



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 5, 1978

ATTORNEY GENERAL OPINION NO. 78-29

Mr. Ray E. Showalter
Executive Administrator
Kansas State Board of Nursing
Forbes Field, Building 729
Topeka, Kansas

Re: Public Health--Examination, Licensure and Regulation
of Nursing--Administration of Medications by Nurses'
Aides

Synopsis: The Kansas Nurse Practice Act, K.S.A. 1977 Supp. 65-
1101, *et seq.*, prohibits individuals not licensed there-
under, including nurses' aides, from administering
medications.

* * *

Dear Mr. Showalter:

You request in behalf of the Board of Nursing reconsideration of Attorney General Opinion No. 76-193. Your letter reflects the Board's concern that this opinion does not consider amendments to the Nurse Practice Act insofar as the question regarding the legality of nurses' aides administering medications is concerned. Your comments and material have been carefully reviewed as has the questioned opinion. The issue to be re-examined is whether nurses' aides are prohibited by the Nurse Practice Act from administering medications.

K.S.A. 65-1114 was amended in 1975 (Chapter 316, Laws of 1975) to provide that it shall be unlawful for any person ". . . to practice or offer to practice practical nursing this state . . . without the requisite license." It was concluded in Attorney General Opinion No. 76-193 that

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"the [1975] amendments [to the Act] provide no basis for a categorical conclusion, purely as a matter of law, that the administration of medication in every instance is an act requiring 'substantial specialized judgment and skill' The administration of medication is clearly a nursing task, which may well fall in some instances within the province of practical nursing when the personnel involved have 'acceptable educational preparation' for the kinds of medication and methods and circumstances of administration involved."

That opinion went on further to provide that

"[t]he administration of medication in particular instances may well constitute a nursing task which is within the competence of a licensed practical nurse"

Essentially that opinion concluded then that administering medications fell within the professional purview of either a registered professional nurse or licensed practical nurse which in either case falls within the definition of the "practice of nursing" as defined in K.S.A. 1977 Supp. 65-1113(b). We do not now by this opinion determine otherwise. However, the question specifically regarding the administration of medication by nurses' aides was not addressed in light of the amendments to the Nurse Practice Act. A review now of the administration of medication by nurses' aides leads this office to the opinion that such individuals so entitled who in fact administer such medication engage in activities which can be reasonably considered to fall clearly and categorically within the definition of the "practice of nursing" as defined by statute, particularly since such activities at the least entail undertaking

"nursing tasks and responsibilities based on acceptable educational preparation within the framework of supportive and restorative care" [K.S.A. 1977 Supp. 65-1113(b)]

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Accordingly it is the opinion of this office that nurses' aides administering medications are engaging in the "practice of nursing," and that such services when performed either for compensation or gratuitously (except as provided in K.S.A. 1977 Supp. 65-1124) may subject the nurses' aides to prosecution under K.S.A. 1977 Supp. 65-1114 assuming of course he or she does not have the requisite license. To the extent above noted Attorney General Opinion No. 76-193 is hereby amended.

The question is one which we have considered at some length. In particular, we have been hesitant to draw any conclusion purely as a matter of law concerning the scope of the practice of nursing as defined by statute, which intruded upon questions properly left to professional medical and nursing judgment. However, after further consideration of the 1975 amendments to the Nursing Practice Act, it is clear, in my judgment, that as a matter of law, the administration of medication is, at the least, a nursing task and responsibility which must necessarily be based on "an acceptable educational preparation within the framework of supportive and restorative care," and thus is restricted to persons licensed therefor. The licensing of nurses has long been required in the interests of the public health and welfare. The examination and licensure of trained nursing personnel assures, to the extent possible, that persons entrusted with the important tasks of the care and treatment of illness will meet certain minimum standards of training and professional competence. When nursing tasks are entrusted to unlicensed personnel, that assurance is jeopardized, and the public forfeits the protection which the licensure act was designed and enacted to provide. If unlicensed personnel are now engaged in performing tasks which may properly be performed only by licensed nursing personnel, including the administration of medication, such as in nursing homes in this state, those responsible therefor must take all necessary steps to assure that such tasks are entrusted henceforth only to licensed personnel. If it is argued that reliance only upon licensed personnel for such tasks will result in a lack of sufficient trained staff to meet patient needs, that argument must be addressed to the legislature, which is best able to weigh the possibly conflicting claims regarding the availability of adequate numbers of trained and licensed nursing personnel. It is certainly not an argument which warrants permitting untrained and unlicensed personnel to assume important patient care responsibilities which are properly left only to licensed professional and practical nurses.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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