

LETTER OPINION
96-L-160

September 23, 1996

Ms. Valerie Tomhave
Chair, ND State Board of
Respiratory Care
Box 2223
Bismarck, ND 58502

Dear Ms. Tomhave:

Thank you for your letter asking whether individuals who have taken a National Institute of Occupational Safety and Health (NIOSH) certified training course in pulmonary function testing may perform such testing without a license to practice respiratory care under North Dakota Century Code (N.D.C.C.) ch. 43-42. That chapter governs licensing of respiratory care practitioners in North Dakota by the State Board of Respiratory Care (Board).

Respiratory care is defined under N.D.C.C. § 43-42-01(8) as a health specialty involving the "treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems . . . implemented on an order from a licensed physician." Respiratory care also "includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows." N.D.C.C. § 43-42-01(8).

Respiratory care may only be provided by licensed registered respiratory care practitioners or certified respiratory care practitioners pursuant to a prescription of a physician, N.D.C.C. §§ 43-42-01(4),(6),(8),(10), 43-42-04, unless provided "during the transportation of a patient, and under any circumstances where an epidemic or public disaster necessitates respiratory care." N.D.C.C. § 43-42-04.

You specifically ask whether individuals who have completed a training course in pulmonary function testing certified by NIOSH are exempt from licensure as a registered or certified respiratory care practitioner. It is my understanding that pulmonary function testing is a testing technique to assist in diagnosis, monitoring and treating the cardiorespiratory systems and, therefore, constitutes the practice of respiratory care. Thus, an individual may only perform pulmonary function testing in North Dakota if the individual is licensed as a registered or certified respiratory care practitioner or falls under one of the exemptions from licensure recognized in N.D.C.C. § 43-42-05.

N.D.C.C. § 43-42-05 provides exemptions from the requirement that an individual be licensed as a respiratory care practitioner in order to practice respiratory care in the state of North Dakota. None of the exemptions appear to apply under the circumstances you describe.

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Subsection 1 requires the individual be "enrolled in a bona fide respiratory care training program" and identified as a "student respiratory care practitioner." Subsection 2 does not apply because the individual must be a "graduate of the bona fide respiratory care training program" and identified as a "respiratory care practitioner applicant." Subsection 4 also is not applicable, only exempting from the licensure requirements "a licensed and qualified member of another healthcare profession" performing duties within the accepted standard of that person's profession. Individuals trained in pulmonary function testing by NIOSH are not licensed members of another healthcare profession based solely upon this training. They are simply individuals trained in one aspect of healthcare. Subsection 4, therefore, does not exempt such individuals from the licensure requirements. Subsection 5 is inapplicable because it relates to "self-care" and subsection 6 does not apply because it only relates to registered or certified respiratory care practitioners.

The meaning of a statute must be sought initially from the statutory language. County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 325 (N.D. 1985). Words in a statute are to be given their plain, ordinary, and commonly understood meanings. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. §§ 1-02-02, 1-02-03. Consideration should be given to the ordinary sense of these words, the context in which they are used, and the purpose which prompted their enactment. County of Stutsman v. State Historical Soc'y, 371 N.W.2d at 327.

In my opinion, N.D.C.C. § 43-42-05 does not exempt individuals who have taken a NIOSH pulmonary function testing course from licensure when performing respiratory care testing techniques. The plain language of N.D.C.C. ch. 43-42 requires that individuals certified by NIOSH who are performing pulmonary function testing techniques "to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows" be licensed as respiratory care practitioners.

For pulmonary function testing by NIOSH certified individuals to be exempt from licensure under N.D.C.C. ch. 43-42, the Legislature would have to create an additional exemption.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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