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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION

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ARIZONA ATTORNEY GENERAL
10-71-30 (R-70)

REQUESTED BY: PAUL R. BOYKIN
Executive Director
Board of Medical Examiners

QUESTION: What statutory limitations are applicable to the Pediatric Nurse Associate Program, which contemplates the training of registered nurses to perform physical examinations, evaluate health histories and social histories of children and families, counsel parents regarding child development, identify common childhood conditions, advise on management of common childhood illnesses, locate resources within the community to help children and their families, and recognize conditions requiring a referral of children to physicians for further diagnosis and treatment?

ANSWER: See body of opinion.

A.R.S. § 32-1401.7 defines the practice of medicine, as follows:

"7. 'Practice of medicine', which shall include the practice of medicine alone, the practice of surgery alone, or both, means the diagnosis, treatment or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat or correct any and all human diseases, injuries, ailments or infirmities, whether physical or mental, organic or emotional, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter."

A.R.S. § 32-1421 limits the application of the Medical Practice Act as follows:

"This chapter shall not be construed to apply to or inhibit:

* * *

"4. The lawful practice of chiropody, chiropractic, dentistry, being a dispensing optician, naturopathy, nursing, optometry, osteopathic physicians and surgeons, pharmacy and physical therapy.

* * *

"6. Any person acting at the direction or under the supervision of either a doctor of medicine or under the supervision of one included in the paragraphs numbered 7 or 8 of this section, so long as he is acting in his customary capacity, not in violation of any statute, and does not hold himself out to the public generally as being authorized to practice medicine.

"7. A commissioned medical officer in the military or public health service of the United States in the discharge of his official duties.

"8. Any out-of-state practitioner holding a license granted by another state, territory, district or country, when in consultation requested by a practitioner holding a license under this chapter."

A.R.S. §32-1601.5 regulates and limits the practice of professional nursing, as follows:

"5. The 'practice of professional nursing' means the performance for compensation of any act requiring substantial specialized knowledge, judgment and nursing skill based upon the principles of the biological, physical, and social sciences in:

"(a) The observation and care of the ill, injured or infirm.

"(b) The maintenance of health or prevention of illness in others.

"(c) The administration of medications and treatment as prescribed by a person licensed in this state to prescribe such medications and treatments.

"(d) The supervision and teaching of other personnel in the performance of any of the foregoing.

"The foregoing shall not be deemed to include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures." (Emphasis added.)

From a review and analysis of the foregoing sections, it is apparent that certain aspects of the proposed functions contemplated for the Pediatric Nurse Associate would violate both the provisions of the Medical Practice Act and the Nursing Practice Act. Specifically, a nurse is precluded from performing a medical diagnosis or the prescription of medical, therapeutic or corrective measures. A.R.S. § 32-1601.5 .

While it may be argued that Paragraph 6 of A.R.S. § 32-1421 would permit all of the duties and functions proposed by the question when under the direction or supervision of a doctor of medicine, nevertheless, any duty performed must not be in violation of any statute, and certainly A.R.S. § 32-1601.5 prescribes certain acts on the part of a registered nurse.

It is recognized that, as a practical matter, delegation of health service functions is to a great extent governed by prevailing custom and practice. In the few relevant court decisions, however, it has been held that a professional custom is no defense to contravention of licensure statutes. The case of Barber v. Reinking, 68 Wash2d. 122, 411 P.2d 861 (1966), is illustrative of this kind of legal reasoning.

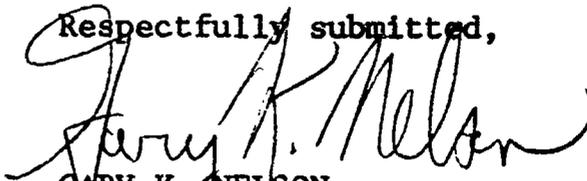
A review of a joint statement of the American Nurses' Association (Division of Maternal and Child Health Nursing Practice) and the American Academy of Pediatrics, issued in January of 1971, providing guidelines on short term continuing education programs for pediatric nurse associates, discloses the following: (1) That the contemplated program has as its purpose the expansion of the nurse's responsibility for making nursing assessments as a basis for diagnosis and action and thus contributing directly to comprehensive nursing; and (2) That nursing practice under the program could involve performance of examinations and assessments therefrom with the capability to "discriminate" among conditions and "recognize and manage" minor conditions, while referring more serious conditions to a pediatric physician. The "management" involved appears to include prescription of selective medications pursuant to standing orders. These above procedures are contemplated to transpire in the absence of or prior to the patient seeing a pediatric physician. As such they are contrary to the prohibitions of "medical diagnosis, or the prescription of medical therapeutic or corrective measures", as outlined in A.R.S. § 32-1601.5, defining the practice of professional nursing.

The restrictions in the Medical Practice Act and the Nursing Practice Act must be viewed as expressions of the legislative intent of the people, and are paramount.

It is, therefore, the opinion of this office that a registered nurse having specialized training as a Pediatric Nurse Associate may perform those customary professional functions and duties recognized in that specialty so long as they do not contravene the specific prohibitions of the Medical Practice Act and the Nursing Practice Act.

This opinion is not intended in any way to derogate from the value or service which such a program may provide for the community. However, to fully implement this new program, as contemplated, certain statutory changes must be enacted to permit these activities.

Respectfully submitted,



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The Attorney General