

MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON HEALTH & INSTITUTIONAL SERVICES

January 4, 1977

Rep. John L. Martin
Chairman, Legislative Council
c/o Speaker's Office
State House
Augusta, Maine 04333

Dear Representative Martin:

In accordance with House Paper 2357 which ordered a study of the administration of medication, we enclose herein the final report of the Health and Institutional Services Committee.

Respectfully submitted,

Walter W. Hichens

Walter W. Hichens
Senate Chairman

Harland C. Goodwin, Jr.

Harland C. Goodwin, Jr.
House Chairman

enclosures
BC/sym

FINAL REPORT

A STUDY OF THE
ADMINISTRATION OF
MEDICATION

Prepared by the
JOINT STANDING COMMITTEE ON
HEALTH AND INSTITUTIONAL SERVICES
107th Legislature

Submitted to the
Legislative Council
107th Legislature

January 4, 1977

Origin of the
Study:

(1)Attorney
General's
opinion:

In 1973 an Attorney General's opinion held that medications could be 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". The term 'medication' was construed to include both over the counter and legend drugs.

At that time the practice in State institutions, including both hospitals and correctional facilities, was to permit personnel other than licensed nurses, physicians and dentists to administer medications. Psychiatric aides, for example, routinely administered medications in mental hospitals and a variety of personnel did the same in correctional facilities.

Although the opinion was addressed to practices in State facilities, its findings applied equally to practices in nursing homes, boarding homes, county jails and a variety of other facilities. Unlicensed personnel routinely administered a range of medications in all of these facilities.

The Attorney General's opinion pointed out that illegally administering medication was a misdemeanor punishable by a fine or imprisonment or both, and that the illegal act could result in civil liability to both the person administering the medication and the person who claimed to authorize the illegal act.

The Legislature was faced with a dilemma. The State institutions and the private facilities could not be operated with the existing personnel at the anticipated fund-

ing levels without permitting unlicensed persons to administer medications. Continuing the practice, however, violated the law.

The Legislature's response was to change the law (32 MRSA § 2258-A) to permit certain unlicensed personnel to continue to administer medication for one year and to be immune from criminal prosecution and civil liability during that time. Within the one year period a permanent solution was to be found and presented to the Legislature.

(2) 1974 Legislation:

In 1974 the Legislature enacted Chapter 737 as a response to the problem identified in the Attorney General's opinion. This legislation authorized licensed professional nurses "to delegate 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". The term "board" indicated the State Board of Nursing and the term "selected nursing services" was intended to include the administration of medication. The legislation did not require the personal presence of a licensed professional nurse "at the place where the [delegated] services were performed, unless such personal presence is necessary to provide patient care of the same quality as provided by the professional nurse". The State Board of Nursing was directed to establish rules

and regulations "concerning delegation as it deems necessary to insure the highest quality of health care to the patient" and the immunity from prosecution and civil liability was extended to July 1, 1975.

(3) Administrative
Rules:

In rules and regulations adopted in 1975, the State Board of Nursing required any person who was to administer medication to have successfully completed a course to become a nurse's assistant. The rules and regulations also provided that nurse's assistants could "be employed as assistants to nurses only in situations where the required registered professional nurse supervision is available". According to these rules, then, any facility in which medication was to be administered by unlicensed personnel would be required to employ nurse's assistants and to have licensed nurses available for supervision of these assistants.

The Legislature expected the Board of Nursing to establish program descriptions which would satisfy the "training and instruction" requirement of the law. The Board of Nursing, however, saw its role as merely approving any programs which public or private agencies proposed.

Although the immunity from prosecution and civil liability lapsed on July 1, 1975, by early 1976 few public agencies or private facilities had proposed programs of training and instruction to the Board of Nursing and regular programs at educational institutions were not available in all areas of the State. The Legislature,

finding that little progress had been made on program development, that confusion still existed about which kinds of facilities were covered by the law and that both public and private facilities could not continue to operate without permitting unlicensed and untrained personnel to administer medication, acted by reinstating the immunity until July 1, 1977 and directing the Health and Institutional Services Committee to study the problem and recommend solutions to the 108th Legislature.

In a separate act during the same session (see Appendix C) the Legislature focused on the administration of medication at county jails. The law (Chapter 674 of PL 1975 or 22 MRSA § 912) permits a county sheriff to administer medication or to delegate this authority to his deputy. Specific guidelines for the sheriff and his deputy are established in the law.

Committee
action:

The Committee has held meetings or corresponded with all of the agencies and groups most directly affected by the statutes and administrative rules relating to the administration of medication. These agencies and groups have included the Department of Mental Health and Corrections, the Department of Human Services, the State Board of Nursing, the Maine Committee on Aging, the Board of Registration in Medicine, the Board of Commissioners of the Profession of Pharmacy, the Maine Nurses Association, the Maine Medical Association and the Maine Boarding Association.

The Committee has heard a wide range of commentary

about the administration of medication. Some groups have suggested that permitting unlicensed personnel to administer medication in certain situations creates a second-class kind of care for the patients and inmates in public institutions as well as for the often elderly, poor or mentally retarded individuals living in private facilities. In addition, they have cited instances of errors and harmful practices involving the administration of medication by unlicensed personnel. In contrast, other groups have suggested that the Attorney General's opinion created the only problem in this area and that unlicensed personnel have administered medication competently in a variety of settings with no sacrifice in the level of care provided,

Certain specific problems and practices relating to the administration of medication in larger boarding homes have also been brought to the Committee's attention. The Committee recognizes that the Department of Human Services has been directly aware of these problems and practices and has taken little action in response to them during the last 2 years.

