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ATTORNEY GENERAL OPINION NO. 86- 125

Lynn Ebel Davis
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Kansas State Board of Pharmacy
503 Kansas Avenue
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Topeka, Kansas 66601

Re: Public Health -- Healing Arts -- Physicians'
Assistants; Issuance of Prescriptions

Public Health -- Examination, Licensure and
Regulation of Nursing -- Advanced Registered Nurse
Practitioners; Issuance of Prescriptions

Public Health -- Examination and Registration of
Pharmacists -- Persons Authorized to Issue
Prescription Orders

Synopsis: It is our opinion that advanced registered nurse practitioners may not issue prescription orders pursuant to a physician's standing orders or protocol because they have not been granted such authority by the statutes and regulations under which they are licensed. Physicians' assistants, however, are expressly authorized to practice medicine under the direction and supervision of a physician. Since the practice of medicine includes the act of prescribing medicine, we conclude that physicians' assistants may issue prescription orders under the direction and supervision of a physician. Cited herein: K.S.A. 65-1113(d), (g); 65-1626(t), (x), as amended by L. 1986, ch. 236, §1; 65-2869(b); 65-2896e; 65-2897a(a), (c); K.A.R. 1985 Supp. 60-11-104; 60-11-105; 60-11-106.

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Dear Ms. Davis:

As attorney for the Board of Pharmacy, you request our opinion as to whether physicians' assistants or advanced registered nurse practitioners may issue, pursuant to standing orders or protocol of a physician, prescriptions for non-controlled substance medication. The controversy surrounding this issue was heightened by passage of 1986 Senate Bill No. 779. While this issue raises many related questions, this opinion concerns only the question as presented above.

The Board of Pharmacy is concerned whether a pharmacist may lawfully fill a prescription issued by a physicians' assistant (PA) or an advanced registered nurse practitioner (ARNP) pursuant to standing orders or protocol. Under the statutes concerning the examination and registration of pharmacists, a "prescription order" means:

"(a) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner in the authorized course of his or her professional practice or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner." K.S.A. 65-1626(x), as amended by L. 1986, ch. 236, §1.
(Emphasis added.)

In order to prescribe medication, then, a person must be a practitioner. Prior to July 1, 1986, a "practitioner" was defined as follows:

"'Practitioner' means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer, prescribe and use prescription-only drugs in the course of professional practice or research."
K.S.A. 65-1626(t) (Ensley 1985).

The 1986 session of the legislature amended this provision in Senate Bill No. 779:

"'Practitioner' means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific

investigator or other person licensed, registered or otherwise authorized by law expressly licensed or registered to administer, prescribe and use prescription-only drugs in the course of professional practice or research."
K.S.A. 65-1626(t) (L. 1986, ch. 236, §1).

The question is whether PAs and ARNPs fit under this definition.

I. Advanced Registered Nurse Practitioner

An ARNP is defined in K.S.A. 65-1113(g) as "a professional nurse who holds a certificate of qualification from the board [of nursing] to function as a professional nurse in an expanded role" The categories of ARNPs and the role and authority of each are set forth in K.A.R. chapter 60, article 11. An ARNP nurse-midwife and an ARNP nurse anesthetist are both authorized to "participate in the joint review and revision of adopted protocols or guidelines." K.A.R. 1985 Supp. 60-11-105(e); 60-11-106(i). An ARNP nurse clinician has authority to:

"manage the medical plan of care prescribed for the client, based on protocols or guidelines adopted jointly by the nurse practitioner and the attending physician;

. . . .

"participate, when appropriate, in the joint review and revision of adopted protocols or guidelines when the advanced registered nurse practitioner is involved in the medical plan of care." K.A.R. 1985 Supp. 60-11-104(f), (1).

It is maintained that an ARNP is authorized by law to prescribe medicine since certain ARNPs have authority by regulation to manage the medical plan of care developed for the patient based on protocols adopted jointly by the ARNP and the attending physician. The question is whether, in accordance with K.S.A. 65-1626(t), as amended by L. 1986, ch. 236, §1, an ARNP is expressly licensed or registered to issue prescription orders.

An ARNP functions as a nurse in an expanded role. The definition of the practice of nursing does not include

prescribing medicines. K.S.A. 65-1113(d). As provided by regulation, certain ARNPs in their expanded role may participate in developing a health care plan and manage that plan. This grant of authority does not, however, authorize an ARNP to issue a prescription order. As we are not aware of any statute or regulation which states that an ARNP may issue prescription orders or that they may issue such an order pursuant to standing orders or protocol, we must conclude that ARNPs are not authorized by law to do so.

II. Physicians' Assistants

A PA is defined under the Healing Arts Act as "a skilled person . . . who is qualified by academic training to provide patient services under the direction and supervision of a physician who is responsible for the performance of that assistant." K.S.A. 65-2897a(c). A PA registered with the Board of Healing Arts is authorized to perform the acts outlined in K.S.A. 65-2896e:

"A person whose name has been entered on the register of physicians' assistants may perform, only under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery to the extent and in the manner authorized by the physician responsible for the physician's assistant. Before a physician's assistant shall perform under the direction and supervision of a physician, such physician's assistant shall be identified to the patient and others involved in providing the patient services as a physician's assistant to the responsible physician. A physician's assistant may not perform any act or procedure performed in the practice of optometry except as provided in K.S.A. 65-1508 and 65-2887 and amendments thereto." (Emphasis added.)

"Direction and supervision" is defined as follows:

"'Direction and supervision' means the guidance, direction and coordination of activities of a physician's assistant by his or her responsible physician, whether written or verbal, whether immediate or by prior arrangement, and shall not be construed to mean that the immediate or

physical presence of the responsible physician is required during the performance of the physician's assistant." K.S.A. 65-2897a(a).

