

TEXAS OPTOMETRY BOARD

333 Guadalupe Street, Suite 2-420
Austin, Texas 78701-3942

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OPINION COMMITTEE

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OPEN RECORDS DIVISION
February 23, 2004

FILE # ML-43530-04
I.D. # 43530

Honorable Gregg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

U.S. Mail, Certified
Return Receipt Requested
7002 2030 0006 2213 0187

RE: Opinion Request

RQ-0188-GA

Dear General Abbott:

An employer of a registered nurse has asked the Board of Nurse Examiners whether a registered nurse may administer a dangerous (prescription) drug on the orders of a therapeutic optometrist. The Board of Nurse Examiners told the employer that the registered nurse could not. The Texas Optometry Board then contacted the Board of Nurse Examiners, who provided a letter dated January 28, 2003 (enclosed).

In summary, that letter stated that a registered nurse does not have authority to administer prescription drugs on the order of a therapeutic optometrist, but may do so on the orders of a physician, dentist, podiatrist, advanced practice nurse or a physician assistant. Finding no distinction in the ability to prescribe dangerous drugs of the above health practitioners versus therapeutic optometrists (other than limitations on the type of drug), the Board authorized the Executive Director to seek an Attorney General Opinion on the following question:

Do the Nursing Practice Act, the Optometry Act, and the Health and Safety Code give the Board of Nurse Examiners authority to allow registered nurses to administer a dangerous drug on the order of a therapeutic optometrist?

Only a narrow group of health care professionals is authorized to administer and prescribe dangerous drugs. A therapeutic optometrist is so authorized by the Texas Optometry Act (Chapter 351 of the Occupations Code). A therapeutic optometrist is defined as a "practitioner" along with physicians, podiatrists, dentists and veterinarians in Chapter 483 of the Health & Safety Code (the



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chapter regulating the dispensing and prescribing of dangerous drugs). Advanced practice nurses and physician assistants are also included, with some restrictions, in the definition.

The letter from Board of Nurse Examiners states that the Board cannot authorize registered nurses to administer on the orders of a therapeutic optometrist because the Nursing Practice Act defines professional nursing to involve: "the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist[.]" Occupations Code §301.002(2)(C). However, when this statute was last amended, these three licensees were the only licensees with legal authority to prescribe for humans. Subsequently, the Optometry Act and Chapter 483 of the Health & Safety Code have been amended to give therapeutic optometrists (and later, advanced practice nurses and physician assistants) authority to prescribe and administer dangerous drugs.

These amendments gave therapeutic optometrists the same prescriptive authority, limited only by scope of practice, as physicians, podiatrists, and dentists. Thus an interpretation of §301.002(2)(C) limiting the authority of therapeutic optometrists to prescribe and administer drugs is contrary to the intent of the 1991 amendments to the Optometry Act and the Health & Safety Code giving broad prescriptive authority to therapeutic optometrists.

Please provide the Board with an opinion under the provisions of Tex. Gov. Code Ann. §402.042 (Vernon 1998). The Optometry Board has enclosed a Brief for your convenience, as well as a copy of the letter from the Board of Nurse Examiners and that Board's Position Statements 15.1 and 15.18.

Thank you. Should you have any questions, please call me at 305-8502.

Sincerely,



Chris Kloeris
Executive Director

Enclosures

Parties with possible interest:

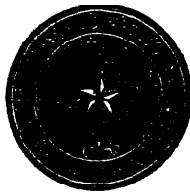
State Board of Physician Assistant Examiners
(Texas State Board of Medical Examiners)
P.O. Box 2018
Austin, TX 78768-2018

The Texas Nurses Association
7600 Burnet Road
Suite 440
Austin, TX 78757

Board of Nurse Examiners for the State of Texas
333 Guadalupe Suite 3-460
Austin, Texas 78701

Texas Academy of Physician Assistants
401 W. 15th Street
Austin, Texas 78701-1680

