve one hundred percent (100%) supervision of the assistant physician, followed by a graduated process of independence.

RESPONSE: Mileage restrictions and the use of telehealth are established by rule to be consistent with other collaborative practice agreements. The board acted cautiously not to place greater restrictions than what is required by statute. The board believes this change would require legislative action by the Missouri General Assembly. No changes have been made to the rule as a result of this comment.

COMMENT #4: A comment was received from Washington University in St. Louis School of Medicine (WUSTL) stating there are several components in the sections dealing with the prescription of controlled substances that are confusing. Paragraph (2)(E)8. provides for the ability of the collaborating physician to delegate to an assistant physician the ability to prescribe controlled substances listed in Schedules II (hydrocodone), III, IV and V. Section (2)(E)8 further specifies that Schedule III substances are limited to a one hundred twenty (120) hour supply. If Schedule III drugs are limited to a one hundred twenty (120) hour supply, WUSTL believe this limit should apply to Schedule II controlled substance prescriptions as well. Moreover, paragraph (2)(E)10 goes on to state that an assistant physician may only dispense “starter doses of medication to cover a period of time for seventy-two (72) hours.” Given the high potential for abuse of scheduled drugs, WUSTL recommends the seventy-two (72) hour standard be applied to drugs both dispensed and prescribed that are on the Schedule. A consistent standard would be clearer for the assistant physician, the collaborating physician, and the patient.

RESPONSE: The board appreciates the comment. The board makes no change as this change would require legislative action by the Missouri General Assembly.

COMMENT #5: One (1) comment was received from the American Association of Physician Assistants (AAPA) suggesting another way to expand access to care would be to optimize Missouri’s physician assistant (PAs) statutes and rules to ensure that PAs are practicing to the top of their education and experience. PAs could be optimized by allowing chart review to determine the practice level. PAs are healthcare providers who are nationally certified and state licensed to practice medicine and prescribe medication in every medical and surgical specialty and setting. PAs practice and prescribe in all fifty (50) states, the District of Columbia and all U.S. territories with the exception of Puerto Rico. PAs are educated at the graduate level, with most PAs receiving a Master’s degree. In order to maintain national certification, PAs are required to recertify as medical generalists every ten (10) years and complete one hundred (100) hours of continuing medical education every two (2) years.

RESPONSE: No action was taken by the board as this change would require legislative action by the Missouri General Assembly.

COMMENT #6: A comment was received from the American Association of Physician Assistants (AAPA) stating the rules should specify that assistant physicians may only serve in certain federal or state designated healthcare shortage area.

RESPONSE: Section 334.038, RSMo, defines the assistant physician’s practice location; therefore, the rules do not need to restate statute. The board made no changes to the rule based on this comment.

COMMENT #7: Three (3) comments were received from Esteban Ivanoff-Tzvetcoff, Muhammad Saad, and Aruna Sana stating they believe it is ridiculous that physician assistants and nurse practitioners have less training and having to pass easier exams are allowed to practice medicine, while medical students who did not match because there are not enough residency programs. One (1) commenter stated that this was plainly discriminatory and not democratic. Two (2) of the comments suggested assistant physicians should have three (3) months of direct supervision by a licensed physician before starting an independent job; assistant physicians

should be allowed to take Missouri State Medical Board exam after twenty-four (24) months of work experience under the supervision of a licensed physician; and assistant physicians should be allowed to practice independently after passing the State Medical Board exam (within 3 years).

RESPONSE: No action was taken by the board as this change exceeds the board's scope and rulemaking authority. This change would require legislative action by the Missouri General Assembly.

COMMENT #8: A comment was received from Washington University in St. Louis School of Medicine (WUSTL) stating many organizations such as the American Association of Medical Colleges (AAMC), American Osteopathic Association (AOA) and American Medical Association, have raised concerns about the assistant physician concept. WUSTL shares these concerns. Central to those objections is the fear of putting untrained individuals into situations where they are dealing with vulnerable patients in underserved areas without an adequate support system in place. Just because patients live in an underserved area does not mean they should be subject to a different standard of care than other individuals. The board must take care to ensure that assistant physicians are providing evidence-based medical care. It is important for the board to think about ways it can track the experience of assistant physicians and their patients to understand better what is working well and what may need further refinement or improvement in the future. WUSTL stated they would be willing to assist the board in thinking through how to track such outcomes.

RESPONSE: The board appreciates the comment.

COMMENT #9: A comment was received from Washington University in St. Louis School of Medicine (WUSTL). The comment builds upon and reinforces comments provided by Dr. Rebecca McAlister, the school's Associate Dean for Graduate Medical Education, on May 12, 2015, and by Dr. Larry Shapiro, former Executive Vice Chancellor for Medical Affairs and Dean, dated July 10, 2015. WUSTL states that unfortunately, the regulations as proposed, in many ways, represent a step backwards compared to earlier drafts of the rule shared last year. WUSTL, as an organization dedicated to preparing medical professionals for the rigors of practicing medicine, state they are deeply concerned that the proposed rules do not provide adequate supervision of, or training for, assistant physicians before they are allowed to prescribe medical treatments. A medical degree itself is not sufficient to ensure an individual can appropriately diagnose and treat a patient presenting with disease. The national model currently used to ensure physicians are capable of competently delivering health care involves completion of the Board of Registration for the M.D. degree followed by a period of residency training which can range from three (3) years to seven (7) years, depending on the physician's specialty. Some specialists will seek even further subspecialty training through fellowships. Any licensed physician will tell you how critical these training experiences are in becoming an experienced and proficient doctor. The assistant physician pathway, by design, lacks a credible period of training. This absence is why it is essential that the board uphold its obligation to protect public health and safety by ensuring that assistant physicians are adequately supervised and exposed to meaningful training opportunities.

RESPONSE: No action was taken by the board as this change exceeds the board's scope and rulemaking authority. This change would require legislative action by the Missouri General Assembly.

20 CSR 2150-2.240 Assistant Physician Collaborative Practice Agreements

(2) Methods of treatment.

(D) The methods of treatment, including any authority to administer, dispense, or prescribe drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating assistant physician, shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that are specific to the clinical conditions treated by the collaborating physician and collaborating assistant physician.