



STATE OF KANSAS

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ATTORNEY GENERAL

January 20, 1982

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ATTORNEY GENERAL OPINION NO. 82- 9

Steven L. Ruddick  
Associate General Counsel  
University of Kansas  
College of Health Sciences and Hospital  
39th and Rainbow  
Kansas City, Kansas 66103

Re: Public Health -- Nursing -- Authority of Student  
Nurses to Practice Nursing

Synopsis: Pursuant to K.S.A. 65-1124, student nurses enrolled in accredited schools of professional or practical schools of nursing are not prohibited from practicing nursing. That statute was intended to allow a student nurse to practice nursing in conjunction with the clinical education requirements of a nursing education. However, it was not intended to allow a student nurse to practice nursing while employed in a program offered by a university hospital, wholly outside the nursing school curriculum. Cited herein: K.S.A. 65-1113, 65-1124, L. 1949, ch. 331, K.A.R. 60-2-101.

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Dear Mr. Ruddick:

On behalf of the general counsel of the College of Health Sciences and Hospital for the University of Kansas, you request our opinion concerning the authority for nursing students to administer medication while employed by the University's hospital. Specifically, you wish to ascertain the authority of a senior nursing student to administer medication where such student is enrolled in the University of Kansas School of Nursing, employed by the University's hospital and where such student has passed a course in pharmacology. The employment program formerly offered by the University Hospital which utilized student nurses in this manner has

been discontinued pending notification from this office. You have requested our assistance in determining the necessary criteria for re-establishment of a program in accordance with the laws governing the practice of nursing.

The program offered by the hospital gave senior nursing students the opportunity to be employed by the hospital in a position entitled Nursing Assistant II. Employment was not mandatory for students, but the work was encouraged as further opportunity for experience before leaving the school. To be considered for employment, the senior nursing student must have successfully completed his or her junior level coursework and must have been enrolled in senior level courses. In addition, the prospective employee must have completed a pharmacology course and successfully passed the pharmacology examination. An employee under this program gave care to patients, while performing treatment and diagnostic work almost identical to that performed as a part of the clinical course offered in the University's nursing curriculum, and the employed student was under the supervision of a registered professional nurse while performing these duties. Although the position was outside the nursing curriculum, the opportunity for employment was open only to senior nursing students from any nursing school who met the entry qualifications and any licensed nurses enrolled in the graduate school.

The practice of nursing is generally defined by K.S.A. 65-1113(d):

"(1) The practice of professional nursing as performed by a registered professional nurse for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and amendments thereto, means the process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry. (2) The practice of nursing as a licensed practical nurse means the performance for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and any

amendments thereto, of tasks and responsibilities defined in part (1) of this subsection (d) which tasks and responsibilities are based on acceptable educational preparation within the framework of supportive and restorative care under the direction of a registered professional nurse, a person licensed to practice medicine and surgery or a person licensed to practice dentistry."

K.S.A. 65-1124 enumerates a host of exceptions to the strict licensing requirements governing the practice of nursing in Kansas. In addition, the statute allows specific persons, although unlicensed practical or professional nurses, to provide certain types of care. The portion of that statute pertinent to the question you have raised reads as follows:

"No provisions of this law shall be construed as prohibiting . . . the practice of nursing by students enrolled in accredited schools of professional or practical nursing . . . ."

In an attempt to ascertain whether the legislature intended to allow K.S.A. 65-1124 to include the practice of nursing by students employed by a university hospital, as your program was formerly offered, we have turned to well established rules of statutory construction. "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes." (Citations omitted.) Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357, 367 (1978). In order to arrive at that legislative intent, it is proper to look to "the historical background of the enactment, the circumstances attending its passage, the purposes to be accomplished, and the effect the statute may have under the various constructions suggested." Id. See, also, State ex rel. v. Kalb, 218 Kan. 459 (1975); Boyd v. Barton Transfer & Storage, Inc., 2 Kan. App. 2d 425 (1978).

The current statutes governing the practice of nursing in Kansas were, for the most part, wholly enacted during the 1949 Kansas Legislative Session. L. 1949, Ch. 331. An examination of the origins of K.S.A. 65-1124 reveals that portion of the 1949 statute [G.S. 1949 65-1124] covering student practice of nursing in accredited schools was identical to that found in the current statute. Additionally, our research indicates no such specific provision covering student practice appeared in the statutes governing nursing until 1949.

Also included within the 1949 law was a section containing statutory requirements for Kansas school of nursing. L. 1949, Ch. 331, §8. G.S. 1949 65-1119(b) stated:

"To qualify as an accredited school for professional nurses, the school must be conducted in the state of Kansas in connection with a hospital having at least an average of thirty beds a day or actively affiliated with such a hospital. Such school shall give a course of study and clinical experience in nursing men, women and children requiring at least three years and meeting the standards fixed by the board and prescribed in its rules. The board also shall accredit schools of nursing conducted by a university or college providing a general course of study in connection with which not less than two and one-half years shall be devoted to professional study and clinical nursing experience in the care of men, women and children as prescribed by the board in its rules."

G.S. 1949 65-1119(c), which provided the required qualifications for an accredited school for practical nurses, also required both course study and clinical experience. The clinical phase of nursing education was undoubtedly required in order to give students as much experience possible to better prepare them for nursing. That experience is gained in conjunction with a required theoretical course of study and, in the case of professional nurses, is presently under the direct supervision of an instructor. K.A.R. 60-2-101(E)(1)(b).

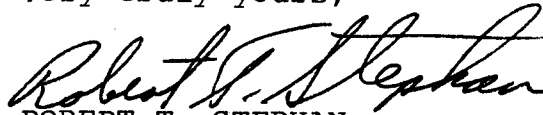
Construing the foregoing provisions of the 1949 legislative enactment together with the provision dealing with student nurses, it is our opinion the legislature originally included the student exemption in order to allow students to participate in the clinical phase of a nursing education. Both the statute requiring a clinical education as well as the statute authorizing students to practice nursing were enacted together. Accordingly, we do not believe legislative intent may be extended to cover students who are employed in a program which is wholly outside the nursing curriculum. To interpret the nursing laws in that manner would, in our opinion, contravene legislative intent and the spirit and purpose of the law. State v. Dumler, 221 Kan. 386, Syl. ¶2 (1977). See also Smith v. Marshall, 225 Kan. 70, 75 (1978). Allowing nursing students to be employed by the University hospital in a program unconnected to nursing curriculum also appears to directly contravene nursing statutes requiring licensure of nurses before practicing. If the employment program were offered by


Steven L. Ruddick  
Page Five

the school of nursing as part of its clinical education opportunities, we believe it would conform to the spirit and intent of the legislative act. If offered in that manner, the program would, of course, be required to conform to any statutorily imposed requirements for clinical education as well as those requirements imposed by the Board of Nursing in its regulations. The factor of compensation is not, in our view, a bar to this result, as long as the student's practice is required as part of the nursing curriculum.

In conclusion, pursuant to K.S.A. 65-1124, student nurses enrolled in accredited schools of professional or practical schools of nursing are not prohibited from practicing nursing. That statute was intended to allow a student nurse to practice nursing in conjunction with the clinical education requirements of a nursing education. However, it was not intended to allow a student nurse to practice nursing while employed in a program offered by a university hospital, wholly outside the nursing school curriculum.

Very truly yours,

  
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RTS:BJS:JLY:hle