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December 7, 1979

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ATTORNEY GENERAL OPINION NO. 79- 277

Honorable Thomas E. Slattery  
State Representative, Fiftieth District  
3431 Northwest 42nd Street  
Topeka, Kansas 66618

Re: Public Health--Healing Arts--Rules and Regulations--  
Revocation or Suspension of Licenses

Synopsis: (1) The Board of Healing Arts may proceed under the provisions of K.S.A. 1978 Supp. 65-2836, as amended, notwithstanding that said Board has not, as yet, promulgated rules and regulations prescribing standards to govern the dispensing of drugs by persons licensed to practice medicine and surgery.

(2) In promulgating rules and regulations establishing standards for the dispensing of drugs by persons licensed to practice medicine and surgery, the Board of Healing Arts need not "rewrite" all of the rules and regulations adopted by the Board of Pharmacy pursuant to the Pharmacy Act and the Uniform Controlled Substances Act. However, it may not promulgate rules inconsistent therewith.

(3) Pursuant to its statutory duty under the provisions of K.S.A. 65-2865, as amended, the Board of Healing Arts must adopt rules and regulations prescribing standards to govern the dispensing of drugs by persons licensed to practice medicine and surgery. Such standards may properly include conditions, restrictions and limitations on such activity, and may also include guides, rules and broad outlines for the dispensing of drugs by persons licensed to practice medicine and surgery.

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Dear Representative Slattery:

You request our opinion regarding several questions which have arisen due to the enactment of 1979 House Bill No. 2007, particularly sections 3 and 8 thereof (L. 1979, ch. 198, §§ 3 and 8). Both sections amend statutes contained in the Healing Arts Act, K.S.A. 65-2801 et seq. Section 3 of the bill amends K.S.A. 1978 Supp. 65-2836, the provisions of which specify grounds for which a license issued under the Healing Arts Act may be revoked, suspended or limited. Pursuant to the 1979 amendment, not only may such a license be revoked, suspended or limited if the licensee willfully or repeatedly violates the provisions of the Healing Arts Act, but now such license also may be revoked, suspended or limited if the licensee willfully or repeatedly violates the provisions of "the pharmacy act of the state of Kansas or the uniform controlled substances act or any rules and regulations adopted pursuant thereto." K.S.A. 1978 Supp. 65-2836, as amended.

Section 8 of the bill amends K.S.A. 65-2865, which directs the Board of Healing Arts (hereinafter referred to as Board) to promulgate rules and regulations. Pursuant to the 1979 amendment, said rules and regulations are required to "include standards for the dispensing of drugs by persons licensed to practice medicine and surgery." K.S.A. 65-2865, as amended.

You indicate it is your understanding that rules and regulations establishing such standards have not, as yet, been promulgated by the Board.

Based upon these new statutory provisions, you ask:

"1) Does the statute prohibit the Board of Healing Arts from enforcing the provisions of 65-2836 until they complete the rules and regulations specified in KSA 65-2865?

"2) Is it necessary for the Board of Healing Arts to rewrite all the pharmacy act regulations and controlled substance act regulations to conform to KSA 65-2865?

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"3) Can the Board of Healing Arts write rules and regulations which conflict with the Pharmacy Act, Controlled Substances Act, pharmacy act regulations and controlled substance act regulations?

"4) What is the definition of 'standards' used in KSA 65-2865? Are these standards more statements of facts relating back to the pharmacy act or are they the regulations themselves?"

In regard to your first inquiry, please be advised that we perceive no legislative intent to make the provisions of either of these statutes dependent on the provisions of the other. The only relation between these statutes is that if the Board of Healing Arts promulgates rules and regulations establishing the "standards" contemplated in K.S.A. 65-2865, as amended, a willful or repeated violation thereof by a licensee will constitute an additional ground upon which the Board may suspend, revoke or limit a license issued by it. The provisions of K.S.A. 65-2865, as amended, do not prohibit or in any way limit the Board's authority to revoke, suspend or limit a license pursuant to the provisions of subsection (h) of K.S.A. 1978 Supp. 65-2836, as amended. Thus, the Board of Healing Arts can enforce the provisions of 65-2836, but obviously cannot enforce standards yet to be promulgated. In short, 65-2865 does not suspend the provisions of 65-2836 pending the adoption of standards to regulate the dispensing of drugs by persons licensed to practice medicine and surgery.

In response to your second and third inquiries, we are of the opinion that the Board need not "rewrite" any of the rules and regulations promulgated by the State Board of Pharmacy pursuant to either the Pharmacy Act, K.S.A. 1978 Supp. 65-1625 et seq., or the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq., in order to fulfill its duty under the provisions of K.S.A. 65-2865, as amended. The legislative charge to the Board under said statute is merely that its rules and regulations include standards for the dispensing of drugs by persons licensed to practice medicine and surgery. There is no requirement that the standards adopted by the Board be exactly the same as the requirements contained in the rules and regulations promulgated by the Board of Pharmacy. However, K.S.A. 65-2865, as amended, specifically provides that the board shall "promulgate all necessary rules,

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regulations and forms, not inconsistent herewith, for carrying out the provisions of this act. . . . It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent with this act." (Emphasis added.) (L.1979, ch. 198, § 8.) Of course, K.S.A. 1978 Supp. 65-2836, as amended, is a provision of the Healing Arts Act and it follows that the rules and regulations adopted by the Board of Healing Arts may not be inconsistent with the provisions thereof. Thus, while the Board of Healing Arts need not promulgate rules and regulations that are merely a regurgitation of the rules and regulations promulgated by the Board of Pharmacy, the Board of Healing Arts may not promulgate rules and regulations which are inconsistent with the Pharmacy Act, the Uniform Controlled Substances Act or any rules and regulations adopted pursuant thereto.

Turning to your final inquiry, it is our opinion that the intent of the legislature is clearly and unambiguously stated in regard to whether the standards mentioned therein are to be mere statements or, rather, are to be rules and regulations having the force and effect of law. (See K.S.A. 1978 Supp. 77-415(4).) In our judgment, the legislature left no doubt but that such standards were to be contained in duly adopted rules and regulations having the force and effect of law.

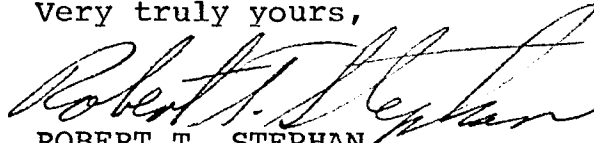
Concerning your inquiry as to the meaning of the term "standards," we quote, in relevant part, the decision of the Court in State, ex rel., v. Hines, 163 Kan. 300 (1947): "Standards are difficult to define because of the variable nature thereof. They have been referred to as conditions, restrictions, limitations, yardsticks, guides, rules, broad outlines and similar synonymous expressions. . . ." Id. at 309.

While in Hines, supra, the Court felt constrained to discuss the term "standards" in more detail than that which is hereinabove quoted, we believe we need not do so here. In our judgment, by using the term "standards" in K.S.A. 65-2865, as amended, the legislature did not intend that the word be construed narrowly, but rather, intended that it be broadly construed. Thus, in our judgment, the intent of the legislature was to direct the Board of Healing Arts to adopt rules and regulations prescribing such "conditions, restrictions, limitations, yardsticks, guides, rules and broad outlines" as it determines to

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be in the best interests of the health and welfare of the public,  
to govern the dispensing of drugs by persons licensed to practice  
medicine and surgery.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
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