The Committee believes that the information with which it has been provided represents the full range of opinions and proposed solutions concerning the administration of medication and it is grateful for the cooperation and assistance of all those who participated in the study.

Committee
findings:

With the exception of recent legislation relating to county jails, the Committee believes that the present laws and administrative rules pertaining to the administration of medication are too rigid and unyielding. We recognize that any drug can be abused. Nevertheless, we believe that, for example, the situations in which foster parents give aspirin to their children or a 6 bed or smaller boarding home operator uses an over the counter antiseptic to treat the minor cut of a resident must be distinguished from the situation in which any person is administered a drug on the controlled substance list. Further, we believe that the situation in which a small staff administers medication to a large number of people in a boarding home must be contrasted with the situation in which medication is provided to a small number of people by a small boarding home owner or employee. With respect to the training required to administer medication, however, the present law cannot distinguish between these different situations.

Without creating a second-class level of care for persons living in certain public and private facilities, the Committee believes that the law and any related administrative rules can be changed to better reflect the variety of contexts in which medication is administered. In some contexts licensed and trained personnel are both unnecessary and inappropriate. In other contexts trained personnel are desirable for the administration of medications.

The Committee will not recommend the level of training which should be required for each setting. We do recommend, however, that the Department of Human Services, the Department of Mental Health and Corrections, and the Department of Educational & Cultural Services should establish rules and regulations for the level of training which will be required of personnel at certain of the facilities which they either license or operate. We exclude the non-State hospitals, skilled nursing facilities and intermediate care facilities licensed by the Department of Human Services from this recommendation. We further recommend that specific training should be required for unlicensed personnel employed in boarding homes of more than 15 beds and that this training should not be limited to in-service programs. The Committee recommends that the three departments recognize the distinctions among the kinds of care and the contexts in which any care is provided at the variety of facilities affected and carefully tailor any regulations to fit these distinctions. We would urge consultations with the State Board of Nursing and recommend that in preparing these regulations the departments should consider among other factors the general health of the persons likely to receive the medication, the number of persons who may be receiving medication and the staffing patterns of the various facilities affected.

To carry out the above recommendations the law governing the practice of nursing must also be changed. Presently, under chapter 31 of Title 32 unlicensed personnel may administer medication only if they have received training and instruction in programs approved by the State Board of Nursing and have been delegated the authority to administer medication by a licensed professional nurse in a position to supervise them. The Committee would limit the effective scope of these restrictions to the unlicensed personnel employed in non-State hospitals, skilled nursing facilities and intermediate care facilities. The limitations on the administration of medication in other facilities, such as certain of those licensed by the Department of Human Services, the Department of Mental Health & Corrections or the Department of Educational & Cultural Services would be established in the administrative rules of the respective departments.

Finally, the Committee recognizes that the adoption of rules may require several months and, therefore, recommends that the present immunity provided under 32 MRSA § 2258-A should be extended until January 1, 1978. The Committee believes that this extension provides sufficient time for the departments to prepare and adopt rules and regulations and, therefore, fully expects that these rules and regulations will be adopted prior to January 1, 1978.

418, 237

STATE OF MAINE

In House

Ordered,

WHEREAS, the 107th Legislature identifies as a serious problem the administration of medication to various types of persons, including, but not limited to, those confined in correctional facilities and those residing in community residential facilities such as nursing, boarding and foster homes; and

WHEREAS, persons who administer medication are often considered to lack the training and licensing needed to safely administer medication; and

WHEREAS, the issue of who is able to safely administer medication to whom has generated heated debate among various health care personnel; and

WHEREAS, this issue must be settled in order to preserve the health and safety of certain individuals to whom medication is administered; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Standing Committee on Health and Institutional Services shall study the administration of medication to various types of persons including, but not limited to, those who live in correctional facilities and in facilities such as nursing, boarding and foster homes; and be it further

ORDERED that in conducting its study the committee shall determine who can safely administer medication and what type of, under what circumstances, and to whom medication can be safely administered; and be it further

ORDERED that in making these determinations the committee shall

consider input from various health care personnel and from the Department of Human Services; and be it further

ORDERED that the Department of Human Services and the various health care licensure boards be requested to provide the committee with such information and technical assistance as the committee deems necessary to conduct this study; and be it further

ORDERED that the Committee shall complete this study no later than 90 days prior to the next regular session of the Legislature and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

ORDERED, upon passage in concurrence, that suitable copies of this Order be transmitted forthwith to the department and to the various health care licensure boards as notice of this directive.

HOUSE OF REPRESENTATIVES
READ AND PASSED

APR 26 1976
SENT UP FOR CONCURRENCE

Edwin D. East
CLERK.

IN SENATE CHAMBER *Pub*
TABLED BY SEN. CONLEY
OF CUMBERLAND

APR 23 1976

PENDING *Passage*
HARRY N. STABBANICH, Secretary

IN SENATE
TAKEN FROM TABLE ON MOTION
BY SEN. SPEERS AND ON FURTHER
OF KENNEBEC
APR 23 1976

MOTION BY SEN. SPEERS
OF KENNEBEC
Passage
IN CONCURRENCE

Harry N. Stabbanich
SECRETARY

H.P. 2357

(Goodwin)
NAME: *Autumn Goodwin Jr.*
TOWN: So. Berwick