



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider,
Attorney General

June 29, 1976

ATTORNEY GENERAL OPINION NO. 76-193

Mr. Ray E. Showalter
Executive Administrator
State Board of Nursing
701 Jackson, Room 314
Topeka, Kansas 66612

Re: Nursing--Scope of Practice--Medication

Synopsis: The conclusions set forth in Opinion No. 74-199 are not altered by the 1975 amendments to K.S.A. 65-1113 *et seq.* Those amendments provide no basis for a categorical determination, purely as a question of law, that the administration of medication in each and every circumstance is a task reserved only to registered professional nurses.

* * *

Dear Mr. Showalter:

The State Board of Nursing requests that we review Opinion No. 74-199, to determine whether its conclusions are altered by 1975 amendments to K.S.A. 65-1113 *et seq.*

In that opinion, Attorney General Vern Miller considered the question whether under Kansas law, a licensed practical nurse or a nurse's aide could lawfully administer medication, including medications given by injection as well as orally. It was pointed out that K.S.A. 65-1113(b) defined the practice of both professional and practical nursing in general terms. *E.g.*, the practice of professional nursing was defined broadly and generally as "any act" which was performed in any of the enumerated circumstances, *i.e.*, in the "observation, care and counsel of the ill, injured, or infirm," in the "maintenance of health or prevention of illness

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of others," in the "supervision and teaching of other personnel," or in the "administration of medications and treatments as prescribed by a licensed physician or dentist," whenever the act is one "requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science." The practice of practical nursing was defined in similarly general terms, to include the performance of "such duties as are required in the care of the ill, injured or infirm" under orders of a licensed physician or dentist, or registered professional nurse, when the performance of such duties "required a knowledge of simple nursing procedures but not requiring the professional knowledge, judgment and skills required for professional nursing."

The Attorney General took the position that it was beyond the province of a legal opinion to determine categorically and purely as a matter of law whether the administration of medication in every instance entailed acts "requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science." He pointed out that varied factors might be pertinent to the question in particular applications, depending upon the medication involved, skill required in its preparation, the patient's condition, the possibility or likelihood of reaction, and others.

K.S.A. 65-1113 was amended in 1975, see ch. 316, L. 1975, in several pertinent respects. The practice of nursing by licensed practical nurses was redefined by section 1(b) of the 1975 enactment thus:

"(2) The practice of nursing as a licensed practical nurse means the performance of compensation or gratuitously, except as permitted by K.S.A. 65-1124 and any amendments thereto, of *nursing tasks and responsibilities based on acceptable educational preparation within the framework of supportive and restorative care* under the direction of a registered professional nurse or a person licensed to practice medicine and surgery or a person licensed to practice dentistry *and such further functions as may be defined in the rules and regulations of the board not inconsistent with the provisions of this act.*" [Emphasis supplied.]

The practice of licensed professional nursing continues to include those acts "requiring substantial specialized judgment and skill

and based on knowledge and application of the principles of biological, physical and social science." The practice of licensed practical nursing now includes "nursing tasks and responsibilities based on acceptable educational preparation," and such further functions as may be defined in the rules and regulations adopted by the Board.

Once again, the amendments provide no basis for a categorical conclusion, purely as a matter of law, that the administration of medication in every instance is an act requiring "substantial specialized judgment and skill" The administration of medication is clearly a nursing task, which may well fall in some instances within the province of practical nursing when the personnel involved have "acceptable educational preparation" for the kinds of medication and methods and circumstances of administration involved.

When this question was presented to the Attorney General earlier, some concern was expressed whether a licensed practical nurse or a nurse's aide could administer medication in an intermediate care home during the absence of a registered professional nurse, in view of requirements that a registered professional nurse be on duty only forty hours per week. Apparently, the 1975 legislature sought to address this problem area, if such it be, by an amendment to K.S.A. 65-1124, to provide that the provisions of the nursing law shall not be construed

"as prohibiting auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse."

The amendments do not define the scope of "auxiliary patient care services." On the face of the matter, the administration of medication is an extremely important responsibility of adult care homes, and it is not likely to have been regarded by the legislature as an "auxiliary" patient care service. Thus, we get little guidance from the amendment to K.S.A. 65-1124 in this regard.

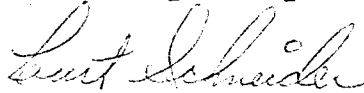
To reiterate, the 1975 amendments provide no basis upon which to alter the conclusions set forth in Opinion No. 74-199, for, like the provisions in force at the time, the amendments provide no direction or support for a categorical conclusion, purely as a

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matter of law, that the administration of medication in each and every instance is a task which requires "substantially specialized judgment and skill" reserved to registered professional nurses. The administration of medication in particular instances may well constitute a nursing task which is within the competence of a licensed practical nurse who has been given acceptable educational preparation therefor, and which does not require substantial specialized judgment and skill of a registered professional nurse.

By rule and regulation, the board is empowered those functions and tasks which may be performed by licensed practical nurses under K.S.A. 1975 Supp. 65-1113(b)(2). With the benefit of informed and considered medical judgment and knowledge bearing upon the highly professional and technical questions involved, the board may determine on a factual basis the questions involved. They are not ones which can be determined conclusively and categorically purely as questions of law. I find no basis upon which to withdraw Opinion No. 74-199.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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