

MEMORANDUM OF LAW
(HORA 2023 - PODIATRISTS)

to

Mr. Robert Hay Jr., Executive Director, MSDC

from

Reza Ghafourian, MD, Esq.

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TO: Robert Hay Jr.
FROM: Reza Ghafoorian, MD, Esq.
DATE: March 11, 2024

RE: Mr. Robert Hay’s request, on behalf of the Medical Society of the District of Columbia, to review and provide comments with respect to the new scope of practice amendments relating to Podiatrists in the District under the new Health Occupations Revision General Amendment Act of 2023 (HORA 2023).

QUESTION PRESENTED

- I. Whether the HORA 2023 expanded the scope of practice for Podiatrists.
- II. Whether the HORA 2023 defines a clear scope of practice for Podiatrists.

BRIEF ANSWER

- I. Yes. HORA 2023 expanded the scope of practice of podiatrists by allowing them to perform soft-tissue hand and wrist surgeries, administer anesthesia and administer injections, vaccinations and immunizations in the district.
- II. No. HORA 2023 does not clearly define the scope of practice with respect to the patient demographics that can undergo hand surgery, anesthesia, or get injections, vaccination or immunizations by podiatrists.

APPLICABLE LAWS

I. Summary of Scope of Practice Provisions of the HORA 2023

In the HORA 2023, the Council of the District of Columbia has updated the scope of practice of podiatrists. HORA 2023 replaces the current definition of the “practice of podiatry” with the following paragraph:

(14) “Practice of podiatry” means the diagnosis, treatment, prevention and care of pathology and ailments of all structures and tissues of the human foot and ankle, the anatomical structures that attach to the human foot, ankle, soft tissue at or below the knee, and soft tissue of the human hand consisting solely of soft tissue at or distal to the wrist and excluding the bony structures of the hand or wrist, by surgical, medical, or mechanical means, with or without

compensation. The term “practice of podiatry” includes the **administration of local anesthesia, monitored anesthesia care, and conscious sedation** as well as the **administration of injections, immunizations, and vaccinations.**” (Emphasis added)

II. Current Podiatry Related Laws and Regulations

DC Code § 3-1201.02 entitled “Definitions of health occupations” states, in part:

(14) “Practice of podiatry” means to diagnose or surgically, medically, or mechanically treat, with or without compensation, the **human foot or ankle**, the **anatomical structures that attach to the human foot**, or the **soft tissue below the mid-calf**. The term “practice of podiatry” **does not include the administration of an anesthetic**, other than a local anesthetic. (Emphasis added)

DC Code § 3-1207.63 entitled “Exemption from licensure for select clinical laboratory practitioners” states, in part:

(a) Section § 3-1210.01 shall not apply to a cytotechnologist, histotechnologist, medical laboratory technologist, medical technologist, histologic technician, or phlebotomist who is:

(1) Licensed or registered in the District of Columbia under any other act and who engages in the practice for which he or she is licensed or registered;

(6) A **pathologist or other licensed physician**; (Emphasis added)

DISCUSSIONS

I. PODIATRISTS

The current podiatry scope of practice laws in the District commensurate with the podiatrists training and education.

The state of Maryland similarly limits the scope of practice for podiatrists to include only foot and ankle surgeries and does not permit administration of anesthesia.¹

Virginia also limits the scope of practice of podiatrists to diagnosis, management and treatment of lower extremity ailments and foot and ankle surgeries. Virginia also does not allow administration of anesthetics.

A. HORA 2023 Eliminates the Board of Podiatry and Transfers Its Regulatory Authority Over to the Board of Medicine.

Under the current laws, the Board of Podiatry has oversight over the licensing and the practice of podiatrists. HORA 2023 eliminates the Board of Podiatry and transfers the authority to regulate podiatrists to the Board of Medicine.

B. HORA 2023 Expands Podiatrists Scope of Practice to Allow Hand and Wrist Surgeries.

Currently, the DC laws limit the scope of practice of podiatrists to foot and ankle and soft tissues below the calf. HORA 2023 expands this scope to include the human hand consisting solely of soft tissue at or distal to the wrist and excluding the bony structures of the hand or wrist, by surgical, medical, or mechanical means.

The American Society for Surgery of the Hand, requires the following training for hand surgeons:

Training in hand surgery begins with one of the following ACGME accredited residencies: Orthopaedic Surgery (5 years) Plastic Surgery (5-7 years) General Surgery (5 years).

