

State of Connecticut



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JUN 18 1985

The Honorable Audrey M. Worrell, M.D.  
Commissioner  
Department of Mental Health  
90 Washington Street  
Hartford, CT 06106

Dear Dr. Worrell:

In your recent letter you requested our opinion on whether registered or licensed nurses may carry out orders of physician assistants in light of the 1980 passage of Conn. Gen. Stat. § 20-12a. Second, in the event that nurses are not compelled to follow the orders of physician assistants, is oral approval by the supervising physician sufficient to validate the action?

Our response to the first question is that a nurse may only carry out the orders of a physician but that these orders may be given through a physician assistant in appropriate circumstances. Second, oral approval by the physician is insufficient.

On October 18, 1976 an opinion was issued to the Commissioner of Health Services providing some general guidelines on the extent of authority of a physician assistant. The opinion refers to Conn. Gen. Stat. § 20-9 which states:

No person shall . . . for compensation prescribe for any injury . . . until he has obtained such a certificate of registration as is provided in section 20-10, but the provisions of this chapter shall not apply to . . . any person rendering service as a physician's trained assistant, a registered nurse, or a licensed practical nurse if such service is rendered under supervision, control and responsibility of a physician.

We explained in that opinion that it is a question of fact whether the act performed by the physician assistant was delegated by the

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physician, and was performed under the physician's supervision. We concluded that in some circumstances a physician may meet the statutory requirement of § 20-9 and provide supervision outside the presence of the physician assistant.<sup>1</sup>

Finally, we stated: "Supervision is the act of one who supervises, and to supervise means to oversee or to have oversight of the performance of work of a person. The words 'supervise and control' comprehend an exercise of restraint or direction, of authority over and of domination and command. Fluet v. McCabe, 299 Mass. 173, N.E.2d 89, 92." \_\_\_\_ Conn. Op. Atty. Gen. \_\_\_\_ (letter to Commissioner of Health Services dated October 18, 1976, pp. 2-3).

Thereafter, another request for an opinion was received from the Nursing Board concerning the interaction of the exemptions of Conn. Gen. Stat. § 20-9, the provision discussed above, and the Nurse Practice Act, Section 20-86, et seq., Conn. Gen. Stat. We concluded in an opinion addressed to the Nursing Board dated February 28, 1976, that a nurse must be under the direct supervision of a licensed physician when executing a medical regimen and

[I]n view of the language of § 20-1 and § 20-87a and the absence of statutory authority permitting physicians' trained assistants to issue orders concerning patient treatment and medication, a nurse should not carry out such orders. To do so would, in our opinion, constitute the unauthorized practice of medicine.

\_\_\_\_ Conn. Op. Atty. Gen. \_\_\_\_ (letter to the Chairman of the Board of Examiners of Nurses dated February 25, 1978, page 2.)

In other words, there was no authority to interpose the physician assistant between the physician and the registered nurse.

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<sup>1</sup>We also noted in that opinion that regulations could be adopted by the Council to establish reasonable standards for health care to be administered by a physician through a physician assistant.

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Finally, the legislature passed P.A. 80-362, now codified as § 20-12a, Conn. Gen. Stat. This provision gave definition to the term "physician assistant" and defined supervision.<sup>2</sup> It also prohibited any person from holding himself out as a physician assistant without approval by a certifying organization and without having passed a certifying examination. It is in light of this provision that we are re-examining our earlier opinions on the subject.

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<sup>2</sup>Section 20-12a, Conn. Gen. Stat.:

(a) For the purposes of this chapter: "Physician assistant" means a skilled individual who is qualified by academic and practical training to provide patient services under the supervision, control responsibility and direction of a physician licensed in accordance with the provisions of this chapter; and "supervision" means the overseeing of or the participation in the work of a physician assistant by a licensed physician including but not limited to:

(1) Continuous availability of direct communication either in person or by radio, telephone or telecommunications between the physician assistant and a licensed physician; (2) availability of a licensed physician on a regularly scheduled basis to (A) review the practice of the physician assistant, (B) review charts and records of the physician assistant, and (C) support the physician assistant in the performance of his services; and (3) a predetermined plan for emergency situations, including the designation of an alternate licensed physician in the absence of the regular licensed physician.

(b) No person shall represent himself as a physician assistant unless (1) such person has graduated from a physician assistant program approved by the American Medical Association and has passed the National Commission on Certification of Physician Assistants certifying examination within two years of graduation or (2) is employed in this state as a physician assistant on October 1, 1980, provided no such person shall represent himself or be employed as a physician assistant after December 31, 1981, unless he has successfully passed such certifying examination. On and after December 31, 1981, no person shall be employed as a physician assistant unless such person has graduated from a physician assistant program approved by the American Medical Association or has passed such certifying examination not later than December 31, 1981.

