



STATE OF KANSAS

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December 5, 1979

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ATTORNEY GENERAL OPINION NO. 79- 274

Mr. Ray E. Showalter, Executive Administrator
Kansas State Board of Nursing
Box 1098, 503 Kansas Avenue
Suite 330
Topeka, Kansas 66601

Re: Public Health--Examination, Licensure and Regulation
of Nursing--Acts Which are Not Prohibited

Synopsis: A professional nurse, licensed in a state other than
Kansas, need not become licensed in this state in
order to participate in the clinical training phase
of the graduate programs in nursing at the University
of Kansas and Wichita State University.

* * *

Dear Mr. Showalter:

You request our opinion as to whether a professional nurse,
licensed in a state other than Kansas, must become licensed
in the State of Kansas while enrolled in a graduate program
in nursing at the University of Kansas or Wichita State
University. You state that during the clinical phase of such
training a graduate nurse performs professional nursing func-
tions in a clinical facility.

Licensing requirements and other provisions relating to the
practice of nursing within the State of Kansas are set forth
in K.S.A. 1978 Supp. 65-1113 et seq. It is provided in K.S.A.
1978 Supp. 65-1114 that "[i]t shall be unlawful for any per-
son . . . [t]o practice or to offer to practice professional
nursing in this state . . . unless such person has been duly
licensed under the provisions of this act." Paragraph (1) of
K.S.A. 1978 Supp. 65-1113(d) defines the "practice of profes-
sional nursing" as follows:

"(1) The practice of professional nursing as performed by a registered professional nurse for compensation or gratuitously, except as permitted by K.S.A. 1978 Supp. 65-1124 and amendments thereto, means the process in which substantial specialized knowledge derived from the biological, physical and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry." (Emphasis added.)

As is apparent from the above underscored portion of K.S.A. 1978 Supp. 65-1113(d)(1), the provisions of K.S.A. 1978 Supp. 65-1124 specify certain acts which may be performed by unlicensed persons. That statute provides, in part, that "[n]o provisions of this law shall be construed as prohibiting . . . the practice of nursing by students enrolled in accredited schools of professional or practical nursing" (Emphasis added.)

K.S.A. 1978 Supp. 65-1119 authorizes the Board to establish standards and basic curricula for schools for professional nurses, schools for practical nurses, and educational programs for advanced registered nurse practitioners (ARNPs). To be accredited in any or all of the three categories, an institution must "apply to the board . . . and submit satisfactory proof that it is prepared to and will maintain the standards and basic . . . curriculum [for the particular category] . . . as prescribed by this act and by the rules and regulations of the board."

You advise that both the University of Kansas and Wichita State University have baccalaureate degree "programs" which have been approved and accredited by the Board. You further advise that both KU and WSU also conduct graduate nursing programs, neither of which are accredited by the Board. It is the Board's position that students enrolled in such nonaccredited graduate programs in nursing do not qualify for the exemption set forth in K.S.A. 1978 Supp. 65-1124. The Board contends that, even though the

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aforementioned institutions conduct accredited schools in professional nursing, students enrolled in the "graduate program" are not enrolled in the "accredited school" and must be licensed by the Board before practicing professional nursing during the clinical phase of training.

We disagree. The Board has, in our opinion, construed the statutes in question too narrowly by equating accredited programs and curricula with the term "accredited school." The statute does not so provide. The only reference to accredited "programs" in K.S.A. 1978 Supp. 65-1119 is to educational programs for ARNPs in subsection (d) of the statute. The legislature distinguishes between the terms "program" and "schools" by specific references, and otherwise authorizes accreditation of institutions offering professional nursing and practical nursing curricula as "schools." An "accredited school" is a school or institution which submits "satisfactory proof [to the Board] that it is prepared to and will maintain the standards and basic professional nursing curriculum or the required curriculum for practical nursing" K.S.A. 1978 Supp. 65-1119. Thus, when the Board takes action to accredit a particular institution's so-called "program" leading to licensure of its graduates either as registered professional nurses or licensed practical nurses, it thereby accredits a "school" for professional nurses or a "school" for practical nurses, respectively.

Accordingly, both KU and WSU have schools of nursing which have been accredited as prescribed by Kansas statutes and by the Board's regulations. It is of no consequence that these institutions offer graduate programs which have not been approved or accredited by the Board, except as the offering of such programs may affect any such institution's ability to meet the prescribed quality standards and to offer the prescribed basic curricula. If, however, the school or institution has been accredited by the Board, pursuant to K.S.A. 1978 Supp. 65-1119 and pertinent regulations, it is an "accredited school" within the meaning of K.S.A. 1978 Supp. 65-1124. Therefore, students enrolled in graduate programs offered by "accredited schools" qualify for the exemption from licensure provided by K.S.A. 1978 Supp. 65-1124.

By providing for such an exemption, the legislature recognized the need for clinical training of nursing students, and at the same time, afforded ample protection for Kansas consumers by restricting the exemption to "students enrolled in accredited schools."

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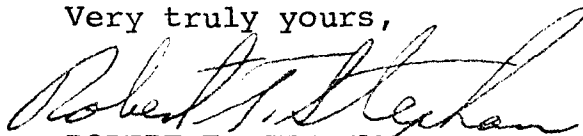
The Board's regulations affirm that clinical training is an "integral part" of the nursing curriculum. Significantly, such training is conducted "under the direction of the instructor." K.A.R. 60-2-101E.1(b). All nursing faculty members of schools for professional nursing are required to be licensed to practice professional nursing in Kansas. K.A.R. 60-2-101C.1.

Thus, if a school has been accredited, the Board has determined that said school will maintain its course offerings in accordance with the standards and curriculum requirements prescribed by the Board, and has thereby insured the protection of consumers contemplated by the statutory exemption. Certainly, if accredited schools also offer graduate programs, which programs have not been reviewed or approved by the Board and which, for any number of reasons, may be deficient for failure to meet certain prescribed standards or basic curriculum requirements, the accreditation status of the schools offering such programs may well be subject to question. So long as the schools maintain their accredited status, however, students enrolled in such schools, whether in graduate or undergraduate courses, are students within the meaning of K.S.A. 1978 Supp. 65-1124.

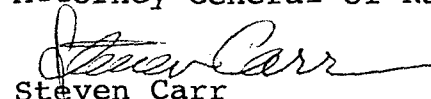
In our judgment, the Board's narrow construction of the statutes would produce an incongruous and irrational result not intended by the legislature. The Board would allow inexperienced undergraduate students to engage in clinical practice while not allowing experienced nurses (licensed in states other than Kansas and enrolled in the graduate programs in question) to practice in the clinical phase of training offered by accredited schools. One of the important rules of statutory construction is that "a statute should be so construed if possible as not to charge the legislature with a ridiculous result." Keck v. Cheney, 196 Kan. 535, 537 (1966).

Guided by that rule, and by the other considerations addressed above, we conclude that a professional nurse, licensed in a state other than Kansas, need not become licensed in this state in order to participate in the clinical training phase of the graduate programs in nursing at the University of Kansas and Wichita State University.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General