



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 64

Richard Sanborn
Mulvane City Attorney
434 North Market
Wichita, Kansas 67202

Re: Automobiles and Other Vehicles--Driving Under the
 Influence of Alcohol or Drugs; Related
 Provisions--Tests for Alcohol or Drugs; Who May
 Administer

Synopsis: Subsequent to a DUI arrest, the withdrawal of
 blood may be performed by a person acting under the
 supervision of a licensed physician or surgeon.
 The term "supervision" is not defined by statute,
 but connotes overseeing with direction,
 superintending, and inspecting with authority.
 Cited herein: K.S.A. 1986 Supp. 8-1001; K.S.A.
 65-2872.

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Dear Mr. Sandborn:

As attorney for the City of Mulvane, you have requested our opinion concerning the administration of blood tests conducted pursuant to K.S.A. 1986 Supp. 8-1001. Specifically, you inquire whether a person trained by a licensed physician and surgeon may take blood samples pursuant to this statute in a physician's clinic under the supervision of the training physician. You have indicated that the city's Director of Emergency Services and one of the full-time city police officers hold current EMT certifications. However, you further indicate that the certification is material only

insofar as it evidences a certain level of background education and learning ability on the part of the individuals, which is relevant to the supervising licensed surgeon.

We find no general prohibition in the Kansas statutes specific to the withdrawal of blood. However, K.S.A. 1986 Supp. 8-1001 does require that, for purposes of testing for alcohol or drugs pursuant to a DUI arrest, the withdrawal of blood may be performed only by:

"(1) A person licensed to practice medicine or surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician." K.S.A. 1986 Supp. 8-1001(c). (Emphasis added.)

When a person acts under the supervision of a licensed practitioner, that person is deemed not to be engaged in the practice of healing arts. K.S.A. 65-2872(g). A medical doctor may delegate tasks which assist in the practice of the healing arts. State ex rel., v. Doolin & Shaw, 209 Kan. 244, 262 (1972). As the person to whom such tasks are delegated is not deemed to be engaging in the practice of the healing arts, it would appear that the degree of expertise required by the person would be determined by the supervising physician or surgeon.

The statutory requirement of K.S.A. 1986 Supp. 8-1001(c) is that the physician or surgeon actually supervise the party withdrawing blood. The statutes do not define the term "acting under the supervision of" another. Our courts have likewise not specifically defined the term. However, the term "general supervision" has arisen in other contexts. In discussing the power of the State Board of Education to exercise general supervision over local school boards, it was stated that,

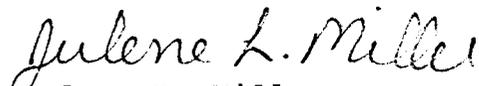
"[a]s found and employed both in the constitution and in the statutes of this state the term 'general supervision' means something more than to advise and confer with but something less than to control." State ex rel., v. Board of Education, 212 Kan. 482, Syl. ¶10 (1973).

Other jurisdictions have associated with the term "supervise" such phrases as "oversee with direction," "superintend," and "inspect with authority." See e.g., Kemp v. Stanley, 15 So.2d 1 (L.A., 1943); Swartley v. Harris, 40 A.2d 409 (Penn., 1944); Rosenstrauch v. Reavy, 21 N.Y.S.2d 358 (1940); Lowe v. Chicago Lumber Co. of Omaha, 283 N.W. 841 (Neb., 1939); New York Life Ins. Co. v. Rhodes, 60 S.E. 828 (Ga., 1908); Egner v. States Realty Co., 26 N.W.2d 464, 170 A.L.R. 500 (Minn., 1947); State v. Manning, 259 N.W. 213 (Iowa, 1935); Continental Cas. Co. v. Borthwick, 177 So.2d 687 (Fla., 1965). While we believe that supervision is an act which must be judged on a case-by-case basis, we also believe that these descriptive phrases offer valuable insight.

In conclusion, it is our opinion that the withdrawal of blood is not prohibited by the statutes when performed under the supervision of a licensed physician or surgeon. It is the duty of the supervising physician to determine the qualifications of the person to whom such tasks are delegated. Though "supervision" is not defined by statute, case law suggests that it requires some degree of oversight.

Very truly yours,


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