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OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 19, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 183

The Honorable Joseph F. Harkins
Secretary of Health and Environment
Forbes Field
Topeka, Kansas 66620

Re: Public Health--Examination, Licensure and Regulation
of Nursing--Health Services Supervisors in Intermediate
Adult Care Homes

Synopsis: If licensed practical nurses who serve as health services supervisors in intermediate adult care homes are not engaged in the "administration, supervision or teaching of the [nursing] process," as defined by K.S.A. 1979 Supp. 65-1113(d)(1), but serve only in a subordinate role under the direction and supervision of consultant registered professional nurses, such persons are not engaged in the illegal practice of professional nursing. Cited herein: K.S.A. 1979 Supp. 65-1113, K.A.R. 28-39-40.

* * *

Dear Secretary Harkins:

You request our opinion as to the application of Attorney General Opinion No. 80-99 to the provision of health care services in intermediate adult care homes, which homes are regulated by the Department of Health and Environment. In the opinion in question, we concluded that "[a] person employed as a director of nursing whose duties as director include 'administration, supervision or teaching of the [nursing] process,' as defined by K.S.A. 1979 Supp. 65-1113(d)(1), must be licensed as a registered professional nurse in order to serve in that capacity." Attorney General Opinion No. 80-99, p. 1.

You advise that the Kansas State Board of Nursing has apparently applied the opinion in question to health services supervisors in

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intermediate adult care facilities, suggesting thereby that such health services supervisors are, in effect, directors of nursing, and must accordingly be registered professional nurses to perform such work, in accordance with Opinion No. 80-99. You have asked for our clarification of that opinion as it pertains to health services supervisors in such facilities.

Pursuant to K.A.R. 28-39-40, an intermediate adult care home is required to have a health services supervisor who may be either a registered professional nurse (R.N.) or a licensed practical nurse (L.P.N.). The regulation provides, in pertinent part:

"(A) Health services supervisor.

(1) The facility shall provide health services under direct supervision of a health services supervisor.

"(2) Immediate supervision of the facility's health services shall be provided by a registered nurse or licensed practical nurse who is employed full time (exclusive of all non-nursing duties) on the day tour of duty.

"(3) In the absence of the supervising nurse, there shall be a relief registered nurse or licensed practical nurse on the day tour of duty seven days per week.

"(4) Onsite consultation must be provided by a licensed registered nurse when a licensed practical nurse serves as the supervisor of health services. The registered nurse consultant must be in the facility at least four hours per week.

"(5) The health services supervisor shall be responsible for:

"(a) The development and implementation of a written health care plan for each resident in accordance with instructions of the attending physician.

"(b) General supervision, guidance, and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments, medications, diet, and other health

services prescribed by the attending physician are properly carried out and recorded.

"(c) The review and revision of resident health care plans, as needed, but not less than quarterly."
(Emphasis added.)

You argue that the nursing board's application of Opinion No. 80-99 to health services supervisors in intermediate adult care homes is erroneous, and that an L.P.N. may serve as a health services supervisor, in accordance with the above-cited regulation, without violation of the statutes regulating the practice of nursing. You have noted that when an L.P.N. is serving as the health services supervisor, the cited regulation requires the facility employ an R.N. to provide "onsite consultation." You note that this provision is generally construed to mean that the consultant R.N. has a responsibility to oversee, generally speaking, the health services being provided by the nursing home, and that it is the consultant R.N. who has the responsibility to review and provide guidance to the nursing staff for the provision of health care in the facility. In effect, you argue, the consultant R.N. is the "director of nursing" within the meaning ascribed to that term in Opinion No. 80-99. You emphasize that the L.P.N. who serves as the health services supervisor in intermediate adult care facilities is only performing ministerial duties, merely carrying out the instructions of the consultant R.N. and serving in a subordinate role, and so, therefore, is not engaged in the illegal practice of professional nursing, as defined by K.S.A. 1979 Supp. 65-1113(d)(1).

If the licensed practical nurse who serves as a health services supervisor in intermediate adult care homes is not engaged in the "administration, supervision or teaching of the [nursing] process," as defined by K.S.A. 1979 Supp. 65-1113(d)(1), but serves only in a subordinate role under the direction and supervision of a consultant registered professional nurse, as described above, it is our opinion that such persons are not engaged in the illegal practice of professional nursing. The practice of nursing as a licensed practical nurse is statutorily defined as the "performance . . . of tasks and responsibilities defined in part (1) of this subsection (d) [K.S.A. 1979 Supp. 65-1113(d)(1)] . . . 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." (Emphasis added.) K.S.A. 1979 Supp. 65-1113(d)(2). The duties of the L.P.N.--health services supervisor in intermediate adult care homes--as you have described them,

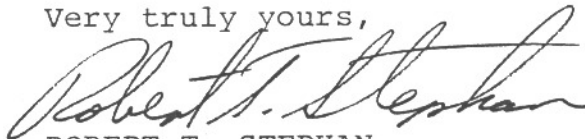
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do not appear to go beyond the scope of practice of nursing by licensed practical nurses as such practice is defined in the above-quoted statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr *Ba*
Assistant Attorney General

RTS:BJS:SC:pf