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The absence of any legislative guidelines was the basis for concluding there was no third party intervention contemplated between a nurse, executing the prescribed medical regimen for a patient, and the physician. This has now been provided by § 20-12a. We can now conclude that it was the intention of the legislature both to create an agency relationship between the physician assistant and the physician and to exempt the individual physician assistant from the prohibition of practicing medicine without a license.<sup>3</sup> Section 20-12a defines supervision as "the overseeing of or the participation in the work of a physician assistant by a licensed physician . . . ."

Courts in other states that have considered this issue have concluded that similar language creates an agency relationship. The legal consequence of the establishment of this relationship is that the physician has the ultimate responsibility for all the actions of the physician assistant and the physician assistant only acts as an extension of the physician. The physician assistant cannot act on his own. Section 20-12a states the patient services provided by a physician assistant are the responsibility of the physician. See, e.g., Washington State Nursing Association v. Board of Medical Examiners, 3 WASH.2d 117, 605 P.2d 1269 (1980).

Since the actions of the physician assistant are attributable to the physician, any negligence occurring through the physician assistant's action would be the responsibility of the physician; likewise, if the physician assistant's activities were to fall within any of the prescriptions contained in § 20-13c, it would be the physician's medical license that would be placed in jeopardy.

Unlike a Registered Nurse or, to a lesser extent, a Licensed Practical Nurse, a physician assistant has no independent basis upon which to act. Because of the constraints on the relationship

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<sup>3</sup>This is a legislatively sanctioned agency relationship. It is only through these provisions and the exemptions in § 20-9 that the physician assistant may act. Section 20-9 does not permit any other class of persons to be made agents of a physician or agents of any other authorized profession in the statute. Without this legislative sanction, anyone who performs activity which is conduct falling within § 20-9 is practicing medicine without a license.

<sup>4</sup>The definition of nursing contained under Conn. Gen. Stat. § 20-87a(a) explicitly states the registered nurse operates under the direction of a licensed physician or dentist in only one area of nursing. See also § 20-87a(b).

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between the physician and the physician assistant, it must be concluded that when a physician assistant acts, he or she is acting as the physician licensed under § 20-13. As that is the case, it is effectively the physician giving orders to the nurse. A nurse has the obligation to execute the medical regime of the physician; therefore, the nurse must follow the physician assistant's orders, provided certain safeguards are imposed.

A nurse has the obligation to question the actions of the physician when, in the exercise of professional judgment, the nurse is not convinced of the propriety of the physician's order. Goff v. Doctor's General Hospital, 166 Cal. App. 3d 314, 33 P.2d 29 (1958). Likewise, the nurse has an even greater obligation to question the extent of delegation to the physician assistant whenever, as a professional, the nurse knows or should know that the physician assistant is exceeding his or her authorization or is not carrying out the delegation properly.

Unlike the situation in many other states, there remain no Connecticut regulations concerning the extent to which a physician may delegate to a physician assistant, the areas in which the delegation may occur, and the method of insuring the propriety of the delegation. Regulations would serve the salutary purpose of providing a framework for the physician, physician assistant and nurse.

The nurse must be provided reasonable assurance that the medical instructions are in fact prescribed by the physician. It is incumbent upon a physician assistant to document without delay the authorized delegation of the instructions by the physician on the patient records to safeguard the nurse who must execute the instructions. Strict, closely written protocols in accordance with Conn. Gen. Stat. § 20-12a(a) stating the extent of delegation must be executed and available for those limited occasions when a physician assistant does not actually need to call the physician before issuing an order. The physician must countersign all orders in a timely fashion to validate the delegation. Ultimately, such measures assure that the nurse is directed by the physician through the physician assistant only to the extent that the physician assistant is authorized.

The ability to issue prescriptions for controlled substances is a separate issue. In Conn. Op. Atty. Gen. (letter to the Chairman of the Board of Examiners for Nursing dated December 12, 1983)

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and \_\_\_ Conn. Op. Atty. Gen. \_\_\_ (letter to the Deputy Commissioner of Consumer Protection dated July 10, 1981) it was concluded that physician assistants, because they are not specifically enumerated as a class of persons permitted to issue prescriptions for controlled substances under Chapter 359, were prohibited from doing so. Those opinions are not altered by the advice rendered now. They deal with specific provisions and possible criminal penalties.

Very truly yours,

JOSEPH I. BIEBERMAN  
ATTORNEY GENERAL

Richard J. Lynch  
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RJL:pc

cc: Douglas S. Lloyd, M.D.  
Commissioner, Department of Health Services

Bette Jane M. Murphy, R.N.  
Chairman, Connecticut State Board of  
Examiners for Nursing