



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 8, 1982

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ATTORNEY GENERAL OPINION NO. 82-241

Robert E. Davis
Attorney for the Board
Kansas State Board of Pharmacy
P. O. Box 6150
Argentine Station
Kansas City, Kansas 66106

Re: Public Health--Examination and Registration of
Pharmacists--Public Health Departments and Private,
Not-For-Profit Family Planning Clinics; Distribution
and Control of Prescription Medications

Synopsis: The State Board of Pharmacy is not authorized, under the provisions of K.S.A. 65-1648 (as amended by L. 1982, ch. 262, §5) or any other statute, to adopt a regulation which provides, expressly or by implication, that the issuance of standing orders is outside the authorized course of professional practice of a physician. However, the State Board of Healing Arts has jurisdiction to investigate complaints against practitioners who allegedly issue standing orders in contravention of standards of competent medical practice.

A public health department or private not-for-profit family planning clinic may not distribute any drug to a patient where such distribution would violate any provision of the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq.

A designated registered nurse, in charge of distributing drugs at a public health department or private not-for-profit family planning clinic (when a pharmacist is not on the premises), may supply the entire quantity

of drugs necessary for treatment of a patient, if completion of the course of treatment ordered by the supervising practitioner entails supplying such a quantity of drugs. Cited herein: K.S.A. 65-1626 (as amended by L. 1982, ch. 182, §138), 65-1648 (as amended by L. 1982, ch. 262, §5), 65-4101, 65-4123 (as amended by L. 1982, ch. 269, §7).

* * *

Dear Mr. Davis:

You request reconsideration of a letter opinion dated August 27, 1982 (a copy of which is attached hereto), wherein it was concluded that the Board of Pharmacy, in promulgating regulations authorized by K.S.A. 65-1648(d)(2) (as amended by L. 1982, ch. 262, §5), has no authority to adopt a regulation which conflicts with the statutory definition of the term "prescription order," as set forth in subsection (x) of K.S.A. 65-1626 (as amended by L. 1982, ch. 182, §138), or which provides that the issuance of "standing orders" is outside the authorized course of professional practice of a physician. You suggest that the Pharmacy Board will have difficulty enforcing pharmacy laws under the aforesaid interpretation, and that said opinion may allow nurses employed by public health departments and private not-for-profit family planning clinics to distribute controlled substances in violation of the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq. You also request our opinion as to whether, when a pharmacist is not on the premises of a public health department or private not-for-profit family planning clinic, a nurse may supply the entire quantity of drugs necessary for treatment of a patient.

In regard to the enforcement problem which you foresee, it is our opinion that any such problem cannot serve as a "springboard" which would allow the Pharmacy Board to exercise authority which it has not been granted by the legislature. Accordingly, we affirm our previous conclusion that the Board has no authority to adopt a regulation which provides (expressly or impliedly) that the issuance of standing orders is outside the authorized course of professional practice of a physician.

In response to your second question, we do not agree that the previously issued letter opinion will allow controlled substances to be distributed in violation of the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq. You have correctly noted that, under said act, schedule II controlled substances may not be dispensed (except in emergency situations or when dispensed by a practitioner)

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without the written prescription of a practitioner. K.S.A. 65-4123 (as amended by L. 1982, ch. 269, §7). However, said requirement is not in conflict with our previous conclusion, and we doubt that there are any circumstances where the dispensing of a schedule II controlled substance, pursuant to a practitioner's standing order, would be deemed to be in the authorized course of a practitioner's professional practice. As a practical matter, the situation should not arise, as it will be the future policy of the Department of Health and Environment to direct that nurses (at public health departments and family planning clinics) shall not dispense schedule II controlled substances pursuant to standing orders.¹

Your last question is whether a designated registered nurse (at a public health department or private not-for-profit family planning clinic) may, when a pharmacist is not on the premises, supply the entire quantity of drugs necessary for treatment of a patient. In this regard, subsection (d)(1) of K.S.A. 65-1648 (as amended by L. 1982, ch. 262, §5) provides, in pertinent part, as follows:

"Drugs supplied to patients when a pharmacist is not on the premises shall be limited to the quantity necessary to complete a course of treatment as ordered by the practitioner supervising such treatment." (Emphasis added.)