Texas Optometric Association
1503 S IH-35
Austin, TX 78741



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TEXAS OPTOMETRY BOARD

Board of Nurse Examiners For the State of Texas

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January 28, 2003

Chris Kloeris, Executive Director
Texas Optometry Board
333 Guadalupe Street, Suite 2-420
Austin, TX 78701-8500

Dear Mr. Kloeris:

Katherine Thomas has requested that I respond to your letter of January 17, 2003 concerning whether or not a Registered Nurse (RN) may administer medications prescribed by a therapeutic optometrist. I appreciate the opportunity to respond to your inquiry.

Registered Nurses are not authorized to act on orders issued by a therapeutic optometrist. Sec. 301.002. Definitions of the Nursing Practice Act states in part that professional nursing involves the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist. You may locate the Nursing Practice Act on our main web page at: www.bne.state.tx.us.

Additionally, you seek clarification of whether or not RNs may act on orders issued by advanced practice nurses and/or physician assistants. Please be advised that the Board has issued two position statements to provide guidance to RNs who practice in settings with either of these professionals as follows:

- # 15.1 Physician's Assistant and ;
- # 15.8 RNS Carrying Out Orders From Advanced Practice Nurses.

Registered Nurses may accept and carry out orders from either of these professionals in accordance with the criteria specified in the position statements. You may locate both position statements on the above web site by selecting Practice Issues and then by selecting Board Position Statements.

I hope this information has been helpful to you. Please feel free to contact me if additional clarification or information is needed.

Sincerely,

Sandra Owen, MN, RN
Director of Professional Nursing

15.1 RNs CARRYING OUT ORDERS FROM PHYSICIAN'S ASSISTANT

The Nursing Practice Act defines "professional nursing" to include the "administration of medications or treatments ordered by a physician, podiatrist or dentist." There are no other health care professionals listed. The Board recognizes that in some practice settings RNs work in a collegial relationship with physician assistants (PAs) who may relay a physician's order for a client being cared for by a RN.

A RN may carry out a physician's order for the administration of treatments or medications relayed by a physician assistant (PA) when that order originates with the PA's supervising physician. Supervision must be continuous but does not require the physical presence of a supervising physician at the place where the PA services are performed provided a supervising physician is readily available by telecommunications. The supervising physician should have given notice to the facility that he/she is registered with the Board of Medical Examiners (BME) as the supervising physician for the PA and that he/she has authorized the PA to relay orders. The PA must be licensed or registered by the BME. A list of physician assistants credentialed by the medical staff and policies directing their practice should be available to the nursing staff.

The order relayed by the PA may originate from a protocol; if the order originates from a protocol, the PA may select specific tasks or functions required to implement the protocol, provided they are within the scope of the protocol. The protocol must be signed by the supervising physician and must be on file and available to the Registered Nurse staff at the facility, agency or organization in which it is carried out. If the tasks or functions ordered fall outside the scope of the protocol, the PA must consult with the physician to obtain a verbal order before the RN may carry out the order.

As with any order, the RN must seek clarification if he/she believes the order or treatment is inaccurate, non-efficacious or contraindicated by consulting with the PA and physician as appropriate. (Board Action, 01/1994)

15.18 RNS CARRYING OUT ORDERS FROM ADVANCED PRACTICE NURSES

Advanced practice nurses (APNs) are registered nurses who hold authorization from the board to practice as advanced practice nurses based on completing an advanced educational program acceptable to the Board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services. Advanced practice nurses utilize mechanisms, including Protocols or other written authorization, which provide them with the authority to provide medical aspects of care, including the ordering of dangerous drugs or devices that bear or are required to bear

the legend: "Caution: federal law prohibits dispensing without a prescription." The Protocols or other written authorization may vary in complexity based on the educational preparation and advanced practice experience of the individual advanced practice nurse. Protocols or other written authorization are not required to describe the exact steps that an advanced practice nurse must take with respect to each specific condition, disease or symptom. Protocols or other written authorization are not required for nursing aspects of care.

