



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 23, 1996

The Honorable Delwin Jones  
Chair, Committee on Redistricting  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-101

Re: Whether a physician's employee who is not certified under the Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m, is authorized to perform sinus and skull x-rays under the supervision of the physician (ID# 38836)

Dear Representative Jones:

You ask whether a physician's employee who is not certified under the Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m (the "act"), is authorized to perform sinus and skull x-rays under the supervision of the physician. The act was significantly amended in 1995 by House Bill 1200, Act of May 24, 1995, 74th Leg., R.S., ch. 613, 1995 Tex. Sess. Law Serv. 3463, 3463.<sup>1</sup> We conclude that the act as amended prohibits the arrangement about which you inquire.

Section 2.05(g) of the act provides that "[t]he Texas Board of Health [(the 'board')] with the assistance of other appropriate state agencies shall by rule identify radiologic procedures that are dangerous or hazardous and that may only be performed by a practitioner or a medical radiologic technologist certified under this Act."<sup>2</sup> A practitioner is defined in the act as 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). A medical radiologic technologist is a "person certified under this Act, other than a practitioner, who, under the direction of a practitioner, intentionally administers radiation to other persons for medical purposes." *Id.* § 2.03(7). In addition, section 2.05(k) provides that, in adopting rules under section 2.05(g), the board "may consider whether the radiologic procedure will be performed by a registered nurse or a licensed physician assistant." This provision authorizes, but does not require, the board to permit a registered nurse or physician assistant who is not certified to perform a dangerous or hazardous procedure.<sup>3</sup>

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<sup>1</sup>This office recently addressed those amendments in Attorney General Letter Opinion 96-077 (1996).

<sup>2</sup>Section 2.05(h) of the act excepts certain dental radiologic procedures from section 2.05(g).

<sup>3</sup>See Attorney General Letter Opinion 96-077 (1996) at 9.

We understand from a letter appended to your request that the board has or will identify sinus and skull x-rays as "dangerous or hazardous" under section 2.05(g). The letter also suggests that the board, exercising its discretion under section 2.05(k), will not adopt a rule permitting a registered nurse or physician assistant who is not certified to perform a dangerous or hazardous procedure. Assuming that is the case, a physician's employee who is not certified under the act will not be authorized to perform such a procedure under any circumstances.<sup>4</sup> A rule adopted by the board under section 2.05(k), permitting a registered nurse or physician assistant who is not certified to perform a dangerous or hazardous procedure, might permit certain, noncertified, physician employees to perform such a procedure.<sup>5</sup>

You also ask about "non-certified technicians." We assume you intend to ask about the new requirement that most persons who are excepted from certification under the act must obtain mandatory training. Because a person who is excepted from certification under section 2.07 may not perform a dangerous or hazardous procedure, the mandatory training requirement would be relevant only with respect to radiologic procedures that are not identified by the board as dangerous or hazardous. Section 2.07 of the act provides that a person must be certified in order to perform a radiologic procedure, with certain exceptions, including an exception for a "person [who] 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." V.T.C.S. art. 4512m, § 2.07(c). A person who performs procedures under the instruction or direction of a physician under this exception must obtain mandatory training as provided by section 2.05(f).<sup>6</sup>

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<sup>4</sup>Indeed, even "a person who is excepted from certification under section 2.07 (and who is not a practitioner) may not perform a dangerous or hazardous procedure, except under section 2.05(h) [relating to certain dental radiologic procedures] or as permitted by the board under section 2.05(k)." *Id.*

<sup>5</sup>For a discussion of the effective date of rules adopted by the board regarding dangerous or hazardous procedures, *see id.* For a discussion of availability of section 2.05(j) hardship exemption to permit a person who is not a practitioner or certified medical radiologic technologist to perform a dangerous or hazardous procedure, *see id.* at 10.

<sup>6</sup>Persons who are required to complete mandatory training as a result of the 1995 amendments to the act have until January 1, 1998, to do so and may continue to perform radiologic procedures under prior law until that date. *See id.* at 8-9.

**S U M M A R Y**

Assuming that the Texas Board of Health identifies sinus and skull x-rays as "dangerous or hazardous" under V.T.C.S. article 4512m, section 2.05(g), a physician's employee who is not certified under the act will not be authorized to perform such a procedure under any circumstances with the following exception. A rule adopted by the board under section 2.05(k) permitting a registered nurse or physician assistant who is not certified, to perform a dangerous or hazardous procedure might permit certain, noncertified, physician employees to perform such a procedure.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Mary R. Crouter".

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee