

Legal Brief

Standing Orders for Vaccinations

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of March 1, 2014; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

The South Dakota Board of Medical and Osteopathic Examiners (“SDBMOE”) has issued a declaratory ruling authorizing the issuance of standing orders for vaccinations under certain circumstances. The standing order may only be issued to licensed healthcare professionals who are authorized by their scope of practice to accept such a delegation and to administer vaccinations. The physician issuing the standing order is responsible to ensure that the order is sufficiently specific as to vaccinations authorized; side effects and other possible impacts on the health of the patient; and actions to be taken in response to side effects and other impacts such there is not undue risk to the health of the patient.

Discussion

On September 12, 2013, the SDBMOE issued a Declaratory Ruling (the “Ruling”) concerning the use of standing, non-patient-specific orders for vaccinations. The Ruling recognizes that the “community medical standard” in South Dakota allows for the issuance of standing orders or protocols by a qualified medical director or other physician authorizing the administration of certain vaccinations to a clinic, lab, or “other organization¹” upon request of a patient entering the facility without an order or prescription for that particular patient.

The issuing physician is responsible to ensure that the standing order or protocol complies with the following:

1. The order or protocol may only be issued to licensed healthcare professionals who are authorized within the scope of their practice to accept the sort of delegation being made and to administer vaccinations.
2. The order or protocol must be sufficiently specific in terms of the vaccinations authorized (including who is authorized to administer the vaccination), side-effects, and other possible health impacts and the response to any such side-effects or other impacts so that there is not undue risk to the health of the patient.

Although the Ruling in some instances refers to “injections,” SDBMOE staff has clarified that they believe the Ruling also covers vaccinations given by means other than injections.

The Ruling also includes a list of licensed or registered healthcare professionals who may administer vaccinations. The list, a copy of which is appended to this Legal Brief, includes physician assistants and nurses. Paramedics, pharmacists, and medical assistants are also authorized to administer some vaccinations in certain limited circumstances.

¹ The term “other organizations” is not defined in the Ruling.

With the exception of pharmacists (who may administer flu vaccinations), the list itself is not specific as to which licensed or registered healthcare professionals may administer which vaccinations; given that the Ruling places responsibility for protecting patient health with the physician issuing the standing order or protocol, SDSMA strongly recommends that the physician be cautious to ensure that the order or protocol only authorize vaccinations in circumstances (including the setting and the person administering the vaccination) appropriate for the vaccinations being authorized.

Conclusion

The SDBMOE declaratory ruling authorizing the issuance of standing orders for vaccinations places the burden on the issuing physician to ensure that there is not undue risk to patient health resulting from the vaccinations authorized. Accordingly, the physician should take into account the possible side effects and other impact on the health of the patient resulting from the vaccination, including the availability of appropriate response personnel and equipment in the place where the vaccination will be given, and the ability of the person administering the vaccination to recognize and provide an appropriate response in the event of an adverse reaction.

Sources: Findings of Fact, Conclusions of Law, and Declaratory Ruling (regarding Immunizations and Standing Orders)
Exhibit 1 to Ruling
Exhibit 2 to Ruling



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Prescribers and Prescribing Authority Approved by the South Dakota Board of Pharmacy

Exhibit 1

Prescribing of Controlled Substances Requires a DEA Registration Number

PRESCRIBER	MD/DO	OD¹ (Optometrist)	DDS (Dentist)	DPM (Podiatrist)	PA² (Physician Assistant Certified)	CNP² (Certified Nurse Practitioner)	PHARMACIST³	DVM⁴ (Veterinarian)	CNM² (Certified Nurse Midwife)
DRUG CLASS									
C-II	YES	YES ¹ ophthalmic only	YES for mouth only	YES for foot only	YES ² 1 period of not more than 30 days	YES ² 1 period of not more than 30 days	NO	YES ⁴	YES ² 1 period of not more than 30 days
CIII to V	YES	YES ¹ ophthalmic only	YES for mouth only	YES for foot only	YES ²	YES ²	NO	YES ⁴	YES ²
Legend Drugs	YES	YES ¹ ophthalmic only	YES for mouth only	YES for foot only	YES ²	YES ²	(see below) ³	YES ⁴	YES ²
Contraception	YES	NO	NO	NO	YES ²	YES ²	NO	YES ⁴	YES ²
Nicotine Cessation	YES	NO	YES	NO	YES ²	YES ²	NO	NO	YES ²
Anti-Anxiety	YES	NO	YES for dental visit only	YES for foot only	YES ²	YES ²	NO	YES ⁴	YES ²
Weight Loss	YES	NO	NO	NO	YES ²	YES ²	NO	YES ⁴	YES ²
Controlled substances for self	NO	NO	NO	NO	NO	NO	NO	NO	NO
Controlled substances for prescriber's spouse or children	YES discouraged	YES ¹ discouraged	YES discouraged	YES discouraged	YES ² discouraged	YES ² discouraged	NO	NO	YES ² discouraged

1. Optometrists are limited to prescribing for the eyes. Optometrists may prescribe, administer or dispense oral and topical pharmaceutical agents including analgesic and antibiotic agents rational to the diagnosis and treatment of the human eye and its appendages. They may not prescribe, administer or dispense any oral therapeutic agent to any child under 12 years of age, or any oral steroid to any person, without prior consultation with a licensed physician. They may not prescribe any injectables.
2. Physician Assistants, Nurse Practitioners, and Nurse Midwives may only prescribe medication specified by a practice agreement in collaboration with a sponsoring physician. To prescribe controlled substances these practitioners must have their own DEA registration. They may prescribe substances listed as Schedule II for one period of not more than 30 days.
3. Registered pharmacists may initiate or modify drug therapy by protocol or other legal authority established and approved within a licensed healthcare facility or by a practitioner authorized to prescribe drugs.
4. Veterinarians can only prescribe to treat non-human animals.

The following persons in South Dakota may administer vaccinations:

Nurses¹ that hold a SD license or an out of state multi-state compact license:

- Certified nurse midwives (CNM)
- Certified nurse practitioners (CNP)
- Clinical nurse specialist (CNS)
- Certified registered nurse anesthetist (CRNA)
- Licensed practical nurses (LPN)
- Registered nurses (RN)

SD licensed:

- Paramedics²
- Pharmacists³
- Physicians (MD or DO)
- Physician assistants (PA-C)

SD registered

- Medical Assistants⁴ (MA)

Footnotes:

1. Nurses may not delegate injectable medications to unlicensed med aides.
2. SD licensed Paramedics may administer medications with education/training as established by the Board of Medical and Osteopathic Examiners.
3. SD licensed pharmacists may administer influenza immunizations pursuant to ARSD 20:51:28.
4. SD registered Medical Assistants (MA) may administer medications with direct physician, CNP, CNM, or PA supervision; they may not calculate doses of medication, so the dose/amount of the vaccination must be calculated by supervising provider and they may not allowed to provide patient teaching. At the September 20, 1995 Joint Board Meeting, it was determined that: Medical Assistants are permitted to administer medications from either a single or multi dose vial as long as the supervising physician, CNP, CNM or PA assures appropriate training, competence, and assumes ultimate responsibility for administration of such drugs.