



STATE OF KANSAS

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August 5, 1981

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ATTORNEY GENERAL OPINION NO. 81-182

The Honorable Roy M. Ehrlich
State Senator, Thirty-Fifth District
Route 1, Box 92
Hoisington, Kansas 67544

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

Synopsis: Neither the Pharmacy Act of the State of Kansas, nor
the Kansas Healing Arts Act, permits a physician to
delegate the authority to dispense prescription-only
drugs to his or her patients. Kansas Attorney General
Opinion No. 80-208 is affirmed. Cited herein:
K.S.A. 65-1626, 65-1631, 65-1635 and 65-2872.

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Dear Senator Ehrlich:

You request reconsideration of Kansas Attorney General Opinion No.
80-208, wherein we opined that 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.
Specifically, you ask whether we "took into account the physician's
broad authority to delegate" under the Kansas Healing Arts Act.

In rendering the aforesaid opinion, we carefully considered all
relevant sections of the Kansas Healing Arts Act, including
K.S.A. 65-2872, which statute provides, in part, as follows:

"The practice of healing arts shall not be
construed to include the following persons:

. . . .

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"(g) Persons whose professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act." (Emphasis added.)

While the above-quoted provision allows licensed professionals, under the supervision of a physician, to engage in acts which would otherwise constitute the practice of the healing arts and violate the Kansas Healing Arts Act, it does not allow such professionals to engage in acts which constitute the practice of pharmacy. The dispensing of prescription-only drugs is part of the practice of pharmacy [see K.S.A. 65-1626(s)], and it is unlawful for any person to practice as a pharmacist unless such person is registered by the state board of pharmacy. K.S.A. 65-1631.

However, under the Pharmacy Act, a physician may supply drugs to his or her patients, but the drugs must be dispensed by the physician. K.S.A. 65-1635. As we pointed out in the previous opinion, a nurse may "administer" (i.e., directly apply to the body of a patient pursuant to lawful direction of a practitioner) drugs pursuant to K.S.A. 65-1635. There is a well-defined statutory distinction, however, between administering (direct application) and dispensing (delivery of prescription medication), and it is clear that the statutory authority to administer drugs does not permit the dispensing of drugs. The only conditions under which a nurse may dispense prescription-only drugs are set forth in K.S.A. 65-1648, which statute provides as follows:

"(a) Any medical care facility pharmacy registered by the board may keep drugs in such facility and may supply drugs to its inpatients and outpatients. Distribution and control of prescription medications in a medical care facility pharmacy shall be under the supervision of a pharmacist in charge. A designated registered nurse or nurses approved by the pharmacist in charge and under the supervision of the pharmacist in charge shall be in charge of the distribution and control of drugs of a medical care facility pharmacy when a pharmacist is not on the premises. Drugs supplied to outpatients when a pharmacist is not on the premises shall be limited to the quantity necessary until a prescription can be filled. The provisions of this section shall not apply to ambulatory surgical centers.

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"(b) Nothing contained in this act shall be construed as prohibiting an adult care home which utilizes the services of a pharmacist, from maintaining an emergency medication kit approved by the adult care home's medical staff composed of a duly licensed practitioner and a pharmacist. Said emergency medication kit shall be used only in emergency cases under the supervision and direction of a duly licensed practitioner, and a pharmacist shall have supervisory responsibility of maintaining said emergency medication kit."

There is no provision of the Pharmacy Act which allows a physician to delegate the authority to dispense drugs. The term "dispense" is defined in K.S.A. 65-1626(g) as follows:

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

We are aware that it has been suggested that the underscored portion of the above-quoted statutory definition supports a conclusion that any person may dispense drugs under the lawful order of a physician. However, we believe that such an interpretation is patently absurd, since it would make nugatory the licensing requirement imposed by the Pharmacy Act. In our judgment, the statutory definition of the term "dispense" refers to the delivery of prescription medication only by persons legally authorized to make such delivery under the Pharmacy Act. Such persons include physicians and other practitioners (but only where the drugs are dispensed by the practitioner), and pharmacists. In our opinion, the phrase "lawful order" used in the statutory definition of the term "dispense" refers to a "prescription order," which order is issued or directed by a practitioner, and is to be filled by a pharmacist. See K.S.A. 65-1626(x). The reference to a "lawful order of a practitioner" in the above-quoted statutory definition cannot be construed to authorize a physician to delegate the authority to dispense drugs, since such an interpretation would be in clear conflict with the plain and unambiguous provisions of K.S.A. 65-1635.

In accordance with the above, it is our opinion that neither the Pharmacy Act of the State of Kansas, nor the Kansas Healing Arts

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Act, permits a physician to delegate the authority to dispense prescription-only drugs to his or her patients. Kansas Attorney General Opinion No. 80-208 is affirmed.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm