



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 18

Pat Johnson, R.N., M.N.  
Executive Administrator  
Kansas State Board of Nursing  
Landon State Office Bldg., 551-S  
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities -- Board  
of Nursing -- Duties and Powers; Promoting Nursing  
Standards

Statutes; Administrative Rules and Regulations and  
Procedure -- Rules and Regulations -- Definitions;  
Rule and Regulation; Policy Statements

Synopsis: The Kansas state board of nursing may issue policy  
statements to promote improved nursing standards.  
Such statements are not rules, and do not have the  
force and effect of law, unless promulgated  
pursuant to the rules and regulations filing act.  
Cited herein: K.S.A. 1990 Supp. 74-1106; K.S.A.  
77-415

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Dear Ms. Johnson:

As executive administrator of the Kansas state board of  
nursing (board), you have requested our opinion regarding the  
duties and powers of the board. Specifically, you ask whether  
the board may issue policy statements.

The authority of administrative agencies is well established.  
Agencies have no inherent or common law powers. Pork Motel  
Corp. v. Kansas Dept. of Health and Environment, 234 Kan.

374, 378 (1983). Being creatures of statute, agencies may exercise only those powers expressly conferred or necessarily implied by statute. State, ex rel. Secretary of S.R.S. v. Fomby, 11 Kan.App.2d 138, 141 (1986). Thus, we must review the relevant statutes establishing the board's authority for guidance.

The board is specifically directed to promote standards of nursing through institutes, conferences and other means. K.S.A. 1990 Supp. 74-1106(c)(4). We believe that this expressed grant of authority necessarily implies the board's authority to inform those persons licensed by the board of its collective thoughts on standards within the practice of nursing.

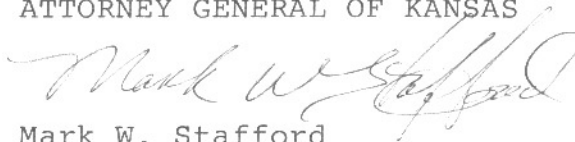
The authority to issue policy statements is not a substitute for following rulemaking procedures. If such a statement is to have the force and effect of law, then it must be adopted in the manner provided by the rules and regulations filing act. K.S.A. 77-415; see also North Amer. Safety Valve Industries v. Wolgast, 672 F. Supp. 488, 493 (D. Kan. 1987) (regulation adopting national inspection code by reference not amended by changes in code until agency complied with rules and regulations filing act); Aircraft Steel & Supply Co. v. State Comm. of Revenue & Taxation, 173 Kan. 524, 531 (1952); but see Clark v. Ivy, 240 Kan. 195, 204-06 (1986) (failure to file and publish policy regarding payment for indigent defense services did not invalidate board's refusal to pay appointed attorneys expenses).

In conclusion, it is our opinion that the Kansas state board of nursing may issue policy statements to promote improved nursing standards. Such statements are not rules, and do not have the force and effect of law, unless promulgated pursuant to the rules and regulations filing act.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford  
Assistant Attorney General