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November 25, 1981

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ATTORNEY GENERAL OPINION NO. 81- 259

Dr. Lois Rich Scibetta
Kansas State Board of Nursing
503 Kansas Avenue, Suite 330
Topeka, Kansas 66603

Re: Public Health -- Nursing -- Home Health Aides

Synopsis: Because K.S.A. 65-1124 exempts persons performing auxiliary patient care services under proper supervision from the licensure requirements of the Nurse Practice Act, K.S.A. 65-1113 et seq., "home health aides," as described in and regulated by 42 C.F.R. §405.1227, are not violating the Nurse Practice Act by filling syringes with insulin for subsequent self-administration by blind patients. Cited herein: K.S.A. 65-1113, 65-1122, 65-1124, 65-1626, 42 C.F.R. §405.1227.

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Dear Dr. Scibetta:

You state that the Kansas State Board of Nursing has been informed that home health aides are being employed to visit the homes of blind diabetic patients to fill a quantity of syringes with insulin sufficient to satisfy the diabetic's needs for a week. The aide then places the syringes in the refrigerator for the patient to administer to himself or herself as directed by the patient's physician. You ask whether this practice violates the Nurse Practice Act, K.S.A. 65-1113 et seq. We note that a violation of the Pharmacy Act, K.S.A. 65-1626 et seq., is not at issue because insulin is a non-prescription drug.

At the outset we assume that by using the term "home health aide," you are referring to the specific class of person as

described in and regulated by 42 C.F.R. §405.1227 (1981) and not merely to any persons who may be employed to provide personal care to a patient in that patient's home. Therefore, we are directing our response to the practice of filling syringes with insulin by these aides only.

The above-cited regulation requires persons who work as home health aides to be carefully trained in methods of patient assistance and to perform certain duties including personal care, household services, extension of therapy services and assistance with medications that are ordinarily self-administered. The home health aide acts in accordance with written instructions prepared by a registered nurse or therapist and performs his or her duties under their supervision.

K.S.A. 65-1122 provides that it shall be a misdemeanor for anyone to practice professional or practical nursing without first being licensed by the Kansas State Board of Nursing. However, K.S.A. 65-1124 enumerates certain instances in which persons performing duties or acts involving patient care will not be prohibited from doing so by the Nurse Practice Act. One such exemption states:

" [N]or shall it [The Nurse Practice Act] be construed as prohibiting auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere 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" Id.

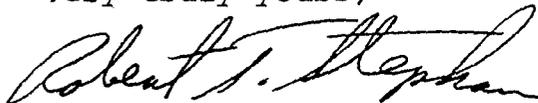
Comparing the description and duties of a home health aide as set forth in 42 C.F.R. §405.1227 to the above quoted exemption, we believe home health aides fall within said exemption.

The duties and care performed by the home health aides do not involve primary medical treatment or care of the individual patient's illness, but rather are only supplemental or "auxiliary" to primary medical treatment. Their duties are performed under the supervision of a registered nurse. Therefore, home health aides who function within the federal guidelines of 42 C.F.R. §405.1227 are not violating the Nurse Practice Act by filling syringes with insulin for blind patients by virtue of the exclusion from the Act for persons performing auxiliary care under the supervision of a registered professional nurse.

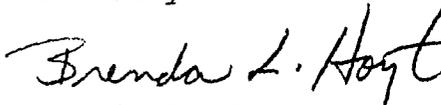
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Because the exemption stated resolves this question, it is unnecessary for us to determine whether generally, the act of filling a syringe with insulin constitutes the practice of nursing.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle