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December 18, 2014

ATTORNEY GENERAL OPINION NO. 2014- 20

Joseph House, Executive Director
Kansas Board of Emergency Medical Services
900 SW Jackson Street, Room 1031
Topeka, KS 66612

Re: Public Health—Emergency Medical Services—Paramedics; Authorized Activities

Public Health—Healing Arts—Licensees Who Direct, Supervise, Order, Refer, Accept Responsibility for, Enter into Practice Protocols with or Delegate Acts Which Constitute Practice of Healing Arts to Others; Requirements and Limitations

Synopsis: Under K.S.A. 2014 Supp. 65-6119, paramedics are not strictly limited to working at the scene of a response or in an ambulance during patient transport. During emergencies, subsection (d)(3) of the statute allows paramedics to perform activities specifically authorized by medical protocols, even in hospital settings. Subsection (d)(2), which authorizes a paramedic to perform medical tasks while in voice contact with a physician or certain other health care professionals authorized by a physician, is not limited to emergency situations. To the extent Attorney General Opinion No. 90-134 reached a different conclusion, that opinion is withdrawn.

A physician may delegate medical tasks to an emergency medical services (EMS) attendant beyond those tasks specifically authorized in the EMS Act as long as the attendant is competent to perform the tasks, the delegation does not violate any other statute or regulation, and the other criteria for delegation specified in K.S.A. 2014 Supp. 65-28,127 are met. Cited herein: K.S.A. 2014 Supp 65-28,127; 65-6119.

* * *

Dear Mr. House:

As Executive Director for the Kansas Board of Emergency Medical Services, you ask for our opinion on two questions regarding the capabilities and limitations of certified emergency medical services (EMS) attendants.¹

The scope of paramedic practice under K.S.A. 2014 Supp. 65-6119

First, you ask whether K.S.A. 2014 Supp. 65-6119 authorizes a paramedic to provide medical services within the paramedic scope of practice in a medical care facility, general hospital, special hospital, ambulatory surgical center, recuperation center, or critical access hospital.

K.S.A. 2014 Supp. 65-6119(d) provides:

(d) Upon transition notwithstanding any other provision of law, a paramedic may:

(1) Perform all the authorized activities identified in K.S.A. 65-6120, 65-6121, 65-6144, and amendments thereto;²

(2) when voice contact or a telemetered electrocardiogram is monitored by a physician, physician assistant where authorized by a physician or an advanced practice registered nurse where authorized by a physician or licensed professional nurse where authorized by a physician and direct communication is maintained, and upon order of such person, may administer such medications or procedures as may be deemed necessary by a person identified in subsection (d)(2);

(3) perform, during an emergency, those activities specified in subsection (d)(2) before contacting a person identified in subsection (d)(2) when specifically authorized to perform such activities by medical protocols; and

(4) perform, during nonemergency transportation, those activities specified in this section when specifically authorized to perform such activities by medical protocols.

¹ These attendants include first responders, emergency medical responders, emergency medical technicians, emergency medical technicians-intermediate, emergency medical technicians-defibrillator, emergency medical technicians-intermediate/defibrillator, advanced emergency medical technicians, mobile intensive care technicians, and paramedics. See K.S.A. 2014 Supp. 65-6112(f).

² These statutes define the scope of practice for emergency medical technicians-intermediate and advanced emergency medical technicians; emergency medical technicians; and first responders and emergency medical responders respectively. Thus, paramedics have the broadest scope of practice for the professions licensed under the EMS Act.

You indicate that certified paramedics are currently working in a variety of clinical settings as staff, relying on voice contact with a physician or other health care professionals authorized by a physician under subsection (d)(2), or pursuant to medical protocols during emergencies as authorized by subsection (d)(3). You wish to know whether this is allowed or whether paramedics are limited to working at response scenes and in ambulances during patient transport.