As indicated by the underscored portion of the above-quoted statutory excerpt, the "limitation" upon the quantity of a drug supplied, when a pharmacist is not on the premises, is determined by the order of the practitioner supervising the treatment. If "completion of the course of treatment" ordered by the practitioner entails supplying the entire quantity of drugs necessary for treatment, then a registered nurse may supply such quantity of drugs when a pharmacist is not on the premises.

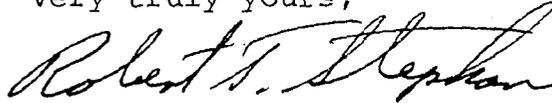
We believe that the above-cited authorities and comments sufficiently address all legal questions raised by your lengthy opinion request. As you seem to recognize, many of the questions which you raise depend upon whether, under individual circumstances, a standing order constitutes a prescription order. Said question is, in our opinion, a mixed question of law and fact, and can be

¹Information supplied by Dr. Joseph Hollowell, Director of Division of Health, Kansas Department of Health and Environment. Dr. Hollowell also indicates that his agency would have no objection to a Pharmacy Board regulation prohibiting nurses from dispensing any controlled substance at a public health department or family planning clinic.

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answered only upon consideration of the facts of each case. As we have noted before, the Board of Healing Arts has jurisdiction to investigate complaints against practitioners who allegedly issue standing orders in contravention of standards of competent medical practice. However, this office is limited to providing opinions in response to strictly legal questions, and has no authority to serve as a trier of fact.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJs:TRH:jm
Attachment



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

August 27, 1982

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

Robert E. Davis
Kansas State Board of Pharmacy
P. O. Box 6150
Argentine Station
Kansas City, Kansas 66106

Re: OR 35682

Dear Mr. Davis:

Attorney General Stephan has asked that I respond to your request for an opinion regarding the use of standing orders/protocol in the distribution of prescription medications at health departments and private, not-for-profit family planning clinics. Specifically, you pose the following questions on behalf of the Kansas State Board of Pharmacy:

"1. [Are] standing orders/protocol . . . included within the definition of prescription order as defined by K.S.A. 65-1626, and K.S.A. 65-669(q)?

"2. [A]ssuming the definition of prescription order does not include standing orders/protocol, [is] the Board . . . authorized to promulgate and adopt regulations which would provide that the supply of prescription-only medications to a patient by a designated registered nurse or nurses when a pharmacist is not on the premises of a family planning clinic or public health department, be done pursuant only to a practitioner's drug order?"

In response to the first question posed above, I note that the term "prescription order" is defined in the Pharmacy Act of the State of Kansas as follows:

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"(1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner in the authorized course of his or her professional practice, or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner." (Emphasis added.) K.S.A. 65-1626(x), as amended by L. 1982, ch. 182, §138.

In my judgment, the underscored portion of the above-quoted statutory definition is the standard which must be utilized in determining whether a particular "standing order" constitutes a valid "prescription order." If a standing order, issued and signed by a practitioner, is issued in the authorized course of the practitioner's professional practice, then such an order would constitute a prescription order. On the other hand, if the standing order were issued in contravention of standards of competent medical practice, then it would be outside the practitioner's authorized course of professional practice, and would not be a valid prescription order. In this regard, this office recently opined that any question as to whether competent medical practice has been followed in a specific case may be answered only upon consideration of the facts of each case. See Kansas Attorney General Opinion No. 82-162. It should also be noted that the Kansas Board of Healing Arts has jurisdiction to investigate complaints related to the professional competency of persons licensed to practice any of the healing arts. See K.S.A. 65-2836.

In response to the second question, it is my opinion, as indicated in the above discussion, that said question may be based on an erroneous assumption, i.e., that any standing order is outside the scope of authorized professional practice and is not a valid prescription order. In any case, and regardless of any professional questions relating to the issuance of standing orders by practitioners, the Board of Pharmacy has no authority to adopt a regulation which conflicts with the statutory definition of the term "prescription order," as set forth in subsection (x) of K.S.A. 65-1626 (as amended), or which provides that the issuance of standing orders is outside the authorized course of professional practice of a physician.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Terrence R. Hearshman
Assistant Attorney General

TRH:jm