



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 23, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-208

Joseph G. Shalinsky
Executive Secretary
Kansas State Board of Pharmacy
P.O. Box 6150, Argentine Station
Kansas City, Kansas 66106

Re: Public Health--State Pharmacy Act--Dispensing and
Administering of Drugs by Duly Licensed Practitioners

Synopsis: The Pharmacy Act of the State of Kansas does not permit a physician to delegate the authority to dispense prescription-only drugs to his or her patients. Cited herein: K.S.A. 1979 Supp. 65-1626, 65-1635, 65-1648, 65-2865, and 65-2896e.

*

*

*

Dear Mr. Shalinsky:

You request our opinion as to whether a "physician" may delegate the function of dispensing "prescription-only drugs" to a nurse or other personnel employed by the physician. As you correctly note, the Board of Healing Arts, pursuant to K.S.A. 1979 Supp. 65-2865, has adopted regulations which prescribe standards for the dispensing of drugs by persons licensed to practice medicine and surgery. However, said regulations do not deal with the subject of delegation, and the legality of any dispensing of drugs by a nurse or other personnel (pursuant to orders from a physician) must be determined by referring to the pharmacy act of this state.

K.S.A. 1979 Supp. 65-1635, which statute is a part of the Pharmacy Act of the State of Kansas, provides as follows:

"Nothing contained in this act shall prohibit any duly licensed practitioner from purchasing and keeping drugs and compounding his or her own prescriptions and administering or supplying to his or her patients such drugs as may be fit, proper and necessary, but such drugs shall be dispensed by such practitioner and shall comply with the Kansas food, drug and cosmetic act and be subject to inspection as provided by law. Nothing contained in this act shall be construed to prohibit any nurse or other person acting, under the direction of a duly licensed practitioner, from administering drugs to a patient." (Emphasis added.)

As the underscored portions of the statute indicate, the pharmacy act provides that a "practitioner" may supply his or her patients with drugs, provided that such drugs are "dispensed" by the "practitioner." The terms "dispense" and "practitioner" are defined in K.S.A. 1979 Supp. 65-1626(g) and (t) as follows:

"For the purposes of this act:

. . . .

"(g) 'Dispense' means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner.

. . . .

"(t) 'Practitioner' means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise authorized by law to administer, prescribe and use prescription-only drugs in the course of professional practice or research."

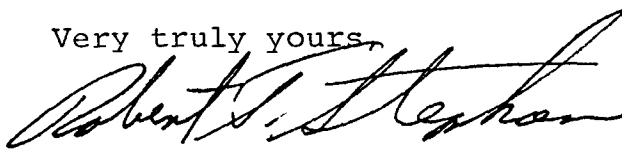
Clearly, a nurse is not a "person licensed, registered or otherwise authorized by law to administer, prescribe and use prescription-only drugs in the course of professional practice or research." Although K.S.A. 1979 Supp. 65-1635 specifically recognizes that a nurse may, under the direction of a physician, "administer" drugs to a patient,¹ nurses are not authorized by

¹The term "administer" is defined in K.S.A. 1979 Supp. 65-1626(a) as follows: "'Administer' means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) a practitioner or pursuant to the lawful direction of a practitioner, or, (2) the patient or research subject at the direction and in the presence of the practitioner."

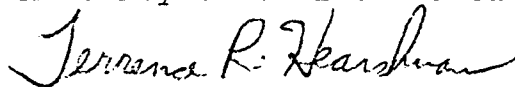
law to prescribe drugs for the treatment of any condition. Therefore, a nurse is not a practitioner and may not dispense drugs under the authority granted by K.S.A. 1979 Supp. 65-1635.²

With regard to other personnel which may be employed by a physician, we are unaware of any specific statutory authority which would allow such personnel to dispense drugs. Although K.S.A. 1979 Supp. 65-2896e grants broad authority to "physicians' assistants" to perform acts under the direction and supervision of a physician, the specific language of K.S.A. 1979 Supp. 65-1635 must take precedence over the more general statutory provisions relating to physicians' assistants. See Harris v. Shanahan, 192 Kan. 629, 637 (1964). In our judgment, K.S.A. 1979 Supp. 65-1635 does not permit a practitioner to delegate the authority to dispense prescription-only drugs.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm

²It should be noted, however, that registered nurses may, under the supervision of a pharmacist in charge, distribute drugs from a medical care facility pharmacy when the pharmacist is not on the premises. See K.S.A. 1979 Supp. 65-1648.