The issue whether physicians' assistants may issue prescription orders was raised during the 1978 session of the legislature. As a result of an interim study concerning physician extenders, the special committee on public health and welfare recommended introduction of 1978 House Bill No. 2719. Section seven of the bill as introduced to the House of Representatives read as follows:

"Prescriptions may be written by physicians' assistants as provided in this section when authorized by the responsible physician except for those controlled substances that are listed on schedule II under federal and Kansas uniform controlled substances acts. The prescription shall include the name, address and telephone number of the responsible physician. The prescription shall also bear the name and the address of the patient and the date on which the prescription was written. The physicians' assistant shall sign his or her name to such prescription followed by the letters 'P.A.' and his or her federal drug enforcement administration registration number."

The special committee's report on the proposed bill reads in pertinent part as follows:

"The Committee has concluded that the scope of practice of a physicians' assistant in Kansas should be determined by the employing physician rather than by the Board of Healing Arts or by statutes. Experience in those states which have adopted a statutory 'laundry list' of responsibilities which can be assumed by the physicians' assistant indicates that this approach needlessly limits the use of the physicians' assistant.

"In reaching the conclusion that the responsible physician should determine the

scope of practice of the physicians' assistant, the Committee recognizes that the physician who employs a physicians' assistant remains legally and medically responsible for the actions of that assistant. Ultimately, only the employing physician can judge effectively how the physicians' assistant performs and the limits of his capabilities. The physician should be free to exercise judgment in such matter, fully realizing that if his judgment is faulty he retains the liability for the practice acts of the physicians' assistant.

. . . .

In line with its conclusion that the scope of practice of the physicians' assistant should be determined by the responsible physician, the Committee has concluded that statutory authorization should be given for physicians' assistants to prescribe legend drugs and controlled substances, except those substances in Schedules I and II of the state and federal controlled substances act. The Committee recognizes that there will be opposition to allowing the physicians' assistant to prescribe drugs. However, the members conclude that such authority should be available if the responsible physician chooses to authorize his assistant to exercise it. Again, the Committee notes that the decision to authorize a physicians' assistant to prescribe, and any limitations on such authority, is that of the responsible physician who also is legally and medically liable for the practice actions of the physicians' assistant." Report on Kansas Legislative Interim Studies to the 1978 Legislature, Vol. II, pp. 1100-1102. (Emphasis added.)

Section seven of 1978 House Bill No. 2719 was deleted from the bill by the Senate Committee on Public Health and Welfare on March 7, 1978. Minutes of that meeting read as follows:

"Senator Talkington made a motion seconded by Senator Morris to delete New Section 7 Based on Committee reaction to testimony about the ways in which physician's assistants now write prescriptions it was noted that this seems to be OK as long as the procedure being used is technically legal and the legislators do not have to endorse it It was again noted that New Section 7 does not authorize a physician's assistant independently to write prescriptions. It is permissible only if the responsible physician authorizes it and only to the extent of his authorization. Motion carried with six voting in favor." (Emphasis added.)

It cannot be said that the senate committee intended to prohibit PA's from issuing prescriptions under the direction and supervision of their responsible physician. The above testimony indicates the committee recognized the authority of a physician's assistant, did not want to endorse this practice in the bill, but wanted to allow each physician the decision whether to allow his or her assistant to write prescriptions.

The question is whether, under K.S.A. 65-1626, as amended by L. 1986, ch. 236, §1, a PA is expressly licensed or registered to prescribe medication. The term "expressly" is defined as "in direct or unmistakable terms; explicitly; definitely; directly." Blacks Law Dictionary 522 (rev. 5th ed.). 1986 Senate Bill No. 779, which changed the definition of "practitioner," was referred to the committee of the whole in both the Senate and House of Representatives the same day it was introduced into each respective house. The language "expressly licensed or registered" was added to the bill by the House on Final Action. Therefore, there are no committee minutes to explain the purpose and scope of the amendment.

The 1986 legislature did not amend or enact a law which states that a PA may not prescribe. In outlining a PA's authority, K.S.A. 65-2896e states that a "physician's assistant may not perform any act or procedure performed in the practice of optometry" This statute was not amended by the 1986 legislature. The doctrine of expressio unius est exclusio alterius provides that if the "statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded." Blacks Law Dictionary 521 (rev. 5th ed.).

Given this rule of statutory construction, it follows that PAs are not prohibited from prescribing medication because the legislature would have so stated if it had so intended.

The evidence does not show that it was the intent of the legislature to exclude PAs from issuing prescription orders by changing the definition of "practitioner." The statutes, therefore, must be examined to determine whether a PA is "expressly licensed or registered" to prescribe medicine. A prescription order must be issued and signed by a "practitioner," which is defined to include persons licensed to practice medicine and surgery. K.S.A. 65-1626(t) and (x). A provision among the healing arts statutes states that "[p]ersons who prescribe, recommend or furnish medicine or drugs" are deemed to be engaged in the practice of medicine and surgery. K.S.A. 65-2869(b). A PA is authorized to perform "under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery." K.S.A. 65-2896e. Therefore, it is our opinion that physicians' assistants may issue prescription orders under the direction and supervision of a physician.

In summary, it is our opinion that advanced registered nurse practitioners may not issue prescription orders pursuant to a physician's standing orders or protocol because they have not been granted such authority by the statutes and regulations under which they are licensed. Physicians' assistants, however, are expressly authorized by statute to practice medicine under the direction and supervision of a physician. Since the practice of medicine includes the act of prescribing medicine, we conclude that physicians' assistants may issue prescription orders under the direction and supervision of a physician.

Very truly yours,



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