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STATE OF NEBRASKA
OFFICIAL
JUN 23 1994
DEPT. OF JUSTICE

DATE: June 21, 1994

SUBJECT: School Physical Examinations and Immunizations

REQUESTED BY: Mark B. Horton, M.D., M.S.P.H.
Director of Health

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested our opinion on three questions concerning the school physical examinations and immunizations required by Neb. Rev. Stat. §§ 79-444 through 79-444.07 (1987, Supp. 1993 and 1994 Neb. Laws LB 1223). Those questions are as follows:

1. Is a physician assistant, nurse practitioner, or a chiropractor a "qualified physician" for purposes of Neb. Rev. Stat. § 79-444?

2. If the physician assistant or nurse practitioner is not a "qualified physician" can he or she do the physical examination as the agent of the physician and sign the report to the board as an agent of the physician? If not, can the physician assistant or nurse practitioner perform the physical examination if the physician signs the report?

3. May a physician assistant, nurse practitioner, or a chiropractor sign a statement that in his or her opinion the immunizations required before a student can be admitted to school would be injurious to the student or to a member of the student's family or household for

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purposes of Neb. Rev. Stat. § 79-444.06? May a physician assistant or nurse practitioner make the diagnosis and sign the statement as the agent of the physician? If not, can the physician assistant or nurse practitioner perform the diagnosis if the physician signs the statement?

We conclude that the term "qualified physician" as it appears in Neb. Rev. Stat. § 79-444 does not include a physician assistant, nurse practitioner, or chiropractor. We also conclude that the statement regarding immunizations referred to in § 79-44.06 must be signed by a physician rather than another health care provider. A physician assistant or nurse practitioner may be authorized to perform medical services which comprise a school physical examination and may be authorized to make an initial diagnosis regarding immunizations under the supervision of a physician. Their roles also depend on the written practice agreement or application for supervision of a physician assistant which has been filed with the Department. However, the final determinations are statutorily required to be made by a physician.

I. Qualified Physician

Neb. Rev. Stat. § 79-444 provides that the board of education of any school district "shall require evidence of a physical examination by a qualified physician within six months prior to the entrance of a child into the beginner grade and the seventh grade or, in the case of a transfer from out of state, to any other grade of the local school, except that no such physical examination shall be required of any child whose parent or guardian objects in writing." (Supp. 1993). We find that the answer to your first question depends not on the scope of practice defined for a physician assistant, nurse practitioner or chiropractor, but rather on the specific language of § 79-444 which requires that this particular physical examination be performed by a qualified physician.

The term physician is not defined within Chapter 79 of the Nebraska Revised Statutes. However, the term physician is defined or described throughout other Nebraska statutes as an individual licensed to practice medicine and surgery. You are referred to, for example, Neb. Rev. Stat. § 20-403 (Supp. 1993) which separately defines "physician" and "health care provider"; § 44-2804 (1988) which defines physician as a person licensed to engage in the unlimited practice of medicine and surgery or licensed to practice osteopathic medicine and surgery; § 71-5502 (Supp. 1993) which separately defines "physician" and "approved physician surrogate";

and § 71-6813 (1990) which defines physician as a person licensed to practice medicine and surgery.

The legislature has not used the term physician so as to encompass these three health care providers. Instead, the legislature has distinguished between physicians and chiropractors in Neb. Rev. Stat. §§ 71-177 and 71-178 (1990). The legislature has chosen to define a physician assistant as a person who is approved to perform medical services under the supervision of a physician. Neb. Rev. Stat. § 71-1,107.16(4) (Supp. 1993). A nurse practitioner may perform medical functions only under the supervision of the physician or other licensed practitioner with whom he or she is associated. Neb. Rev. Stat. § 71-1721.03 (1990).

We also note a prior opinion of this office which stated that the term "qualified physician" did not include a physician assistant for purposes of Neb. Rev. Stat. § 81-8,133.01 (1976). 1979-1980 Rep. Att'y Gen. 265 (Opinion No. 184, dated December 26, 1979).

Under Nebraska law, where the words of a statute are plain and unambiguous, no interpretation is needed to ascertain their meaning. In the absence of anything to indicate the contrary, words will be given their ordinary meaning. ***Kellogg Co. v. Herrington***, 216 Neb. 138, 343 N.W.2d 326 (1984). As stated by the Nebraska Supreme Court, "[R]ecognition that legislators typically vote on the language of a bill generally requires this court to assume that the legislative purpose is expressed by the ordinary meaning of the words used." ***Lawson v. Ford Motor Co.***, 225 Neb. 725, 727, 408 N.W.2d 256, 258 (1987). We believe the legislature intended, as indicated by the plain language of § 79-444, that only physical examinations by duly licensed physicians may be accepted by a board of education.

II. Role of Physician Assistants and Nurse Practitioners

Your next question is whether a physician assistant or nurse practitioner may perform the required physical examination as an agent of a physician. We conclude that the role of the physician assistant or nurse practitioner in the performance of the "school physical" is governed both by statute and by the written application for approval or written practice agreement in each case.

The laws governing physician assistants are found at Neb. Rev. Stat. §§ 71-1,107.15 through 71-1,107.30. Section 71-1,107.17 provides that a physician assistant may perform medical services under the supervision of a licensed physician in the specialty

areas for which the physician assistant is trained or experienced. Thus, by statute, a physician assistant may not engage in an independent practice, but may perform medical services under the supervision and direction of a physician.

A physician who wishes to supervise a physician assistant must file an application with the Department of Health which describes the physician's practice and the way in which the physician assistant will be utilized. § 71-1,107.20. Therefore, in our opinion, the role of the physician assistant in the performance of a "school physical" will also depend upon the language of the application approved by the Board of Examiners in Medicine and Surgery. Within those limits, a physician assistant is authorized to perform medical services which comprise the "school physical." Because § 79-444 requires a physical examination by a physician, it is our opinion that the physician should make any final determinations and should sign the report which will be presented as evidence to the school.

Similarly, a nurse practitioner's authorization to perform the medical services encompassed by a "school physical" depends in part upon the written practice agreement authored and signed by the nurse practitioner and associated physician and approved by the appropriate boards. That agreement is required to describe the agreed-upon medical functions which the nurse practitioner may perform. Neb. Rev. Stat. §§ 71-1716.03 and 71-1721.01 (1990).

The medical services described in the practice agreement must, of course, fall within the scope of practice of a nurse practitioner which is defined in Neb. Rev. Stat. § 71-1721 (1990) and must be performed under the supervision of the physician named in the practice agreement. Neb. Rev. Stat. § 71-1721.03 (1990). Again, as § 79-444 requires a physical examination by a physician, the supervising physician should make the final determinations and sign the report.

III. Reports Regarding Immunizations

Your third question is whether a chiropractor, physician assistant, or nurse practitioner may make the diagnosis that certain immunizations may be injurious to a student and may sign a statement to that effect to be submitted to the school's admitting official in compliance with Neb. Rev. Stat. § 79-444.06 (Supp. 1993). We first note that § 79-444.06 has an operative date of July 1, 1994. Prior to that date, it has been sufficient for the student's parent or guardian to present a written statement that he or she does not wish to have the student immunized. We conclude that the new statute requires a statement signed by a physician

which reports that physician's opinion (or an affidavit stating that immunization would conflict with religious beliefs).

As in our answer to question one, we are not providing an opinion as to whether these three health care providers are competent to make such a diagnosis or whether making such a diagnosis falls within the scope of practice of these health care providers. Rather, in our opinion, the answer to your question is found within § 79-444.06. The legislature has provided certain alternatives to the general requirement of student immunization, but those alternatives must meet statutory requirements. Here, the legislature has specifically required a statement signed by a physician which states that physician's opinion.

You also ask whether a physician assistant or nurse practitioner may make the diagnosis that certain immunizations would be injurious to the health of the student or any member of the student's household. As previously discussed, both a physician assistant and nurse practitioner may perform medical services under the supervision and direction of a physician. It appears to us that physician assistants and nurse practitioners would be authorized to convey their findings and impressions to a supervising physician. However, although the physician's opinion may very well be based upon the services performed by a physician assistant or nurse practitioner, the statute in question requires a statement of the physician's opinion and we believe that it is the physician who must make the final diagnosis and sign the required statement.

Sincerely,

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Approved By:

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9-206-6.22