¹ Maryland Code Sec. 16-101. Definitions

The Hand fellowship program covers:

- Trauma surgery of the hand and wrist, including replantation of severed body parts
- Congenital differences
- Microvascular surgery
- Arthritis surgery (both rheumatoid and osteoarthritis)
- Reconstructive wrist surgery
- Peripheral nerve surgery

In contrast, according to the American Association of Colleges of Podiatric Medicine (AACPM), after a 4 year education at an accredited Podiatric Medical School, “new podiatrists must participate in a four (4) year residency. This residency program provides an interdisciplinary experience with rotations such as anesthesiology, internal medicine, infectious disease, surgery, ER and pediatrics. Residency training provides a combination of medical and surgical experiences that are competency-based. Podiatric medical graduates select a 36-month Podiatric Medicine and Surgery Residency (PMSR) that includes training in rear foot and ankle surgery.”²

“Residency programs expose the podiatric medical graduate to structured learning environments and experiences in general medical patient management along with training in the diagnosis and care of podiatric pathology”³ (Emphasis added)

According to the AACPM, approved residencies in podiatry include:

Podiatric Medicine and Surgery Residency (PMSR) – A PMSR resident is trained in the breadth of podiatric healthcare. Completion of the residency leads to the following certification pathways — the American Board Podiatric Medicine (ABPM) and foot surgery of the American Board of Foot and Ankle Surgery (ABFAS).

Podiatric Medicine and Surgery Residency with a credential in Reconstructive Rearfoot/Ankle Surgery (PMSR/RRA). In addition to the standard Podiatric Medicine and Surgery Residency, the added credential in Reconstructive Rearfoot/Ankle Surgery (PMSR/RRA) is available with some residencies. These residencies can provide a sufficient volume and diversity in reconstructive rearfoot and ankle procedures and are approved to grant an added credential in RRA.

It should be noted that podiatric medical training does not include care of general “surgical” patient management. Further, the podiatric training focuses on diagnosis and

² <https://aacpm.org/podiatric-education/> (accessed March 11, 2024)

³ <https://aacpm.org/residencies/> (accessed March 11, 2024)

care of podiatric pathology and not on upper extremities or human organs. AACPM does not provide any mention of training in hand and wrist or knowledge of training of podiatrists in managing soft tissue of the hand or wrist.

Under the District's regulations, podiatrists qualify for a license to practice in DC when they complete only two (2) years of postgraduate clinical training in a residency program approved by CPME.⁴

It can be implied from the rigorous curriculum and requirements set forth by the American Society for Surgery of the Hand that diagnosing, managing and treating hand issues is complicated and requires a high level of training and experience.

Allowing podiatrists to manage organs or limbs for which they are not trained may subjugate the District's patients to significant harm. Podiatric Medical Schools must first change their education and residency curriculum to train their medical doctors in the surgery of the hand, before the legislature expands the scope of practice of these professionals.

C. HORA 2023 Expands Podiatrists Scope of Practice to Allow administration of local anesthesia, monitored anesthesia, and conscious sedation.

Currently, DC Code prohibits podiatrists to administer an anesthetic, other than a local anesthetic.⁵ However, HORA 2023 expands the scope of practice of podiatrists with respect to administration of anesthetics to include **administration of local anesthesia, monitored anesthesia care, and conscious sedation.**

The American Society of Anesthesiologists states that:

[P]hysician anesthesiologists are the most qualified to make anesthesia related perioperative medical decisions. Physician anesthesiologists are primarily responsible for the safety and well-being of patients before, during and after surgery. This may include placing them in the state of controlled unconsciousness called "general anesthesia," the provision of "regional anesthetics" where only a portion of the body is made numb, or administering sedation when indicated for the relief of pain or anxiety.

Physician anesthesiologists in the United States complete a four year undergraduate college degree that includes satisfying pre-med requirements. Like other medical doctors, they must follow undergraduate education with four years

⁴ DCMR 17-6802

⁵ DC Code § 3-1201.02 (14)

of medical school. After medical school, a physician specializing in anesthesiology completes a four-year anesthesiology residency program.

Following completion of a residency program, residents are eligible to sit for the American Board of Anesthesiology (ABA) exam. Almost 75 percent of physician anesthesiologists are board certified.

Anesthesia management of patients is complicated, requiring anesthesiologists to attend at least four (4) years of residency dedicated to only this practice. Further, fellowships are required to specialize in fields such as pediatric, cardiac, obstetric anesthesia.

