

FILE

Subject

*State Board
Nursing*

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Office of the Attorney General

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VERN MILLER
Attorney General

June 19, 1974

Opinion No. 74-199

W. J. Fitzpatrick
Special Assistant Attorney General
Kansas State Board of Nursing
Professional Building, Suite 313
Independence, Kansas 67301

Dear Mr. Fitzpatrick:

You inquire whether under Kansas law a licensed practical nurse or a nurse's aide may lawfully administer medications. You state that for the purpose of this opinion, we should assume that the administration of medications includes injections with a needle, as well as the administration of oral medications.

K.S.A. 65-1113(b) does not, and indeed practicably could not, define the practice of either professional or practical nursing in terms of enumerated physical or mechanical acts. Rather, the practice of professional nursing is defined broadly and generally as "any act" which is performed in any of the enumerated circumstances, i.e., in the "observation, care and counsel of the ill, injured, or infirm," "in the maintenance of health or prevention of illness of others," in the "supervision and teaching of other personnel," or in the "administration of medications and treatments as prescribed by a licensed physician or dentist," whenever the act is one "requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science." The practice of practical nursing is defined in similarly general terms, to include the performance of "such duties as are required in the care of the ill, injured or infirm" under orders of a licensed physician or dentist, or registered professional nurse, when the performance of such duties "requires a knowledge of simple nursing procedures but not requiring the professional knowledge, judgment and skills required for professional nursing."

The generality of this definitional language does not lend itself to a ready determination whether a particular act is within

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or without the scope of either professional or practical nursing. Indeed, the question whether a single kind of service, such as the administration of medication, constitutes the practice of either professional or practical nursing cannot be answered totally in vacuo. The question which you pose has been raised in connection with K.A.R. 28-38-23(C)(c), of regulations prescribing standards for adult care homes:

"A trained person shall be assigned and held responsible for giving and recording the medications on each shift. Each resident will be observed to see that oral medication has been taken."

In an intermediate care home, a registered professional nurse or licensed practical nurse is required to be on duty forty hours a week. Thus, the question is raised whether a licensed practical nurse or nurse's aide may administer medication in such homes. Medication which is duly prescribed by a licensed physician is deemed to be administered at his direction and under his order. If the administration of medication in a particular instance involves acts "requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science," by definition under K.S.A. 65-1113(b)(1), those acts constitute the practice of professional nursing, except as permitted under K.S.A. 65-1124. Obviously, the administration of medication is a duty "required in the care of the ill, injured or infirm" and when it involves acts which require only "knowledge of simple nursing procedures but not requiring the professional knowledge, judgment and skills required for professional nursing," such acts fall within the scope of practical nursing defined by K.S.A. 65-1113, again, of course, unless permitted to unlicensed persons under K.S.A. 65-1124.

This latter provision enumerated a number of circumstances in which care may permissibly be rendered to the ill by unlicensed persons, "so long as they do not practice professional nursing within the meaning of this act." It contains an additional provision pertinent here:

"[N]or shall this act prohibit the practice of practical nursing for hire or otherwise by any person, provided that such person shall not use in connection with his or her name any designation tending to imply that he or she is a licensed practical nurse unless then duly licensed so to practice under this act."

This proviso does not apply to professional nursing, however.

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The term "nurse's aide" is not one which is defined by statute. It is one of common parlance used generally to describe persons who provide personal care services to persons requiring medical and nursing attention, and assist professional and practical nurses in the performance of their duties. A person who is employed in an adult care home as a nurse's aide, who does not hold himself out to be a licensed practical nurse and uses no designation tending to imply that such person is a licensed practical nurse, may under the proviso quoted above engage in the practice of practical nursing, which would include the administration of medication when the tasks involved therein require, again as stated in K.S.A. 65-1113(b)(2), a "knowledge of simple nursing procedures but not requiring the professional knowledge, judgment and skills required for professional nursing." This last quoted language introduces into the determination whether a particular class of service constitutes practical nursing subject to licensure, the exercise of judgment whether the tasks involved require a "knowledge of simple nursing procedures . . ."

Certainly, many and varied factors may be considered as bearing upon the question in particular applications, depending upon the medication involved, skill required in its preparation, the patient's condition, possibility or likelihood of reaction, and others. Surely, the administration of medication in many instances, particularly as to those taken orally or applied externally, requires only the "knowledge of simple nursing procedures" possessed by licensed practical nurses, and thus may be performed by nurse's aides.

We recognize that the question you pose is raised as a matter of statutory interpretation, and in responding, we cannot presume to introduce those judgmental considerations which are properly left to those possessing the requisite professional expertise. However, purely as a matter of law, we do conclude that when the administration of medication involves tasks which require a "knowledge of simple nursing procedures but not requiring the professional knowledge, judgment and skills required for professional nursing," it is permitted to nurse's aides and other unlicensed persons under the proviso above-quoted from K.S.A. 65-1124.

If further questions remain, please feel free to contact us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Bob Corbett, State Department of Health
Ray Showalter, Kansas State Board of Nursing