When interpreting statutes, courts begin with the text. If the statutory language is plain and unambiguous, courts give effect to the statute as written.³ “Only when the language of a statute is unclear or ambiguous” is it appropriate to “move to the next analytical step, applying canons of construction or relying on legislative history to construe the statute.”⁴

We are unable to find anything in the text of the EMS Act to suggest that the activities specified in subsections (d)(2) and (d)(3) of K.S.A. 2014 Supp. 65-6119 may be performed only at response scenes or in ambulances. To be sure, subsection (d)(3) authorizes reliance on medical protocols only “during an emergency.” But emergencies can occur in hospitals and other medical facilities as well as outside of them. We conclude that during emergencies subsection (d)(3) of K.S.A. 2014 Supp. 65-6119 authorizes paramedics to perform activities specifically authorized by medical protocols, even in hospital settings.

Subsection (d)(2) of K.S.A. 2014 Supp. 65-6119 authorizes a paramedic to perform tasks deemed necessary by a physician or certain other health care professionals authorized by a physician when the paramedic maintains voice contact and direct communication with the physician or health care professional. Attorney General Opinion No. 90-134 considered a prior version of this provision and concluded that it was limited to emergency situations. Although the plain language of the statute contained no such limitation, the opinion relied on the phrase “emergency medical services” in the title of the bill to conclude that the Legislature intended paramedics to act based on voice contact with a physician only during emergencies, not in settings where medical tasks are foreseeable as part of a patient’s plan of care.

The conclusion of Attorney General Opinion No. 90-134 was debatable at the time. Nothing in the text of what is now subsection (d)(2) would limit that provision to emergency situations, and the fact that the phrase “during an emergency” is found only in subsection (d)(3) strongly implies that subsection (d)(2) is not so limited. After all, if the entire statute were limited to emergency situations, the phrase “during an emergency” in (d)(3) would be superfluous, and statutes should generally be interpreted to avoid redundancy.⁵ While Attorney General Opinion No. 90-134 correctly noted that the title of a bill can be used as evidence of legislative intent when construing ambiguous statutory terms, the opinion failed to identify any statutory ambiguity that

³ See, e.g., *Unruh v. Purina Mills, LLC*, 289 Kan. 1185, 1193-94 (2009).

⁴ *Id.*

⁵ See, e.g., *State v. Sedellos*, 279 Kan. 777, 783-84 (2005) (“[C]ourts should avoid interpreting a statute in such a way that part of it becomes meaningless, useless, or surplusage.”).

would provide a textual basis for its conclusion. And the Kansas Supreme Court has repeatedly held that “[a] statute should not be read to add something that is not found in the plain words used by the legislature.”⁶

In any event, subsequent statutory changes to K.S.A. 65-6119 have further undermined the conclusion of Attorney General Opinion No. 90-134. In 1991, the Legislature amended the statute to authorize paramedics to perform certain medical tasks “during nonemergency transportation.”⁷ It is now no longer possible to conclude that the paramedic scope of practice is limited to emergency situations, and so we believe the statute should be given its plain meaning. Subsection (d)(3) of K.S.A. 2014 Supp. 65-6119 is limited to emergency situations, and subsection (d)(4) is limited to nonemergency transportation. But subsection (d)(2) contains neither of these limitations, and we decline to read them into the statute. To the extent Attorney General Opinion No. 90-134 concluded that what is now K.S.A. 2014 Supp. 65-6119(d)(2) is limited to emergency situations, that opinion is withdrawn.

Delegation by a physician pursuant to K.S.A. 2014 Supp. 65-28,127

Your second question is whether K.S.A. 2014 Supp. 65-28,127 authorizes a physician to delegate medical tasks to certified EMS attendants beyond those tasks specifically authorized by the relevant EMS statutes and regulations.

Prior Attorney General opinions reached differing conclusions on the scope of K.S.A. 65-28,127, which prior to 2009 stated:

(a) Every responsible licensee⁸ who directs, supervises, orders, refers, accepts responsibility for, enters into practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons shall:

.....

