

Opinion No. 76-29

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BY: OPINION OF TONEY ANAYA, Attorney General Nicholas R. Gentry, Assistant Attorney General

TO: Ms. Olive Vaughn, Chief Administrator, New Mexico Board of Pharmacy, 2340 Menaul, N.E., Suite 216, Albuquerque, New Mexico 87107

QUESTIONS

Question

May physicians' assistants and/or certified nurse practitioners legally prescribe dangerous drugs or controlled substances?

Conclusion

See analysis.

OPINION

{*103} Analysis

According to the New Mexico Drug and Cosmetic Act, Sections 54-6-26, **et seq.**, N.M.S.A., 1953 Comp., particularly Section 54-6-27 (H), **supra**, "no person other than a **practitioner** shall prescribe or write a prescription." The identical language appears in Section 54-11-18 of the Controlled Substances Act, Sections 54-11-1, **et seq.**, N.M.S.A., 1953 Comp. A "practitioner" includes:

"a physician, dentist, veterinarian **or other person licensed to prescribe and administer drugs** which are subject to the New Mexico Drug and Cosmetic Act." (Emphasis added.) Section 54-6-27(I), **supra**.

The Controlled Substances Act likewise contains the same language, except that it refers to "drugs which are subject to the Controlled Substances Act." Thus, the determination must be made as to whether a physician's assistant or a certified nurse practitioner is "a person licensed to prescribe and administer drugs."

As stated in Section 67-5-10(B), N.M.S.A., 1953 Comp., the "practice of medicine" includes the prescription of any drug or medicine for the use of any other person, and only a licensed physician may engage in the practice of medicine. See Section 67-5-12, N.M.S.A., 1953 Comp. This language must, however, be read in conjunction with the statutes governing physician's assistants. See Section 67-5-10 (G), N.M.S.A., 1953 Comp.

A physician's assistant is defined as:

"a skilled person certified by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the licensed physician who is responsible for the performance {**104*} of that assistant." Section 67-5-3.1(C), N.M.S.A., 1953 Comp.

And according to Section 67-5-3.3 (B), N.M.S.A., 1953 Comp.:

"A physician's assistant shall perform only those acts and duties assigned him by a supervising physician that are within the scope of practice of such supervising physician."

The obvious intent of the legislature in enacting this legislation was to free licensed physicians from certain tasks by allowing them to delegate such tasks to less highly trained individuals who can adequately perform the tasks under proper supervision. This power of delegation of duties is not absolute, however. According to Section 67-5-10(G)(3), **supra.**:

"the services of the physician's assistant are limited to assisting the physician in the particular fields for which the assistant has been trained, certified and registered; provided that this subsection shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom, except the dispensing of dangerous drugs."

When all of these statutes are read in **pari materia**, as they must be according to New Mexico case law (see **State v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1966)), it appears that licensed physicians may delegate to their physician's assistant any duty within the scope of the physician's practice or for which the physician's assistant has been trained, certified and registered, except for the dispensing of dangerous drugs.

In view of the obviously open-ended language of the statutes concerning the activities of a physician's assistant, it appears that the legislative intent was to leave the ultimate decision as to the scope of activity in the hands of the Board of Medical Examiners, the state agency charged with regulation of physician's assistants. The Board by such delegation has the authority to allow physician's assistants to prescribe drugs, if it deems such course of action advisable, and to establish by regulation the conditions under which such action is undertaken. See Section 67-5-10(G)(3), **supra.** Assuming such authority is granted, a physician's assistant must still comply with the conditions delineated by statute: (1) the physician's assistant must be adequately trained, certified and registered to prescribe drugs; (2) he/she must be under adequate supervision and direction from a licensed physician; (3) such physician must have delegated the task of prescribing; and (4) the physician's assistant must comply with Board rules and regulations. If all these prerequisites are met, a physician's assistant would then qualify as a "practitioner" for purposes of prescribing drugs.

In dealing with certified nurse practitioners, many of the same statutes are involved, and we must again determine whether such a person is a "practitioner", "a person licensed to prescribe and administer drugs." See Sections 54-6-27(H), 54-6-27(I), 54-11-18 and 54-11-2(S), **supra**. Section 67-5-10 (B), **supra**, which includes prescription of drugs within the practice of medicine is not controlling, since the nursing profession is expressly excluded from the statutes governing the practice of medicine. See Section 67-5-10.1(E), N.M.S.A., 1953 Comp.

{*105} A "certified nurse practitioner" is defined in the Nursing Practice Act, Sections 67-2-1, **et seq.**, N.M.S.A., 1953 Comp., as:

"a professional nurse, as described in subsection C of this section, licensed to practice in this state, who must have satisfactorily completed a postgraduate program designed for the training of nurse practitioners and approved by the board of nursing. The certified nurse practitioner shall be personally responsible, and shall act only under the supervision of a physician or surgeon, licensed to practice in New Mexico, **for acts beyond those of professional nursing.**" Section 67-2-3 (H), **supra**. (Emphasis added.)

A "professional nurse" is defined as ". . . a registered nurse who practices professional nursing . . ." Section 67-2-3(C), **supra**, with "professional nursing" being defined as:

". . . 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." Section 67-2-3(A), **supra**.

The definitions quoted above evidence an intent on the part of the legislature to expand the role of nursing, thus relieving physicians from the necessity of performing certain tasks.

In essence, a certified nurse practitioner is given the same powers and duties as a professional nurse, plus some additional undefined authority for which he or she is personally responsible and which is justified by approved post graduate study, but which must be exercised under the supervision of a licensed physician.

A professional nurse is authorized to administer drugs, but is expressly prohibited from "acts of medical diagnosis or prescription of therapeutic or corrective measures" which would appear to include the prescription of drugs. Nevertheless, it must be kept in mind that a certified nurse practitioner, who is a professional nurse with advanced education and training, may engage in acts beyond those of professional nursing with no express statutory limitation, assuming that such acts are under the supervision of a licensed physician. Once again, it appears that the legislature has purposefully declined to

establish exact limits on the authority of certified nurse practitioners, preferring to let the Board of Nursing, with its expertise in this area, establish the parameters for such conduct by rule and regulation.

Thus, as with physician's assistants, certified nurse practitioners, assuming that the Board has permitted them to prescribe drugs, must still comply with the statutory limitations on their practice beyond that of professional nursing: (1) completion of an approved post graduate program in the necessary areas of study; (2) adequate supervision by a licensed physician; and (3) compliance with Board rules and regulations. All prerequisites having been met, {**106*} a certified nurse practitioner is also a "practitioner" for purposes of prescribing drugs.