

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333  
June 14, 1977

Honorable Olympia J. Snowe  
Senate Chairperson  
Committee on Health & Institutional Services  
State House  
Augusta, Maine

Honorable Harland C. Goodwin, Jr.  
House Chairperson  
Committee on Health & Institutional Services  
State House  
Augusta, Maine

Dear Senator Snowe and Representative Goodwin:

This responds to your letter of June 1, 1977, seeking advice on several questions relating to prescription of drugs by assistants to licensed medical practitioners. You posed your questions in light of the provisions of L.D. 515 and L.D. 1415 which are currently under consideration by your Committee. The questions you posed and the answers follow:

"1. Liability. Under present law is a pharmacist any more liable for dispensing prescriptions originating from or transmitted by a physician assistant, nurse practitioner or other agent of a licensed medical practitioner than he is for dispensing a prescription originating from or transmitted by a licensed medical practitioner?"

ANSWER: As will be indicated in the discussion below, the current law is not specific on the authorization of assistants to licensed medical practitioners to prescribe drugs. For that reason, it is difficult to say what conclusions might be reached by a judge and jury in a civil action against a pharmacist arising from the

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pharmacist's preparing prescriptions which originated from a physician's assistant, nurse practitioner, or other agent of a licensed medical practitioner. There may be circumstances where the fact that the prescription was not prescribed by a medical practitioner but rather by an assistant could increase the pharmacist's exposure to liability, particularly if it could be demonstrated that the pharmacist had knowledge that he was not receiving the prescription from a licensed medical practitioner. This might be a factor which could influence a jury regardless of the fact that there may have been no specific illegal act by either the assistant originating the prescription or the pharmacist in filling it.

"2. Who can prescribe? There appears to be some disagreement about who is authorized to prescribe drugs under present law. Dr. George Sullivan, Secretary of the Board of Registration in Medicine, has suggested that because present law does not expressly authorize persons other than licensed medical practitioners to prescribe drugs to other persons, the authority to prescribe cannot be delegated to other persons by these licensed practitioners. (See Attachment #1) Others have contended that express statutory authority is not required and that present statutory provisions permit licensed medical practitioners to delegate the authority to prescribe drugs.

"What is the opinion of your office on this question? Is express statutory authority required for a licensed medical practitioner to delegate the authority to prescribe drugs to another person?

ANSWER: We understand by your opinion request that you have a copy of our opinion of December 15, 1975. That opinion was reviewed very carefully before it was published. Basically that opinion indicates that the current law does not specifically prohibit medical practitioners from delegating the authority to originate and transmit prescriptions to their assistants. Accordingly, we maintained in that opinion and we maintain now that the question is one that the Legislature has left to the discretion of the Boards of Registration in Medicine, Nursing, and Osteopathic Examination and Registration. As the matter currently stands there is no express statutory authority to delegate the authority to prescribe drugs; however, we have interpreted the statutes to imply that the appropriate boards have the capacity to rule that the practitioners

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they regulate may delegate such authority to proper persons.

"3. Consistent delegation of authority to prescribe drugs. The Committee has learned that the Board of Osteopathic Examination and Registration does not plan to delegate the authority to prescribe drugs to physician assistants. (See Attachment #3) And yet the allopathic physicians already delegate this authority to physician assistants.

"Is consistency legally required with respect to the delegation of the authority to prescribe drugs by the various licensed medical practitioners (i.e., allopathic physicians, osteopathic physicians, dentists, podiatrists, veterinarians and others)? For example, do any legal problems arise if osteopathic physician assistants cannot prescribe drugs, but allopathic physician assistants can prescribe drugs?"

ANSWER: Without knowing the extent of differences between the various boards and the reasons for the differences between those boards relating to delegation of authority to prescribe drugs, we are not in a position to address the question of whether any equal protection requirements are violated in the situation where one board permits delegation and another, or several others, do not. Such a determination would require a careful examination of the determinations made by the various boards, the basis for those determinations, and their effect on the particular profession and competing professions. We would note that where the matter is one for the discretion of the boards, as indicated above, there would at least be a presumption in favor of the action taken by the board within the bounds of its statutory authority.

"4. Nurses. Is it legal for a nurse practitioner to prescribe drugs, if an allopathic physician has delegated this authority to the nurse? Are any legal problems created by having one profession regulate the activities of another profession, as appears to be the case when a physician authorizes a nurse to prescribe drugs?"

ANSWER: As indicated in our opinion of December 15, 1976, this matter is one within the discretion of the various regulatory boards. Where a nurse practitioner is acting pursuant to a proper delegation in accordance with regulations authorized pursuant to 32 M.R.S.A. § 2102 (2) by the Board of Registration in Medicine, Board of Nursing, and Board of Osteopathic Examination and Registration, and the nurse practitioner meets all of the qualifications for an assistant specified by those Boards, the nurse practitioner may originate and transmit prescriptions without violating the law.

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The second part of question 4 asking if there are any problems of one profession regulating another is not sufficiently specific for use to provide an answer.

"5.a. Clarification of present law. Does L.D. 1415 effectively clarify present law with respect to who can prescribe and transmit prescriptions?"

ANSWER: We believe L. D. 1415 does clarify the law by specifying that only certain professionals may write prescriptions. Further, it specifies the circumstances under which other assistants may transmit prescriptions. In reviewing the bill, however, we believe that questions of interpretation may arise as to what constitutes a prescription: "ordered by the person granting the authority." The bill does not indicate how specific or general this order may be or the form which the order may take.

"5.b. Does either L.D. 515 or L.D. 1415, or both, appropriately clarify the liability of pharmacists who dispense prescriptions either originating from or transmitted by physician assistants, nurse practitioners and other agents of licensed medical practitioners?"

ANSWER: We are not exactly sure what is meant by the words "appropriately clarify" in your question. Without an absolute rule that pharmacists either are liable or are not liable in all circumstances, there are certain to be many questions left for interpretation in specific factual situations. For example, much is left to interpretation with the use of words such as "knew or should have known," "medically improper," and "unauthorized person," as those terms are stated in L.D. 1415. We can neither anticipate all of these questions nor suggest how they might be resolved by a court in advance of the specific situation arising. Accordingly, we do not believe it possible to answer the second part of question 5.

I hope this information is helpful.

Sincerely,

*Donald G. Alexander*  
DONALD G. ALEXANDER  
Deputy Attorney General

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