The Board recognizes that in many settings, RNs and advanced practice nurses work together in a collegial relationship. An RN may carry out an advanced practice nurse's order in the management of a patient, including, but not limited to, the administration of treatments, orders for diagnostic testing, or medication orders. A physician is not required to be physically present at the location where the advanced practice nurse is providing care. The order is not required to be countersigned by the physician. The advanced practice nurse must function within the accepted scope of practice of the role and specialty in which he/she has been authorized by the board.

As with any order, the RN must seek clarification if he/she believes the order is inappropriate, inaccurate, nonefficacious or contraindicated by consulting with the advanced practice nurse or the physician as appropriate. The RN carrying out an order from an advanced practice nurse is responsible and accountable for his/her actions just as he/she would be with any physician order. (Board Action, 01/2001)

Brief

Texas Optometry Board

Fact Example

Situations arise, for example in schools, where a nurse licensee (registered nurse) of the Board of Nurse Examiners may be asked to administer a dangerous (prescription) drug on the orders of a therapeutic optometrist. The Optometry Board was notified that the Board of Nurse Examiners had informed the employer of a registered nurse that the nurse did not have legal authority to administer a dangerous drug on the order of a therapeutic optometrist. The Optometry Board sought clarification from the Board of Nurse Examiners and received the letter dated January 28, 2003, which is included as an attachment to the Optometry Board's request for this Attorney General Opinion.

In summary, that letter stated that the Board of Nurse Examiners does not have legal authority to permit a registered nurse to administer prescription drugs on the order of a therapeutic optometrist, but legal authority does exist to allow nurses to administer on the orders of a physician, dentist, podiatrist, advanced practice nurse or a physician assistant. Finding no distinction in the ability to prescribe dangerous drugs of the above health practitioners and therapeutic optometrists (other than limitations on the scope of practice), the Board authorized the Executive Director to seek an Attorney General Opinion regarding the statutory authority of a registered nurse to administer a dangerous drug on the orders of a therapeutic optometrist.

Relevant Statutory Authority

The Nursing Practice Act, in §301.002(2), defines professional nursing:

(2) "Professional nursing" means the performance for compensation of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or prescription of therapeutic or corrective measures. Professional nursing involves:

...
(C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;¹

¹ Tex. Occ. Code Ann. §301.002(2)(C) (Vernon 2003).

Prior to slight changes in wording during codification into the Occupations Code, this subsection was last amended in 1989 by inserting, "including a podiatric physician licensed by the Texas State Board of Podiatry Examiners," between physicians and dentists.²

The Texas Optometry Act authorized therapeutic optometrists to administer and prescribe prescription drugs in 1991 legislation:

(b) A therapeutic optometrist may administer and prescribe ophthalmic devices, over-the-counter oral medications, and topical ocular pharmaceutical agents, other than antiviral agents and antiglaucoma agents, for the purpose of diagnosing and treating visual defects, abnormal conditions, and diseases of the human eye³

As codified and amended to include dangerous drugs delivered orally by optometric glaucoma specialists, the law now reads:

(a) An optometrist may not treat the eye for a defect or administer or prescribe a drug or physical treatment unless the optometrist is a therapeutic optometrist or licensed physician.

(b) A therapeutic optometrist may:

(1) administer, perform, or prescribe ophthalmic devices, procedures, and appropriate medications administered by topical or oral means, in accordance with this section and Section 351.3581, to diagnose or treat visual defects, abnormal conditions, or diseases of the human vision system, including the eye and adnexa⁴

The Health & Safety Code restricts possession of dangerous (prescription)⁵ drugs to a narrow group of individuals, most notably practitioners and those who lawfully obtain the drugs through the authority of practitioners.⁶

² Act of May 10, 1989, 71st Leg., R.S., ch. 192, §1, 1989 Tex. Gen. Laws 841.

³ Act of May 21, 1991, 72d Leg., R.S., ch. 588, §2, 1991 Tex. Gen. Laws 2108.

⁴ Tex. Occ. Code Ann. §351.358 (Vernon 2003).

⁵ Tex. Health & Safety Code Ann. §483.001(2) (Vernon Supp. 2003):

2) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

⁶ Tex. Health & Safety Code Ann. §483.041 (Vernon 2003). The section reads, in part:

(a) A person commits an offense if the person possesses a dangerous drug unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug for the purpose of selling the drug.

“Practitioner” is defined in §483.001(12):

(12) "Practitioner" means a person licensed:

(A) by the Texas State Board of Medical Examiners, State Board of Dental Examiners, Texas State Board of Podiatric Medical Examiners, Texas Optometry Board, or State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs;

...

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under Section 157.052, 157.053, 157.054, 157.0541, or 157.0542, Occupations Code.⁷

Interpretation

The starting point of every attempt to define the meaning of a statute is to ascertain the intent of the legislature in passing the statute.⁸ The intent may be determined from “. . . the object sought to be obtained, the circumstances under which the statute was enacted, legislative history, and the consequences of a particular construction.”⁹ The reading of the statute should be one that achieves the “. . . object sought to be obtained by the legislature in enacting the statute.”¹⁰ Although courts will look at the plain meaning of the words of a statute, the courts will not determine the meaning of a statute “. . . by a bloodless literalism in which text is viewed as if it had no context.”¹¹

Section 301.002(2)(C)¹² of the Nursing Practice Act, and its predecessor¹³ define the practice of professional nursing to include the administration of dangerous drugs on the orders of three listed types of health professional: physician, podiatrist, and dentist. When the predecessor to §301.002(2)(C) was last amended in 1989 by adding podiatrist, nurses could then administer

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by the following persons or an agent or employee of the person:

(1) a pharmacy licensed by the board;

(2) a practitioner; . . .

⁷ Tex. Health & Safety Code Ann. §483.001(12) (Vernon Supp. 2003)

⁸ *Meritor Auto., Inc. v. Ruan Leasing*, 44 S.W.3d 86 (Tex. 2001); *Worker's Comp. Com'n v. Continental Cas.*, 83 S.W.3d 901 (Tex.App. – Austin 2002, *no writ*)

⁹ *ibid.*, *Meritor* at 89, citing Code Construction Act.

¹⁰ *op.cit.*, *Continental Cas.* at 905.

¹¹ *Harris Co. v. Williams*, 981 S.W.2d 936, 939 (Tex.App.–Houston [1st Dist.] 1998, *writ denied* 1999), quoting *West Anderson Plaza v. Feyznia*, 876 S.W.2d 528, 532 (Tex.App.-Austin 1994, *no writ*).

¹² *loc. cit.*, Occ. Code §301.002(2)(C).

¹³ Act of May 10, 1989, 71st Leg., R.S., ch. 192, § 1, 1989 Tex. Gen. Laws 841.

dangerous drugs on the orders of every type of health professional authorized by statute to prescribe dangerous drugs to humans.¹⁴

The statutory authority to prescribe dangerous drugs may be found in two acts: the specific health professional licensing act¹⁵ and §483.001(12)(A) of the Health & Safety Code.¹⁶ Since 1989, the licensing acts and §483.001(12)(A) have been amended to include three additional types of health professionals in the group of persons authorized to prescribe and administer drugs to humans.¹⁷ Therapeutic optometrists were given the authority to prescribe and administer dangerous drugs in 1991 in amendments to both the Optometry Act and Chapter 483 of the Health & Safety Code.

Section 301.002(2)(C) is part of the definition of professional nursing in the Nursing Practice Act, but the statute acts as a limit on the authority of health professionals outside the jurisdiction of the Board of Nurse Examiners to fully prescribe dangerous drugs. The Optometry Board recognizes that although the statute acts as a limitation on the authority of several health professionals, the Board of Nurse Examiners may retain authority to determine the scope of practice of registered nurses.¹⁸ Thus the purpose of seeking this opinion is not to direct the Board of Nurse Examiners to define the scope of practice for its licensees, but to obtain an opinion on the limits of the authority of the Board of Nurse Examiners.

After the amendments to licensing acts and the Health & Safety Code giving health professionals other than physicians, podiatrists and dentists drug prescribing authority (these amendments all subsequent to the last amendment of §301.002(2)(C)), a current interpretation of §301.002(2)(C) such that some health professionals with statutory drug prescribing authority may not issue orders to registered nurses to administer dangerous drugs ignores the intent of the

¹⁴ Health & Safety Code §483.001(12)(A) also includes veterinarians, as it did in 1989.

¹⁵ Tex. Occ. Code Ann. §§158.001, 164.053, 202.001(4), 251.003 and 258.053 (Vernon 2003).

¹⁶ See notes 6 & 7. The pharmacy act also contains statutory authority for the prescribing of dangerous drugs and defines practitioner in Tex. Occ. Code Ann. §551.003(34) (Vernon 2003):

"Practitioner" means:

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

...

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under Section 157.052, 157.053, 157.054, 157.0541, or 157.0542.

¹⁷ Optometrists, physician assistants and advanced practice nurses. See Health & Safety Code §483.001(12)(A) & (D), *supra*.

¹⁸ See Op. Tex. Att'y Gen. Nos. DM-423 (1996), JC-0177 (1999).

legislature in passing these broad amendments. Specifically, such an interpretation limiting the authority of therapeutic optometrists was not the intent of the legislature in 1991, as evidenced by the far reaching and comprehensive statutory amendments in the Optometry Act and Chapter 483 of the Health & Safety Code which now permit therapeutic optometrists to prescribe dangerous drugs.

The Optometry Board asserts that the intent of the legislature, as expressed in the these 1991 amendments, was to give therapeutic optometrists the same overall prescriptive authority, as the three practitioners then listed in §483.001(12)(A) of the Health & Safety Code: physicians, podiatrists and dentists (except for limitations on the type of drugs that may be prescribed). There is no evidence of legislative intent¹⁹ that this overall prescriptive authority would somehow be restricted from that given to physicians, podiatrists and dentists, such that optometrists could not issue drug administration orders to registered nurses.

Legislative intent to give the same overall prescriptive authority is most evident in the language of new Section 1.03 (c) of the Optometry Act:

A therapeutic optometrist must satisfactorily complete the educational requirements established by board rule to be certified as a therapeutic optometrist. . . . The board by rule shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are approved by the board and that are determined by the board to be equivalent in the total number of classroom hours to the requirements for other health care professionals in this state who may be licensed to use pharmaceutical agents, including dentists, podiatrists, and physicians. [emphasis added]²⁰

The amendments to the Optometry Act gave clear authority for therapeutic optometrists to prescribe and administer dangerous drugs:

¹⁹ Although an argument could be made that by not amending §301.002(2)(C) in 1991 (and in 2001 when physician assistants and nurse practitioners were defined as practitioners in the Health & Safety Code) the legislature expressed an intent that only the three listed practitioners may give drug administration orders to registered nurses, despite the several amendments to licensing acts and the Health & Safety Code. However, the history of amending §301.002(2)(C) at least strongly suggests that the legislature has simply not been able to keep up-to-date with all the interrelated laws in this area. The 1989 amendment adding podiatrist became law no sooner than 30 years after podiatrists were defined as practitioners in the predecessor (Article 4476-14) to Health & Safety Code §483.001(12)(A). As late as 1959, Article 4476-14 included chiropodists in the definition of practitioner. Act of May 8, 1959, 56th Leg., R.S., ch. 425, § 2, 1959 Tex. Gen. Laws 924. Apparently recognizing the long overdue addition, the 1989 amendment to the Health & Safety Code passed by unanimous vote in both houses.

²⁰ Act of May 21, 1991, 72d Leg., R.S., ch. 588, § 2, 1991 Tex. Gen. Laws 2108.

(b) A therapeutic optometrist may administer and prescribe . . . topical ocular pharmaceutical agents, other than antiviral agents and antiglaucoma agents, for the purpose of diagnosing and treating visual defects, abnormal conditions, and diseases of the human eye and adnexa,²¹

The intent to give therapeutic optometrists the same authority as physicians, podiatrists and dentists is also illustrated in the imposition on therapeutic optometrists of the same duties and legal responsibilities as those other health professionals with authority to prescribe dangerous drugs. New Section 1.03 (g) subjected therapeutic optometrists to the same standard of care as ophthalmologists.²²

Further evidence of this intent may be seen in the amendment to §483.001(12)(A) of the Health & Safety Code, which added therapeutic optometrist to physician, podiatrist, and dentist (and veterinarian) without qualification or limitation.²³ The 1991 amendments also included amendments to the Pharmacy Act to require the Pharmacy Board to inform pharmacy licensees that therapeutic optometrists may prescribe dangerous drugs.²⁴

The legislative history supports this interpretation of intent. In a committee hearing on Senate Bill 774, the Committee on State Affairs heard extensive testimony concerning the advisability of amending the law to allow therapeutic optometrists to administer and prescribe dangerous drugs.²⁵ Subsequently, a floor amendment was offered and passed.²⁶ The floor amendment (and the enrolled bill) did not modify the authority of a therapeutic optometrist to prescribe in the same manner as a physician, podiatrist, or dentist, although the amendment did alter the list of drugs that a therapeutic optometrist could prescribe.²⁷ Thus the legislature, hearing opposing voices, and with the opportunity to limit the prescribing authority of therapeutic optometrists, chose not to make changes that would suggest that it had intended any restrictions on prescribing authority.

²¹ Act of May 21, 1991, 72d Leg., R.S., ch. 588, § 2, 1991 Tex. Gen. Laws 2108.

²² *op. cit.*, 2109

²³ *op. cit.*, § 26, 1991 Tex. Gen. Laws 2117

²⁴ *op. cit.*, § 28, 1991 Tex. Gen. Laws 2118

²⁵ Hearing on S.B. 774 before Senate Committee on State Affairs (April 3, 1991). Tape available in Room 300, Lorenzo De Zavala Library and Archives Building.

²⁶ S.J. of Tex, 72nd Leg., R.S. 1113, 1125 (1991).

²⁷ Language amending Health & Safety Code §483.001(12) was not changed from the introduced language of the bill. Compare S.B. 774 as introduced, S.J. of Tex, 72nd Leg., R.S. 355 (1991) (copy of bill available in bill file in Legislative Reference Library), to floor amendment (*see* note 26) and statutory language (*see* Health & Safety Code §483.001(12)(A), note 7).

In 1991 the legislature went to great lengths, in amending several acts, to give therapeutic optometrists the same prescriptive authority as physicians, podiatrists, and dentists. Of course therapeutic optometrists are limited in prescribing ability by their scope of practice, as are podiatrists and dentists. But nothing in the 1991 amendments limits the drug prescribing and administration authority to less than the authority of physicians, podiatrists, and dentists (other than limiting the authority to those dangerous drugs topically administered for the treatment of visual defects, abnormal conditions, and diseases of the human eye and adnexa). The amendments to the Optometry Act and the Health & Safety code simply do not impose any other limitations on the therapeutic optometrist's ability to prescribe and administer dangerous drugs.

In order to interpret §301.002(2)(C) of the Nursing Practice Act so that it excludes therapeutic optometrists, the argument must be advanced that legislature had the following intent in 1991: Therapeutic optometrists, within their scope of practice, have sufficiently similar abilities and training as physicians, podiatrists, and dentists in the area of pharmacology, and may therefore administer and prescribe dangerous drugs in the same manner as physicians, podiatrists, and dentists, but for some reason this very same training and ability is not sufficient to permit therapeutic optometrists to give orders to registered nurses to administer dangerous drugs. Nowhere in the 1991 amendments or legislative history is there any suggestion that there was any reason to deny this authority to therapeutic optometrists. This was not the intent of the legislature.

The Board does not see a fundamental difference between the practice of therapeutic optometrists and physicians, podiatrists and dentists that would support denying therapeutic optometrists the authority to give drug orders to registered nurses? Certainly physicians have statutory authority to delegate to registered nurses that the other health professionals do not.²⁸ But dentists and podiatrists do not have this authority, and may, like therapeutic optometrists, prescribe dangerous drugs only within their scope of practice.

The object sought to be obtained by the legislature in passing the 1991 amendments was to give therapeutic optometrists the same opportunities and tools for providing the types of health care requiring the administration of dangerous drugs as physicians, podiatrists and dentists (as limited by each practitioner's scope of practice). To prohibit therapeutic optometrists from issuing dangerous drug orders to registered nurses would amount to a restriction on these opportuni-

²⁸ Op. Tex. Att'y Gen. No. MW-318 (1981).

ties and tools, a restriction that is absent from the 1991 amendments, and such an interpretation of §301.002(2)(C) is contrary to the object sought by the legislature in the 1991 amendments.

Section 301.002(2)(C) of the Nursing Practice Act should be construed in harmony with §483.001(12)(A) of the Health & Safety Code, statutes in *pari materia*.²⁹ Both statutes are similar in purpose³⁰ – both control the prescription and administration of dangerous drugs by limiting the authority to prescribe and administer to certain health professionals, with §301.002(2)(C) controlling prescriptive and administration authority by limiting those health professionals who may issue orders to administer by registered nurses. Interpreting §301.002(2)(C) such that registered nurses may administer on the orders of all health professionals defined as “practitioners” in §483.001(12)(A)³¹ is the only construction that harmonizes both statutes, and the sections in the Optometry Act authorizing therapeutic optometrists to administer and prescribe dangerous drugs.³²

Interpretation by Agency

Section §483.001(12)(A) of the Health & Safety Code defines practitioner as a physician, podiatrist, dentist or therapeutic optometrist.³³ Subsection (12)(D) added physician assistants and advanced practice nurses to the definition in 2001.³⁴

The January 28, 2003, letter from the Board of Nurse Examiners to the Optometry Board states that the Board of Nurse Examiners interprets §301.002(2)(C) of the Nursing Practice Act to allow registered nurses to administer dangerous drugs on the orders of physicians, podiatrists, dentists, and in addition, both physician assistants and advanced practice nurses.³⁵ In other words, the Board of Nurse Examiners is interpreting §301.002(2)(C) to allow every health professional authorized to prescribe dangerous drugs to humans, except therapeutic optometrists, to issue drug administration orders to registered nurses.

²⁹ *Reed v. Tex. Dept. Licensing & Reg.*, 820 S.W.2d 1 (Tex.App.-Austin, *no writ*).

³⁰ *In re S.N.*, 95 S.W.3d 535 (Tex.App.-Houston [1st Dist.] 2002, *writ denied* 2003).

³¹ Only those authorized to prescribe for humans.

³² See notes 3, 21 and 22.

³³ The section also includes veterinarians.

³⁴ Tex. Health & Safety Code Ann. §483.001(12)(D) (Vernon Supp. 2003).

(12) "Practitioner" means a person licensed:

...
(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under Section 157.052, 157.053, 157.054, 157.0541, or 157.0542, Occupations Code.

³⁵ Position Statements of Board of Nurse Examiners, Nos. 15.1 and 15.18, attached to Optometry Board's request letter. Available at the website of the Board of Nurse Examiners at <http://www.bne.state.tx.us/files.htm#Publications>

Courts give serious consideration to the construction of a statute by a state agency that is charged with enforcing the statute, but only if the construction is reasonable and does not contradict the statute's plain language.³⁶ The court will not consider an agency's interpretation that is inconsistent with the intent of the legislature.³⁷

The legislature, in adding physician assistants and advanced practice nurses to the definition of practitioner in §483.001(12)(D) of the Health & Safety Code,³⁸ and authorizing these health professionals to prescribe and administer dangerous drugs in their respective licensing acts,³⁹ may well have intended that these licensees have similar prescriptive authority as therapeutic optometrists, physicians, dentists, and podiatrists. In fact, the authority of physician assistants and advanced practice nurses is less than that of therapeutic optometrists, since §483.001(12)(D) limits the prescribing authority of these two classes of health professionals to those instances where a physician has delegated the authority to carry out or sign dangerous drug orders. No such limitation is imposed in §483.001(12)(A) on therapeutic optometrists.

An interpretation by the Board of Nurse Examiners that all six health professionals listed in §483.001(12) have statutory authority to issue dangerous drug administration orders to registered nurses would be consistent with the intent of the legislature in amending the Health and Safety code as well as the practice acts in 1991 and 2001. But instead, the Board of Nurse Examiners interpreted the Health and Safety code and the practice acts as authorizing only five of the listed health professionals (two of whom are not listed in §301.002(2)(C)),⁴⁰ but not therapeutic optometrists. Such a distinction is not supported by the language of §301.002(2).⁴¹

The Optometry Board is not making the argument that physician assistants and advanced practice nurses do not have the authority to issue drug administration orders to registered nurses. The Optometry Board is not making the argument that the Board of Nurse Examiners is required to define the practice of professional nursing as the administration of drug orders by every licen-

³⁶ *ibid.*, *Continental Cas.*

³⁷ *ibid.*, *Continental Cas.*

³⁸ Act of April 26, 2001, 77th Leg., R.S., ch. 112, §6, 2001 Tex. Gen. Laws 219.

³⁹ *op. cit.*

⁴⁰ Physician assistants and advanced practice nurses have never been added to §301.002(2).

⁴¹ Subsection (G) includes in the definition of professional nursing the performance of act delegated by a physician pursuant to certain sections of the Occupations Code which allow advanced practice nurses and physician assistants to administer dangerous drugs. These sections of the Occupations Code do not authorize advanced practice nurses and physician assistants to delegate authority or otherwise direct registered nurses to administer dangerous drugs. Note that the delegation of an act by a physician in subsection (G) is separate from the authority in subsection (C) to administer dangerous drugs on the order of a physician.

see defined as a practitioner in §483.001(12). The Optometry Board does contend that the Board of Nurse Examiners has misconstrued the intent of the legislature when the Board states that §§483.001(12) and 301.002(2) do not give the Board of Nurse Examiners authority to define the practice of professional nursing to include the administration of dangerous drugs on the orders of a therapeutic optometrist (despite finding authority in Position Statements⁴² to allow registered nurses to follow the orders of physician assistants and advanced practice nurses, practitioners also not listed in §301.002(2)(C)) . Therefore a court would not be bound by a determination inconsistent not only with the plain wording of §483.001(12) but also with the intent of the legislature as set out above.

Conclusion

The comprehensive amendments in 1991 to the Optometry Act and the Health & Safety Code clearly establish that the legislature intended for therapeutic optometrists to have the same drug prescriptive authority as physicians, podiatrists and dentists. Therefore the Board of Nurse Examiners has authority to interpret the Nursing Practice Act to include therapeutic optometrists in the group of practitioners that may issue drug administration orders to registered nurses (just as the Board of Nurse Examiners has already interpreted the Nursing Practice Act to permit physician assistants and advanced practice nurses drug administration orders).

⁴² See note 35.