

N.D.A.G. Letter to Winkelman (Sep. 19, 1986)

September 19, 1986

Honorable Brent Winkelman
State Representative
633 N. 35th St.
Bismarck, North Dakota 58501

Dear Representative Winkelman:

Thank you for your letter of August 14, 1986, in which you request a clarification of a 1979 Attorney General's opinion. The 1979 opinion discussed those persons exempted from the massage registration.

Specifically, the 1979 opinion concluded that persons who administer massages at the direction of a nurse may do so without obtaining the appropriate license. This conclusion was the result of the exemption for nurses from massage licensure requirements (N.D.C.C. §43-25-04(2)) and the authority of nurses to supervise, and delegate to, persons engaging in health and nursing practices.

In the 1979 opinion dealing with nurses, emphasis was placed on the fact that N.D.C.C. §43-12.1-02 grants nurses the specific authority to supervise or delegate health and nursing practices. According to the opinion, these health and nursing practices would include massage.

A review of N.D.C.C. Ch. 43-04 (barbers) and N.D.C.C. Ch. 43-11 (cosmetology) does not disclose similar authority. Thus, a reader of the statutes is left to believe that the Legislature did not intend for those licensed professions to be able to delegate their authority to other nonlicensed individuals. Therefore, it is my conclusion that persons instructed to administer massages at the direction, or under the supervision, of barbers or cosmetologists are not exempt from the massage registration requirements of N.D.C.C. Ch. 43-25.

I trust that this answers your question.

Sincerely,

Nicholas J. Spaeth

pg

cc: Gail Hagerty, Burleigh County State's Attorney