



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 18

Pat Johnson, R.N., M.N.
Executive Administrator
Kansas State Board of Nursing
Landon State Office Bldg., 551-S
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities -- Board
of Nursing -- Duties and Powers; Promoting Nursing
Standards

Statutes; Administrative Rules and Regulations and
Procedure -- Rules and Regulations -- Definitions;
Rule and Regulation; Policy Statements

Synopsis: The Kansas state board of nursing may issue policy
statements to promote improved nursing standards.
Such statements are not rules, and do not have the
force and effect of law, unless promulgated
pursuant to the rules and regulations filing act.
Cited herein: K.S.A. 1990 Supp. 74-1106; K.S.A.
77-415

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Dear Ms. Johnson:

As executive administrator of the Kansas state board of
nursing (board), you have requested our opinion regarding the
duties and powers of the board. Specifically, you ask whether
the board may issue policy statements.

The authority of administrative agencies is well established.
Agencies have no inherent or common law powers. Pork Motel
Corp. v. Kansas Dept. of Health and Environment, 234 Kan.

374, 378 (1983). Being creatures of statute, agencies may exercise only those powers expressly conferred or necessarily implied by statute. State, ex rel. Secretary of S.R.S. v. Fomby, 11 Kan.App.2d 138, 141 (1986). Thus, we must review the relevant statutes establishing the board's authority for guidance.

The board is specifically directed to promote standards of nursing through institutes, conferences and other means. K.S.A. 1990 Supp. 74-1106(c)(4). We believe that this expressed grant of authority necessarily implies the board's authority to inform those persons licensed by the board of its collective thoughts on standards within the practice of nursing.

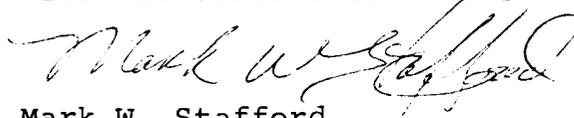
The authority to issue policy statements is not a substitute for following rulemaking procedures. If such a statement is to have the force and effect of law, then it must be adopted in the manner provided by the rules and regulations filing act. K.S.A. 77-415; see also North Amer. Safety Valve Industries v. Wolgast, 672 F. Supp. 488, 493 (D. Kan. 1987) (regulation adopting national inspection code by reference not amended by changes in code until agency complied with rules and regulations filing act); Aircraft Steel & Supply Co. v. State Comm. of Revenue & Taxation, 173 Kan. 524, 531 (1952); but see Clark v. Ivy, 240 Kan. 195, 204-06 (1986) (failure to file and publish policy regarding payment for indigent defense services did not invalidate board's refusal to pay appointed attorneys expenses).

In conclusion, it is our opinion that the Kansas state board of nursing may issue policy statements to promote improved nursing standards. Such statements are not rules, and do not have the force and effect of law, unless promulgated pursuant to the rules and regulations filing act.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
Assistant Attorney General