

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date k July 1, 1975

To G. S. Mullaney, Warden

Dept. Maine State Prison

From Courtland D. Perry, Asst. Att'y General

Dept. Mental Health & Corrections

Subject Administration of Medication - Minimum Security Unit, Maine State Prison

We have your request for an informal opinion regarding the legality of your proposed method of administering medications at the Minimum Security Unit at the Maine State Prison following the expiration of the operation of 32 M.R.S.A. § 2258-A, as amended by P.L. 1973, Chapter 737, § 2, on July 1, 1975.

Your proposal is that the registered nurse employed at the Maine State Prison deliver to an inmate of a minimum security unit of the Maine State Prison his medication for a one-week period, together with instructions for taking the medication in conformity with the prescription of the physician. The inmate will deposit such weekly supply of medication at the pharmacy at the minimum security unit and will take his daily dosages of such medication under the supervision of an officer of the minimum security unit, who will assure that each dosage is taken in accordance with the physician's prescription instructions. Such officer is neither a registered nurse nor a licensed practical nurse.

We answer that the proposal would result in the officer's violation of 32 M.R.S.A. Chapter 31, the supervision of the taking of medication as proposed being the administration of medication by one without authority to do so, unless such officer has been delegated the function of administration of medication in accordance with the following statute:

"The practice of 'professional nursing' means the performance for compensation of any of the services which necessitate the specialized knowledge, judgment and skill required for the application of nursing as based upon principles of biological, physical and social sciences in the:

.....
F. Delegation of selected nursing services to unlicensed personnel when such personnel have received appropriate training and instruction and such programs of training and instruction have been approved by the board. Delegation of such services shall not require the personal presence of the delegating professional nurse at the place where such services are performed, unless such personal presence is necessary to provide patient care of the same quality as provided by the professional nurse. The board shall issue such rules and regulations concerning delegation as it deems necessary to insure the highest quality of health care to the patient."

32 M.R.S.A. §2102, sub-§2, F, as last amended by Chapter 737, § 1, Public Laws of 1973.

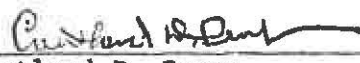
July 1, 1975

Under your proposal the act of administration of medication does not occur with the delivery of a week's supply of medication by the registered nurse to the inmate. The nurse's delivery of a week's supply to the inmate, such supply to be restored to the custody of the state by its deposit by the inmate at the pharmacy at the minimum security unit, accomplishes nothing legally. It merely moves the week's supply of medication from one physical location under the control of the state to another physical location under the control of the state through the inmate as carrier. It is the officer at the minimum security unit who causes the inmate to take the medication in accordance with the instructions in the doctor's prescription. This, in our view, is the administration of medication.

See Words and Phrases, "administer (drugs, liquor or poison)", pages 650-652.

The administration of medication has not been defined by statute. However, such activity has been referred to as included within the practice of professional nursing, see 32 M.R.S.A. § 2102, sub-§ 2, D, and within the practice of licensed practical nursing under supervision in 32 M.R.S.A. § 2102, sub-§ 3.

An issue arose in 1973 with respect to the administration of medication by non-licensed persons in institutions and health care facilities in the state, resulting in the enactment as an emergency measure of P.L. 1973, Chapter 535. In the emergency preamble to such act, the legislature gave recognition to the administration of medication as "furnishing, delivering, supplying or giving medication." That act provided immunity from liability to non-licensed persons administering medications under certain conditions for a limited period of time until July 1, 1974 (32 M.R.S.A. §2258-A). The emergency preamble to that act also stated, "the medical and nursing professions are undertaking a comprehensive study of this situation to determine whether remedial legislation is necessary." The 106th Legislature in Special Session enacted P.L. 1973, Chapter 737; § 2 of which extended for one year the immunity and conditional rendition of services provisions applicable to the non-licensed persons first enacted in P.L. 1973, Chapter 535. Section 1 of Chapter 737 enacted Part F of sub-section 2 of §2102 of Title 32 of the Revised Statutes, which, in our view, is the remedial legislation first cited by the legislature in its emergency preamble to Chapter 535, which remedial legislation controls the instant question.


Courtland D. Perry
Assistant Attorney General