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October 24, 1990

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ATTORNEY GENERAL OPINION NO. 90- 119

Peter K. Curran
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842 Louisiana St.
P.O. Box 485
Lawrence, Kansas 66044-0485

Re: Public Health -- Regulation of Nursing -- Acts
Which Are Not Prohibited; Administration of
Over-The-Counter Medications in the School Setting

Synopsis: The school nurse regulations do not prohibit a
registered professional nurse from administering
over-the-counter drugs to a pupil at the parent's
request. Cited herein: K.S.A. 65-1113; K.S.A.
1989 Supp. 65-1124, as amended by L. 1990, ch.
220, § 1; K.S.A. 1989 Supp. 65-1626; K.A.R.
60-15-101, 60-15-104.

* * *

Dear Mr. Curran:

As legal counsel to U.S.D. No. 497 Board of Education, you
have requested our opinion regarding the practice of nursing
in the school setting. Specifically, you ask whether K.A.R.
60-15-101 prohibits a registered professional nurse from
administering over-the-counter (OTC) drugs to a pupil at the
parent's request.

You state that the board of nursing practice specialist has
expressed the opinion that a nurse would be in violation of
the nurse practice act by administering OTC drugs to school

students. That opinion is based on an interpretation of K.A.R. 60-15-101, which defines the term "medication" to mean prescription-only drugs. The logic imposed is that the regulation requires an order for over-the-counter medication to come from someone, and nursing practice is limited to executing the medical regimen prescribed by a physician or dentist.

Agency interpretations of statutes and regulations are given deference, except when incorrect as a matter of law. In re Tax Appeal of Newton Country Club Co., 12 Kan.App.2d 638, 642 (1988). There is no indication that the interpretation offered by the practice specialist is shared or sanctioned by the board of nursing, and such deference is not therefore required. In any event, for the reasons stated below, we believe the interpretation is incorrect as a matter of law.

Our courts have defined the term "drug" to mean "[a]ny substance used to treat, relieve or remedy a disease, condition or ailment. . . ." Kansas State Board of Healing Arts v. Burwell, 5 Kan.App.2d 357, 361 (1980). A prescription-only drug is distinguished from an over-the-counter drug in the Kansas pharmacy act for purposes of determining whether a drug may be dispensed by a pharmacist without a prescription order. A prescription-only drug is defined as "any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend 'Caution: Federal law prohibits dispensing without prescription.'" K.S.A. 1989 Supp. 65-1626(x). A physician's order for a prescription-only drug is part of the medical regimen. Executing the medical regimen is one aspect of the practice of professional nursing. K.S.A. 65-1113(d)(1).

The Kansas state board of nursing was directed by the legislature to specify nursing procedures which could be performed safely by unlicensed persons, as necessary for disabled students and as necessary to accomplish pupils' daily living activities. K.S.A. 1989 Supp. 65-1124(k), (l), as amended by L. 1990, ch. 220, § 1. To accomplish this task, the board promulgated the school nurse regulations. One such regulation pertains to administration of "medications" in the school setting. See K.A.R. 60-15-104.

The administration of OTC drugs is not covered by the school nurse regulation. A "medication", as the term is used in the regulations, is a prescription-only drug. K.A.R.

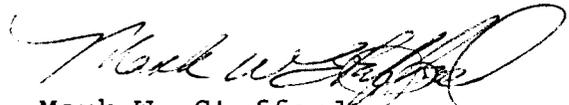
60-15-101(b)(10). OTC drugs are excluded because administration of such drugs is not inherently limited to licensed nurses. OTC drug administration is not a nursing procedure which must be delegated by a nurse to an unlicensed person. This explains why the term "medication," as used in the school nurse regulations, is limited to prescription-only drugs. Thus, the definition of "medication" in the school nurse regulations does not prohibit professional nurses from administering OTC drugs in the public school setting.

Our opinion is limited to the general question presented in light of the authority cited. There may be instances where OTC medication becomes part of the medical regimen, requiring administration in dosages or by methods inconsistent with label instructions. Our opinion also does not reflect issues of liability. Finally, our opinion does not take into consideration constraints on the practice of administering drugs which may be imposed by local boards of education or the state department of education.

In conclusion, it is our opinion that the school nurse regulations do not prohibit a registered professional nurse from administering over-the-counter drugs to a pupil at a parent's request.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
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