Podiatrists education and residency training are outlined above. DC laws require even fewer years of residency training from podiatrists. Although podiatrists' residency training may include anesthesiology rotations, the AACPM does not offer an anesthesiology residency or fellowship. Before podiatrists are allowed to manage patients' complicated anesthesiology, the District should require certification of podiatrists at an accredited anesthesiology training program.

Failure to require proper training and accreditation from professionals could cause significant harm to patients in the District.

D. HORA 2023 Expands Podiatrists Scope of Practice to Allow administration of injections, immunizations, and vaccinations.

The current scope of practice of podiatrists does not include permissions for injections, immunizations and vaccinations. HORA 2023 expands the scope of practice of podiatrists to allow these practices. However, with this expansion, HORA 2023 fails to specify exactly what podiatrists can inject and who they can inject it to. Of concern is that the HORA 2023 rules fail to define an age limit for the practice of injection by podiatrists.

Internal medicine, family practitioners, OBGYN physicians and pediatricians, each train in their respective fields for at least 3 years of rigorous training in diagnosing, managing and treating human illnesses after medical school to qualify as primary care physicians. These physicians become experts in their fields of medicine for the population that they serve. Podiatrists, in contrast, are physicians who focus their entire careers and practices on the treatment of foot and ankle. They do not have the experience, knowledge or experience to practice as primary care physicians.

E. HORA 2023 Limits The Exception To the Licensing Requirements for Clinical Laboratory Practitioners. (D.C. Official Code § 3-1207.63)

Under DC Code § 3–1210.01 entitled “Practicing without license, registration, or certification,” cytotechnologists, histotechnologists, medical laboratory technologists, medical technologists, histologic technicians or phlebotomists must obtain a license to practice their trade. This statute recites:

No person shall practice, attempt to practice, or offer to practice a health occupation licensed, registered, certified, or regulated under this chapter in the District unless currently licensed, registered, or certified, or exempted from licensure, registration, or certification, under this chapter.

However, with respect to cytotechnologists, histotechnologists, medical laboratory technologists, medical technologists, histologic technicians or phlebotomists, the current rules exempt professionals who already possess another valid health care license from the requirement of obtaining a license to practice as one of the enumerated technicians. For example, a licensed pathologist or podiatrist does not require a second license to practice phlebotomy.⁶

HORA 2023 amendments change the current law by limiting which licensed health care practitioners are exempted under DC Code § 3–1207.63. As these amendments apply to podiatrists, HORA 2023 repeals paragraph (a)(1) which exempts a podiatrist from a separate licensing requirement, but then specifically recites the term “podiatrist” in paragraph (a)(6). Although this amendment does not change the scope of licensing for a podiatrist, it does properly close this exemption to other licensed professionals in the District, such as to chiropractors.

F. Suggested Amendments to DC HORA Amendments 2023:

If the Council intends to expand the scope of practice of podiatrists to include hand and wrist surgery, administration of anesthesia and administration of injections and vaccines, it is prudent to first require podiatrists to have the minimum necessary educational and residency training to ensure patient safety.

1. *The Scope of Practice of a Podiatrist Should Not Include Soft-Tissue Surgery of the Hand or Wrist.*
 - a) Surgery of the hand requires extensive knowledge and training not possessed by a podiatrist.

⁶ DC Code § 3–1207.63. Exemption from licensure for select clinical laboratory practitioners.

- b) Podiatry residency training does not emphasize or train for the surgery of the hand.
2. *The Scope of Practice of a Podiatrist Should Not Include Administration of Anesthesia.*
- a) Anesthesiology is a learned practice and a high risk field. To ensure no harm comes to patients, the District should require its practitioners to possess the proper education and training.
 - b) Podiatric medical training does not include anesthesia training.
3. *The Scope of Practice of a Podiatrist Should Not Include Administration of injections, vaccinations and immunizations.*
- a) HORA 2023 fails to define the scope of injection. Injection may include administration of chemotherapy compounds.
 - b) Podiatrists should not be allowed to administer vaccination and immunizations. These practitioners are not trained in the field of primary care and epidemiology.
 - c) HORA 2023 fails to define a patient demographic podiatrists may practice with. Podiatrists, for example, should not inject, vaccinate or immunize children under the age of 18.
 - d) Primary care physicians have extensive knowledge and training in determining whether patients should be vaccinated or immunized. With the rise in the anti-vaccination movement, and failure to immunize, Council should take care not to allow those who are not experienced with public health, such as primary physicians, to counsel and advise the public about immunization and vaccination.