

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

Inter-Departmental Memorandum Date 15 May 1973

To William F. Kearns, Jr., Commissioner

Dept. Mental Health and Corrections

From William J. Kelleher, Ass't. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject _____

SYLLABUS:

State personnel not licensed under Title 32 M.R.S.A. 1964, included those classified as "psychiatric aides" at the two State hospitals, may not legally administer medications. Both civil and criminal liability may flow from the administration of medication by unlicensed personnel.

FACTS:

It has repeatedly come to the attention of this office that psychiatric aides at the two state hospitals, who are not licensed by the State in any capacity, regularly administer medications to patients in these hospitals. Due to the serious implications of this practice, vis-a-vis the position in which certain State employees are placed by the requirements of this practice, this Opinion is considered required in order that the Department of Mental Health and Corrections fully understand the criminal and civil liability which may flow from the continuation of this practice.

QUESTIONS:

1. Who may legally administer medications in the various State institutions?
2. What are the legal implications of the current practice of "psychiatric aides" administering medications solely upon the authorization of the Department of Mental Health and Corrections?

ANSWERS:

1. Medications may be legally administered only by a licensed professional nurse or a licensed practical nurse who does so under the supervision of a licensed professional nurse or a physician or dentist. Unlicensed personnel, including "psychiatric aides" at the two State hospitals may not legally administer medications.
2. Illegally administering medication is a misdemeanor punishable by a fine or imprisonment or both. This practice may also result in civil liability to both the personnel actually administering the medication and the state officer who purported

13
May 1973

to authorize the illegal act.

REASONS:

1. There are several statutory provisions which must be considered in order to determine who is qualified under our law to pass medication.

Title 32 M.R.S.A. 1964, chapter 48, as enacted by the Legislature by P.L. 1972, c. 591, which repealed chapter 47 of Title 32, contains the statutory provisions relating to Physicians and Surgeons. Section 3270 states in part:

"Unless duly registered and licensed by the (Board of Registration in Medicine), no person shall practice medicine or surgery or any branch thereof, ...by prescribing or furnishing any drug, medicine,..."

Initially, it is clear that a licensed physician can legally administer medications.

Title 32, M.R.S.A. 1964, chapter 31, contains the statutes which authorize licensed nurses to administer properly prescribed medications. Section 2101 states in part,

"It shall be unlawful for any person not licensed under this chapter to practice or offer to practice professional or practical nursing in this State."

Section 2102, sub-section 21, paragraph D, includes within the definition of "professional nursing," the "(a)dmistration of medications and treatment as prescribed by a licensed physician or dentist." Subsection 3 of that section states:

"The practice of 'practical nursing' means the performance for compensation of those services in observing and caring for the ill, injured or infirm in administering treatments or medication or in applying counsel and procedures to safeguard life and health based on the principles underlying the practice of practical nursing under the supervision of a registered professional nurse, licensed physician or dentist."

There exists some language in Section 2101 which must be considered before concluding whether the above-cited sections circumscribe the limits of those the State has authorized to pass medication. The last paragraph of that

section states:

"This chapter does not affect or prohibit the employment of persons functioning under supervision as nursing aides, attendants, orderlies and other auxiliary workers in private homes, offices, hospitals, nursing or rest homes or institutions."

It should be emphasized that this language does not carve out any exception to the prohibition of section 2101 that it is unlawful for any person not licensed to practice under chapter 31 to practice nursing. It merely makes clear that the chapter did not intend to entirely foreclose non-licensed persons from the health care profession so long as they are employed under supervision and do not otherwise perform duties defined under chapter 31 as being entirely within the province of the nursing profession. It should be clear from the above-quoted sections that the administration of medications may not be done legally except by a licensed professional nurse or a licensed practical nurse who does so under the supervision of a licensed professional nurse or a physician or dentist.

It is concluded that unlicensed personnel at the various state institutions, including those classified as "psychiatric aides" at the two state hospitals, may not legally administer medications.

2. The legal implications of unlicensed personnel, including "psychiatric aides" in the two state hospitals, administering medications must be considered. Title 34 M.R.S.A. §2106, subsection 3, makes it a misdemeanor for any person to: "Practice professional nursing or practical nursing as defined by this chapter unless duly licensed to do so under this chapter." Section 2106 then provides that, "Such misdemeanor shall be punishable by a fine of not more than \$100 for a first offense, or by imprisonment of not more than 10 days. Each subsequent offense shall be punishable by a fine of not more than \$200, or by imprisonment of not less than 10 days nor more than 30 days, or by both." It should be noted

15
8 May 1973

that each act of administering a medication without a license would constitute a separate offense under section 2106.

It must also be stressed that any State employee who authorizes another employee to administer medications illegally would also be liable in damages for any harm which might be occasioned to a patient as a result of receiving illegally administered medication.

"(S)tate officers are not personally liable for the wrongful acts of agents, servants, or other persons acting under them when they have themselves been guilty of no personal neglect, misfeasance, or wrong, and the rule of respondeat superior is inapplicable to such situations." 81 Corpus Juris Secundum 1040.

As the above quotation illustrates, if any State employee were to authorize another to illegally administer medication, especially after having been put on notice of the consequences of that authorization through this Opinion, such State employee would be guilty of misfeasance; and were a patient harmed by the illegal administration of medication, the doctrine of respondeat superior would operate to make such State employee as personally liable for the harm caused as would be the employee who illegally administered the medication.

"(S)tate officers may be held personally liable for their unauthorized acts." 81 Corpus Juris Secundum 1040.

In such a situation, the Office of the Attorney General may be disinclined to defend a suit for damages against a State employee who continues to pretend to authorize the illegal administration of medication in the face of this Opinion.



William J. Kelleher
Assistant Attorney General

WJK/vv