(3) direct, supervise, order, refer, enter into a practice protocol with, or delegate to such persons only those acts and functions which the responsible licensee knows or has reason to believe such person is competent *and authorized by law to perform*.⁹

The confusion centered on the phrase “authorized by law to perform” and whether this meant physicians could only delegate acts that licensed health care professionals were

⁶ *State v. Bruce*, 295 Kan. 1036, 1048 (2012) (quotations and citations omitted).

⁷ L. 1991, ch. 203, § 2.

⁸ For purposes of K.S.A. 2014 Supp. 65-28,127, “‘responsible licensee’ means a person licensed by the state board of healing arts to practice medicine and surgery or chiropractic [i.e., a physician or a chiropractor] who has accepted responsibility for the actions of persons who perform acts pursuant to practice protocols with, or at the order of, or referral, direction, supervision or delegation from such responsible licensee.”

⁹ Emphasis and footnote added.

already authorized to perform under the licensing act for their profession. As Attorney General Opinion No. 2000-26 explained:

A narrow reading of the phrase 'authorized by law to perform' would preclude any delegation of any task that falls under the professional responsibility of a physician, except to another licensed professional when the task is within the professional responsibility of that other professional. A narrow reading would, therefore, preclude most delegation to unlicen[s]ed individuals, and many acts which are currently deleg[a]ted to licensed or registered individuals. Most probably, that phrase refers back to the phrase 'enter into a practice protocol with,' to prohibit a physician from entering into a practice protocol with an advanced registered nurse practitioner that would exceed that practitioner's normal scope of practice. If the Legislature meant to prohibit delegation of all tasks except when delegated to licensed or registered individuals in whose scopes of practice such duties are a part, it could have said it much more simply.

The opinion found "nothing in the legis[.]ative history to demonstrate an intent to so drastically limit delegation of tasks."

Attorney General Opinion No. 2008-6 reached a different conclusion, however, explaining that:

[T]here does not appear to be any reason to limit the phrase 'authorized by law to perform' only to practice protocols. The phrase 'authorized by law to perform' refers back to 'direct, supervise, order, refer, accept responsibility for, enter into a practice protocol with, or delegate,' thus limiting a physician from directing, supervising, ordering, referring, accepting responsibility for, entering into a practice protocol with, or delegating activities that would exceed an attendant's authorized scope of practice, *i.e.*, the activities an attendant is authorized by law to perform.

In light of these conflicting conclusions, Attorney General Opinion No. 2009-4 withdrew both Attorney General Opinion No. 2000-26 and Attorney General Opinion No. 2008-6 and concluded that the question would be "best resolved by the legislature after consultation with health care providers."

The Legislature responded to Attorney General Opinion No. 2009-4 by amending K.S.A. 65-28,127 to replace the phrase "such person is competent and authorized by law to perform" with "can be competently performed by such person and is not in violation of any other statute or regulation."¹⁰ The legislative history indicates that this amendment was introduced at the request of the Executive Director of the Kansas Medical Society, who wished to ensure that physicians could delegate to registered nurse anesthetists (RNAs) the ability to order pre- and post-operative medications and diagnostic tests,

¹⁰ See L. 2009, ch. 133, § 2.

even though the Nurse Practice Act does not authorize RNAs to perform those tasks.¹¹ The amendment clarified that under certain conditions a physician may delegate acts to a person who is not licensed to perform them as long as the performance of those acts is not specifically prohibited by some other statute or regulation.

Given the 2009 amendment to K.S.A. 65-28,127, we conclude that a physician may delegate medical tasks to an EMS attendant beyond those tasks specified in the EMS Act provided the attendant is competent to perform the tasks, the delegation does not violate any other statute or regulation, and the other statutory criteria for delegation are met.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

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¹¹ Minutes, Senate Public Health and Welfare Committee, March 16, 2009.