



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 25, 1962

Honorable C. C. Hampton
County Attorney
Comanche, Texas

Opinion No. WW-1403

Re: Whether a nurse or a practitioner's assistant can dispense drugs or medicine to his patients under the practitioner's direction and supervision, and related question.

Dear Mr. Hampton:

You have requested an opinion on the following questions:

"No. 1. Can a nurse or practitioner's assistant dispense drugs or medicine to his patients under the practitioner's direction and supervision?"

"No. 2. Can a nurse or practitioner's assistant administer drugs or medicine to his patients under the practitioner's direction and supervision?"

Article 4510, Revised Civil Statutes of Texas, 1925, as amended, provides:

"Any person shall be regarded as practicing medicine within the meaning of this law:

"(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with

and in view of Article 740, Penal Code of Texas, and Article 4504, Revised Civil Statutes of Texas as contained in this Act."

Section 8 of Article 4542a, Vernon's Civil Statutes, as amended, provides as follows:

"It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine, prepare, label, sell or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this State shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry or chiropody, who is duly registered as such by his respective State Board of Examiners of this State, who shall supply his or her patients, as a physician, dentist or chiropodist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiropodist or veterinarian licensed by his respective Board of Examiners of this State, in order to supply the immediate needs of his patients; . . ." (Emphasis added).

In construing the above-quoted provisions, it was held in Attorney General's Opinion WW-829:

"By the terms of the statute, it is unlawful for persons other than registered pharmacists to fill drug prescriptions. Licensed practitioners of medicine, dentistry or chiropody, not in the retail drug business, are exempted from this restriction when supplying their own patients. Since such practitioners are thus exempted from the provisions of the Pharmacy Act (Art. 4542a), they need not comply with its licensing (Sec. 9)

or permit (Sec. 17) provisions under the stated circumstances.

". . .

"Certain practitioners are exempted from the pharmacy law under certain designated circumstances. However, to hold that these exempt practitioners could in turn authorize nurses or other aides to fill and dispense prescriptions would be to place in the hands of the practitioners the power to create additional exemptions over and above those created by the Legislature. No such authority is attempted to be delegated by the Act in question, and we think the evident intention of the statute is to limit the practice of pharmacy to those licensed by the State Board of Pharmacy, subject only to the specific exemptions set out in the statute. It is perhaps worthy of notice that the last paragraph of Section 8 exempts certain senior pharmacy students operating under the direct supervision of a registered pharmacist. It would appear that if the legislature had intended that nurses or other aides acting under the supervision of a practitioner should also be exempted, specific mention thereof would have been made. . . ."

Chapter 7, Title 71, Revised Civil Statutes of Texas, 1925, creates the Board of Nurse Examiners and provides for the licensing and regulation of the practice of nursing in this State. Section 1 of Article 4518, Revised Civil Statutes of Texas, 1925, as amended, provides that it is the duty of the Board of Nurse Examiners to prescribe a course of study for schools of nursing and educational programs, which course shall include both theory and clinical practice in the care of men, women and children.

The practice of nursing is not defined by Chapter 7, Title 71; therefore, it is our opinion that the practice of nursing constitutes that field of endeavor commonly known as nursing and would include "both theory and clinical practice in the care of men, women and children" for the reason that the Board of Nurse Examiners is required to prescribe such a course of study for schools of nursing. Generally speaking, the duty of the nurse is to carry out the medical treatment prescribed by a doctor for his patient.

Hon. C. C. Hampton, page 4 (WW-1403)

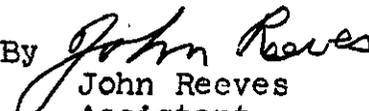
In view of the foregoing, it is noted that the State has provided for the licensing and regulation of the practice of medicine, the practice of pharmacy and the practice of nursing. Therefore, it is our opinion that a nurse licensed under Chapter 7, Title 71, Revised Civil Statutes of Texas, 1925, may carry out the duties of the nursing profession by dispensing or administering drugs or medicine as directed by a licensed doctor; however, a nurse is not authorized to perform acts which constitute the practice of medicine as defined by Article 4510, without first obtaining a license to practice medicine, issued by the Texas State Board of Medical Examiners.

SUMMARY

A nurse licensed under the provisions of Chapter 7, Title 71, Revised Civil Statutes of Texas, 1925, may carry out the duties of the nursing profession by dispensing or administering drugs or medicine as directed by a licensed doctor; however, a nurse is not authorized to perform acts which constitute practicing medicine as defined by Article 4510, V.C.S., without first obtaining a license.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Marvin Thomas
W. O. Shultz

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore