

Update on Physician Assistant Prescribing Authority

The Spring, 2014 issue of *Dateline* discussed the rules governing the professional practice of physician assistants (PAs). In the article *Physician Assistants: A Risk-Benefit Analysis*, it was stated that PAs could not prescribe any Schedule II controlled substance, citing 10 NYCRR § 94.2(e)(5) (page 3, footnote 10). On February 26, 2014, a Notice of Proposed Rulemaking was published in the New York State Register proposing to remove this restriction. As of this writing, the regulation has not been amended, although the website of the New York Department of Health does state that PAs may write prescriptions for Schedule II controlled substances:

In an outpatient setting, the PA may prescribe all medications, including Schedule II - V controlled substances, if delegated by the supervising physician. PAs may apply to the DEA to obtain their own, individual registration numbers as "mid-level practitioners." Once duly registered by the DEA, they may prescribe Schedules II, III, IV, and V drugs, in compliance with Article 33 of the Public Health Law and Part 80 and Part 94.2 of Title 10 regulations. Such prescribing is also subject to any limitations imposed by the supervising physician and/or clinic or hospital where such prescribing activity may occur. PAs shall register with the Department of Health in order to be

issued official New York State prescription forms. Official New York State prescription forms issued to the PA are imprinted with the names of both the PA and the supervising physician. If a PA utilizes an official prescription issued to a hospital or clinic, the PA must stamp or type his or her name and the name of the supervising physician on the official prescription.

www.health.ny.gov/professionals/doctors/conduct/physician_assistant.htm. If you require further information on this subject, please contact an attorney at Fager Amsler & Keller, LLP. ❖

HIV Law Updates

On April 1, 2014, Public Health Law § 2781, governing consent for HIV tests, and Public Health Law § 2135, regarding confidentiality of HIV reports, were amended. The purpose of these changes was to increase HIV testing and thereby increase the number of HIV positive persons who receive medical care. These new provisions, described below, are applicable to all individuals who are offered HIV testing in New York State, and are not restricted to patients between the ages of 13 and 64 in clinical settings who must be offered testing pursuant to prior legislation.

1. The requirement for written consent to be obtained prior to ordering HIV-related tests has been eliminated with the exception of individuals retained in correctional facilities, who must still provide written consent for HIV testing.
2. Information about HIV testing (pre-test counseling) must still be provided to the patient via posters, brochures, videos or discussions

with providers, so the patient has the information necessary to consent to or refuse testing.

3. Verbal consent must be obtained from the patient or individual legally authorized to consent for the patient prior to the test. The patient's verbal consent should be documented in the medical record.
4. Prior to testing, the patient must be advised each time an HIV test is to be performed.
5. All HIV tests performed must be documented in the patient's medical record. We also continue to recommend that all pre- and post-test counseling be documented in the medical record.
6. A physician can share a noncompliant patient's protected HIV-related information, as well as other necessary information, with local and state health departments and other physicians treating the patient in order to retain that patient in treatment.
7. During post-test counseling, patients

identified as HIV positive must be advised that if they are non-compliant with care, they may be contacted by their medical provider or the health department to promote their re-entry into, and compliance with, care.

8. Post-test counselling must emphasize the benefits of antiretroviral therapy (ART) and the importance of HIV viral suppression.
9. All prior New York State Public Health Law confidentiality protections governing HIV-related information remain in effect with respect to the release of medical records and verbal communications. Protections against discrimination based upon HIV-related information are also unchanged.

Regulations will be developed by the New York State Department of Health to implement these statutory changes. Additional information about the new amendments may be found at www.nyhealth.gov. Questions may be sent to hivtestlaw@health.state.ny.us. ❖