

OPINION
79-232

December 14, 1979 (OPINION)

Mr. T. N. Tangedahl
Executive Director
Social Service Board
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Tangedahl:

This is in response to your letters of October 23, 1979, and December 6, 1979, requesting an opinion of this office as to whether administration of massage by local public health nurses with the assistance of "homemaker/home health aides" within limitations you describe is prohibited by the provisions of section 43-25-03 of the North Dakota Century Code.

You inform us that occasionally the public health nurse providing care for the client, and supervision to the homemaker/home health aide, will determine that massage is a necessary part of providing range of motion exercises. You indicate that the nurse may direct that the homemaker/home health aide assist in the provision of that massage. You state that such directions are provided in a written plan of care which is signed by the supervising nurse. You state that the Homemaker/Home Health Aide Services Administration Guide Book, a publication of the Social Service Board of North Dakota, is the operations manual which circumscribes the activities of the homemaker/home health aide. You state that this guide book, at page 6, provides that:

The homemaker/home health aide should not perform any personal health care activity that has not been assigned in writing by the supervising nurse.

and further provides, at page 11, that:

Under no circumstances should the home health aide render home health care services without proper medical supervision and without written instructions recorded on the patient's care record. (Emphasis in original).

You conclude that in short, massage would never be performed except at the direction, and under the supervision, of a registered nurse.

You call to our attention the fact that subsection 5 of section 43-12.1-02 in the relevant part defines "the practice of nursing as a registered nurse" to include "administration, teaching, supervision, delegation, and evaluation of "health and nursing practices." (Emphasis indicated to be yours.)

Your questions are stated as:

1. Are the above described practices within the statutory definition of the practice of nursing as a registered

nurse? and

2. Does the exemption contained in subsection 2 of N.D.C.C. section 43-25-04 have application to this practice?

In response to your first question it is our opinion that the above described practices are within the statutory definition of the practice of nursing as a registered nurse.

Subsections 1 and 2 of section 43-25-04 of the North Dakota Century Code provide:

43-25-04. EXEMPTIONS. - The following classes of persons are exempt from this chapter:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, podiatry, or persons holding a drugless practitioner's certificate under the laws of this state.
2. Registered nurses and licensed practical nurses under the laws of this state.

* * *

In response to your second question it is our opinion that the above described practices are exempted from the application of chapter 43-25 of the North Dakota Century Code by subsection 2 and possibly also by subsection 1 of section 43-25-04 of the North Dakota Century Code. We would thus further conclude that the administration of massage by local public health nurses with the assistance of "homemaker/home health aides" in the circumstances you describe is not prohibited by the provisions of section 43-25-03 of the North Dakota Century Code.

We hope the within and foregoing is sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General