



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 13, 1988

Ms. Louise Sanders, R.N.
Executive Secretary
Board of Nurse Examiners
1300 E. Anderson Lane
Building C, Suite 225
Austin, Texas 78752

LO-88-54

Dear Ms. Sanders:

You ask several questions about the authority of the Board of Nurse Examiners under the Medical Radiologic Technologist Certification Act, article 4512m, V.T.C.S. We assume that you are asking about the board's authority in regard to nurses who are not certified under article 4512m.

Section 2.07 of the act provides:

(a) Except as otherwise provided by this section, to perform a radiologic procedure a person must hold a certificate issued under this Act.

(b) A person is not required to hold a certificate issued under this Act to perform radiologic procedure if the person is a practitioner and performs the procedure in the course and scope of the profession for which the person holds the license.

(c) A person is not required to hold a certificate issued under this Act to perform radiologic procedures if the person performs the procedures under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under Section 2.08 of this Act.

(d) A person who performs a radiologic procedure in a hospital that participates in

the federal Medicare program or that is accredited by the Joint Commission on Accreditation of Hospitals and who has received appropriate instruction and training in the use and operation of diagnostic radiologic equipment consistent with either the federal Medicare standards for certification of hospitals or the accreditation standards of the Joint Commission on Accreditation of Hospitals may perform radiologic procedures without a certificate issued under this Act. A hospital that instructs and trains a person in the performance of radiologic procedures shall develop a protocol for the instruction and training.

A "practitioner" for purposes of subsections (b) and (c) of section 2.07 is "a doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons." V.T.C.S. art. 4512m, 2.03(6).

Section 2.08 of article 4512m provides:

(a) This section applies to the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, the Texas State Board of Dental Examiners, the Texas State Board of Podiatry Examiners, and the Board of Nurse Examiners.

(b) Each agency, other than the Board of Nurse Examiners, subject to this section shall adopt rules in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to regulate the manner in which a licensee of the agency may order, instruct, or direct another person in the performance of radiologic procedures.

(c) Rules adopted under this section must:

(1) require a person, other than a registered nurse, who is not certified under this Act to register with the agency that licenses the practitioner under whom the person performs radiologic procedures;

(2) establish reasonable and necessary fees to cover the administrative costs incurred by the agency in administering a registration program created under this subsection;

(3) establish grounds for the suspension, revocation, or nonrenewal of a registration issued under this subsection;

(4) identify radiologic procedures that are more dangerous or hazardous and may only be performed by a practitioner or by a medical radiologic technologist certified under this Act;

(5) establish safety standards and procedures for the operation of equipment used to perform radiologic procedures; and

(6) establish standards for the training and supervision of the operators of the equipment.

(d) In adopting rules under Subsection (c) of this section, an agency may take into account whether the radiologic procedure will be performed by a registered nurse.

(e) The Board of Nurse Examiners may adopt rules governing registered nurses performing radiologic procedures under Subsections (b) and (d) of Section 2.07 of this Act and shall require registered nurses performing radiologic procedures under Subsection (b) of Section 2.07 to register with the Board of Nurse Examiners and to identify the practitioner ordering those procedures. The board shall notify the agency licensing the practitioner that the nurse has registered with the board.

Subsection (e) of section 2.08 authorizes the Board of Nurse Examiners to adopt rules governing registered nurses performing radiologic services "under Subsections (b) and (d) of Section 2.07." It also directs the board to require registered nurses to identify practitioners ordering procedures under "Subsection (b) of Section 2.07." You point out that the references to subsection (b) of section 2.07 are nonsensical. Subsection (b) does not allow

registered nurses to perform radiologic procedures without a certificate issued under article 4512m; rather, it allows licensed doctors of medicine, osteopathy, podiatry, dentistry, or chiropractic to do so. Because subsection (b) does not authorize registered nurses to perform radiologic procedures, it makes no sense to authorize the Board of Nurse Examiners to adopt rules governing registered nurses who perform radiologic procedures under subsection (b). We think it is clear that the legislature intended section 2.08(e) to refer to subsection (c) of section 2.07, rather than subsection (b). Subsection (c) provides:

A person is not required to hold a certificate issued under this Act to perform radiologic procedures if the person performs the procedures under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under Section 2.08 of this Act.

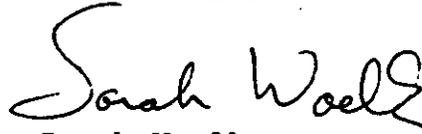
Section 2.08(e) requires the Board of Nurse Examiners to require registered nurses performing radiologic procedures "under Subsection (b) of Section 2.07" to identify the practitioner ordering the procedures. It is subsection (c), however, rather than subsection (b), that permits a person to perform radiologic procedures without a certificate if the person does so at the direction of a practitioner. Also, subsection (c) makes express reference to compliance with rules adopted under section 2.08. Therefore, we think it is clear that the references in section 2.08(e) to subsection (b) of section 2.07 were intended to refer to the content of subsection (c).

Determining legislative intent is the key to construction of statutes. Rogers v. Dallas Railway and Terminal Co., 214 S.W.2d 160, 166-67 (Tex. Civ. App. - Dallas 1948, aff'd 218 S.W.2d 456 Tex. 1949). Words or clauses should not be given their literal meaning when such an interpretation would thwart the intent of the legislature. Id. An obvious clerical error may be overlooked in order to give effect to legislative intent. Attorney General Opinion C-106 (1963) (bill purporting to amend "section 5" of an act obviously intended to amend section 3). Therefore, the references to subsection (b) of section 2.07 of article 4512m should be read as references to subsection (c) of section 2.07 of article 4512. Thus, the Board of Nurse Examiners may issue regulations governing nurses performing radiologic procedures under subsections (c) and (d) of section 2.07.

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You also ask whether the Nurse Practice Act, article 4514, V.T.C.S., gives the Board of Nurse Examiners authority to regulate the performance of radiologic procedures by registered nurses. A registered nurse would be authorized to perform radiologic services only if he or she were doing so under circumstances described in subsections (c) and (d) of section 2.07 of the Medical Radiologic Technologist Certification Act. Because section 2.08(e) of that act gives the Board of Nurse Examiners authority to regulate registered nurses performing radiologic procedures in those circumstances, it is unnecessary to determine whether the Nurse Practice Act could be interpreted as giving the Board of Nurse Examiners the same regulatory authority.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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Ref: RQ-1356
ID# 2949