



COMMONWEALTH of VIRGINIA

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The Honorable Christopher P. Stolle, M.D.
Member, House of Delegates
Post Office Box 5429
Virginia Beach, Virginia 23471

Dear Delegate Stolle:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Virginia Department of Health (“Department”) has authority to utilize expedited partner therapy as a measure to treat curable communicable diseases that pose a threat to the public health.

Response

It is my opinion that the Department may utilize expedited partner therapy only to the extent that the requirements of § 54.1-3303(C) of the *Code of Virginia* are met.

Background

You relate that the Centers for Disease Control and Prevention (“CDC”) has concluded that expedited partner therapy is a useful option to facilitate partner management among heterosexual men and women with chlamydial infection or gonorrhea.¹ The CDC defines “expedited partner therapy” as “the practice of treating the sex partners of persons with sexually transmitted diseases . . . without an intervening medical evaluation or professional prevention counseling.”² The usual method of expedited partner therapy is through patient-delivered partner therapy wherein a clinician provides his patient with medication intended for the patient’s partner or provides a prescription in the partner’s name for the patient to deliver.³

¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, EXPEDITED PARTNER THERAPY IN THE MANAGEMENT OF SEXUALLY TRANSMITTED DISEASES: REVIEW AND GUIDANCE at 32 (2006), available at <http://www.cdc.gov/std/treatment/eptfinalreport2006.pdf>.

² *Id.* at 4.

³ *See Id.* at 8.

Applicable Law and Discussion

Under Virginia law, a practitioner⁴ generally may prescribe drugs only to persons with whom he has a bona fide practitioner-patient relationship.⁵ To enable the practitioner to lawfully prescribe a controlled substance, a bona fide practitioner-patient relationship requires the practitioner to:

(i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the benefits and risks of the drug being prescribed; (iii) *perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription;* and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.⁶

Thus, a practitioner normally is required to examine a patient prior to prescribing medicine that constitutes a controlled substance.

Upon meeting certain conditions, § 54.1-3303(C) permits a practitioner to prescribe certain substances to other persons in close contact with a diagnosed patient.⁷ This authority requires the practitioner to establish with the close contact all attributes of a bona fide practitioner-patient relationship, *except* that the practitioner need not conduct an examination of the close contact.⁸ In addition, the practitioner must satisfy three other criteria. First, the practitioner must have a full bona fide practitioner-patient relationship with a diagnosed patient who is in close contact with the person to be prescribed the medicine.⁹ Second, the practitioner, in his or her professional judgment, must believe that “there is

⁴ A practitioner is “a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01, licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.” VA. CODE ANN. § 54.1-3401 (Supp. 2013).

⁵ Section 54.1-3303(A) (Supp. 2012).

⁶ *Id.* (emphasis added).

⁷ This statutory grant of authority is limited to the prescription of Schedule VI antibiotics and antiviral agents. *See* Section 54.1-3303(C), which states as follows:

Notwithstanding any provision of law to the contrary and consistent with recommendations of the Centers for Disease Control and Prevention or the Department of Health, a practitioner may prescribe Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as defined in subsection A, with the diagnosed patient; (ii) in the practitioner's professional judgment, the practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable disease; (iii) the practitioner has met all requirements of a bona fide practitioner-patient relationship, as defined in subsection A, for the close contact except for the physical examination required in clause (iii) of subsection A; and (iv) when such emergency treatment is necessary to prevent imminent risk of death, life-threatening illness, or serious disability.

⁸ *Id.* *See* § 54-3303(A).

⁹ *Id.*

urgency to begin treatment to prevent the transmission of a communicable disease[.]”¹⁰ Finally, the practitioner must believe that “emergency treatment is necessary to prevent imminent risk of death, life-threatening illness, or serious disability.”¹¹ Accordingly, I conclude that, provided these statutory requirements are fully met, a practitioner may lawfully practice such limited form of “expedited partner therapy.”¹²

Nevertheless, your inquiry focuses on the authority of the Department to use this treatment method. As you note, regulations of the Department provide that “[t]he board [of health] and commissioner [of the Department] reserve the right to use any *legal* means to control any disease which is a threat to public health.”¹³ Section 54.1-3303(C) provides the legal means for practitioners to prescribe medicine without first examining the patient, subject to the limitations discussed above. “[W]hen a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.”¹⁴ Neither the Board of Health nor the Commissioner of the Department of Health has any authority to expand or otherwise alter the parameters of expedited partner therapy outside of the constraints set by § 54.1-3303(C).

Conclusion

Accordingly, it is my opinion that the Virginia Department of Health may utilize expedited partner therapy if it does so in accordance with § 54.1-3303(C).

With kindest regards I am,

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

¹⁰ *Id.*

¹¹ *Id.*

¹² I must note that § 54.1-3408.01(A) requires that the name and address of the person receiving the medication be labeled on each prescription. Although the address can be added by the dispensing pharmacist, it is my opinion that the practitioner must obtain the name of the person to be prescribed the medicine.

¹³ 12 VA. ADMIN CODE 5-90-100 (emphasis added).

¹⁴ 2008 Op. Va. Att’y Gen. 69, 71.