

**LETTER OPINION
2000-L-168**

December 4, 2000

Honorable Judy L. DeMers
State Senator
2200 South 29th Street, Apt. 92N
Grand Forks, ND 58201-5869

Dear Senator DeMers:

Thank you for your letter inquiring about the delegation authority of licensed nurses under North Dakota's Nurse Practices Act, N.D.C.C. ch. 43-12.1.

The Nurse Practices Act defines nursing to include "[a]dministration, teaching, supervision, delegation, and evaluation of health and nursing practices." N.D.C.C. § 43-12.1-02(6). The authority of a nurse to delegate to nurse assistants is necessarily implied from the definition of "nurse assistant" as "a person who is authorized by the board to perform nursing tasks delegated and supervised by a licensed nurse." N.D.C.C. § 43-12.1-02(5). "Nurse" is defined in N.D.C.C. § 43-12.1-02(4) as "any person currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse."

N.D.C.C. ch. 43-12.1 only authorizes delegation by a nurse to a person exempt from the Nurse Practices Act pursuant to N.D.C.C. § 43-12.1-16. "A licensed nurse may delegate medication administration to a person exempt under subsection 9 of section 43-12.1-04." N.D.C.C. § 43-12.1-16 (effective through July 31, 2001). 1999 N.D. Sess. Laws. ch. 376, § 4. Subsection 9 of section 43-12.1-04 exempts from the Nurse Practices Act "[a] person who provides medication administration according to individual needs and as part of an individual habilitation or case plan within a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11."

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Pursuant to the authority provided to the Board of Nursing in N.D.C.C. § 43-12.1-08(2), the Board has adopted rules to define delegation and regulate its use. See, for example, N.D.A.C. § 54-05-00.1-01(6) and chs. 54-05-04, 54-07-05, and 54-07-08. N.D.A.C. § 54-05-04-05 prohibits delegation by a licensed nurse for nine listed activities. Subsection 9 of that section prohibits delegation of medication administration unless it is to a nurse assistant who has met the requirements of N.D.A.C. ch. 54-07-05. That subsection also provides an exception to its own limitation for specific delegation to a specific nurse assistant for the administration of a specific medication to a specific client.

The Legislature grants rulemaking authority to administrative agencies by statutory delegation. However, the Legislature may also retract authority previously delegated to an agency. Trinity Medical Center v. North Dakota Board of Nursing, 399 N.W.2d 835, 848 (N.D. 1987). Therefore, under the circumstances provided for delegation under N.D.C.C. § 43-12.1-16 to those persons identified in N.D.C.C. § 43-12.1-04(9), the Legislature has, for the period of effectiveness of those statutes, overridden the rules of the Board of Nursing that are contrary to those sections. Therefore, it is my opinion that despite the limitation provided by N.D.A.C. § 54-05-04-05(9), medication administration may be delegated to a person exempt under N.D.C.C. § 43-12.1-04(9) pursuant to N.D.C.C. § 43-12.1-16 until August 1, 2001, when that statute expires. It is my further opinion that except for delegation pursuant to N.D.C.C. § 43-12.1-16, licensed nurses may only delegate to a nurse assistant.

Sincerely,

Heidi Heitkamp
Attorney General

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