



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 2, 1980

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

ATTORNEY GENERAL OPINION NO. 80- 217

Dr. Lois Rich Scibetta, R.N.
Executive Administrator
Kansas State Board of Nursing
Box 1089, 503 Kansas Avenue
Topeka, Kansas 66601

Re: Public Health--Examination, Licensure and Regulation
of Nursing--Execution of Medical Regimen Under Direction
of Podiatrist

Synopsis: Registered professional nurses may execute a medical regimen
prescribed by a podiatrist. Cited herein: K.S.A. 1979 Supp.
65-1113, 65-2001, 65-2002, 65-2869.

* * *

Dear Dr. Scibetta:

You request an opinion from this office concerning the legality
of a nurse executing a medical regimen prescribed by a podiatrist.
Your question arises from the wording of K.S.A. 1979 Supp. 65-1113(d),
which defines the practice of nursing, as follows:

"(d) Practice of nursing. (1) The practice of
professional nursing as performed by a registered
professional nurse for compensation or gratuitously
. . . , 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

Dr. Lois Rich Scibetta, R.N.
Page Two
October 2, 1980

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.)

Is a podiatrist a "person licensed to practice medicine and surgery" within the meaning of the above-quoted section? The phrase is not defined in the act regulating the practice of nursing. However, we do find the term defined in the healing arts act. K.S.A. 1979 Supp. 65-2869 provides:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

"(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

"(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment, or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease or physical or mental illness, of human beings.

"(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings." (Emphasis added.)

In Clafin v. Walsh, 212 Kan. 1 (1973), the Kansas Supreme Court affirmed the rule that "[s]tatutes relating to the same subject, although enacted at different times, are in pari materia and should be construed together." 212 Kan. at 8. In Callaway v. City of Overland Park, 211 Kan. 646 (1973), the Court said: "'Ordinarily, identical words or terms used in different statutes on a specific subject are interpreted to have the same meaning in the absence of anything in the context to indicate that a different meaning was intended.'" 211 Kan. at 652. Guided by these long-established

Dr. Lois Rich Scibetta, R.N.
Page Three
October 2, 1980

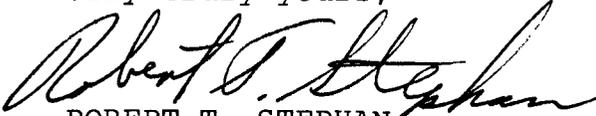
rules of statutory construction, we conclude that the phrase "person licensed to practice medicine and surgery" in K.S.A. 1979 Supp. 65-1113 has the same meaning as "persons . . . engaged in the practice of medicine and surgery" as that term is defined in K.S.A. 1979 Supp. 65-2869, quoted above.

It is clear that a podiatrist is a person engaged in the practice of medicine or surgery, as defined by 65-2869. To practice podiatry, which is defined as the "diagnosis and treatment of all illnesses of the human foot" [K.S.A. 1979 Supp. 65-2001(c)], a person must be licensed by the state board of healing arts. K.S.A. 1979 Supp. 65-2001(a). The scope of practice of a podiatrist is established in K.S.A. 1979 Supp. 65-2002, which states, in pertinent part, thus:

"(b) A registered podiatrist shall be authorized to prescribe such drugs or medicine, and to perform such surgery on the human foot or toes, as may be necessary to the proper practice of podiatry, but no podiatrist shall amputate the human foot or toes or administer any anesthetic other than local. (Emphasis added.)"

As a person statutorily authorized to prescribe drugs and perform surgery, although that authority is limited, a podiatrist is a person engaged in the practice of medicine and surgery. Accordingly, a registered professional nurse may execute the medical regimen prescribed by a podiatrist. One important caveat should be noted, however. A nurse's practice under the direction of a podiatrist must be limited to the scope of practice within which the podiatrist himself or herself must work. The podiatrist may not direct the nurse to do that which the podiatrist may not do. Under general principles of the law of agency, "an agent cannot do what the principal himself could not honestly or lawfully have done." 2A C.J.S., Agency §144.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf