

Opinion No. 73-62

August 28, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mrs. Ruth Dilts Director Board of Nursing 505 Marquette Avenue, N.W.
Albuquerque, N.M. 87101

QUESTIONS

QUESTIONS

Can the Board of Nursing license a person as an anesthetist if he is not a registered nurse or a licensed practical nurse in the State of New Mexico?

CONCLUSION

No, but see Analysis.

OPINION

{*122} ANALYSIS

Chapter 149, Laws of 1973 amends the Nursing Practice Act. Section 3 of Chapter 149, Laws of 1973 provides:

"PERSONS EXEMPTED. -- The provisions of Section 67-2-4.1 N.M.S.A. 1953 shall not apply to persons employed to administer general anesthesia on the effective date of this act provided such employment is certified to the board on or before January 1, 1974 by a licensed physician, osteopath or dentist or a hospital or clinic licensed by the health and social services department."

This has the effect of exempting those acting as practicing anesthetists prior to the effective date of the law if the conditions are met, so that Section 2 of this chapter is not violated. Section 2 provides:

"ADMINISTRATION OF GENERAL ANESTHESIA -- EXCEPTIONS. -- It shall be unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry, or a certified registered nurse anesthetist when acting under the direction of and in the {*123} immediate area of a licensed physician or dentist, to administer general anesthesia to any person. Nothing in this section prohibits a person licensed in the healing arts from administering local anesthesia or from using hypnosis."

Section 1 of Chapter 149, Laws of 1973 retains in substance the definitions of nursing set forth in the original Nursing Practice Act but adds a definition of certified registered nurse anesthetist and general anesthesia and makes changes in punctuation:

"DEFINITIONS. -- As used in the Nursing Practice Act:

"A. 'professional nursing' means the performance for compensation of any act in the observation, care and counsel of the ill, injured or infirm or in the prevention of illness or the conservation of health of others, or in the administration of medications and treatments as prescribed by a licensed physician or dentist requiring specialized judgment or skill based on knowledge and application of the principles of the biological, physical and social sciences. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures;

"B. 'practical nursing' means the performance for compensation of selected acts in the care of the ill, injured or infirm under the direction of a registered professional nurse or a licensed physician or dentist, and not requiring the specialized skills, judgment and knowledge required in professional nursing;

"C. 'professional nurse' means a registered nurse who practices professional nursing and whose name and pertinent information is entered in the register of licenses of professional nurses maintained by the board;

"D. 'practical nurse' includes vocational nurse, and means a nurse who practices nursing and whose name and pertinent information is entered in the list of practical nurses maintained by the board;

"E. 'board' means the board of nursing;

"F. 'certified registered nurse anesthetist' means a person licensed as a professional nurse under the Nursing Practice Act, who has successfully completed the educational program of a school for nurse anesthetists accredited by the American association of nurse anesthetists, and whose certification as a registered nurse anesthetist by the American association of nurse anesthetists is either endorsed by the board or is filed with the board within one year following the completion of such educational program; and

"G. 'general anesthesia' means a state of insensibility to pain with loss of consciousness produced by the administration of anesthetic agents."

Section 67-2-4, N.M.S.A., 1953 Comp. (1971 P.S.) requires that no person shall practice nursing as defined above unless properly licensed. In other words no person should perform any act falling within the above definitions unless licensed as a nurse. The above definitions have been, since the enactment of the Nursing Practice Act, broad enough to cover the practice of administering anesthesia. In order to receive **any** license from the Board of Nursing, a person must meet the requirements set out in

Section 67-2-10, N.M.S.A., 1953 Comp. (1971 P.S.) or Section 67-2-15, N.M.S.A., 1953 Comp. (1971 P.S.) and pass the required examination (otherwise he must fall within the provisions of Section 67-2-14, N.M.S.A., 1953 Comp. [1971 P.S.]).

Section 3 of Chapter 149 makes no provision for a separate license to be given a person falling within its scope. It merely provides that persons employed to administer general anesthesia on the effective date of the act may lawfully continue to do so even if not a **certified registered** nurse anesthetist. Thus, the Board of Nursing should make a permanent record attesting a person's certification as employed to administer general anesthesia on July 1, 1973, but a separate license is not necessary.

By: Jane E. Pendleton

Assistant Attorney General