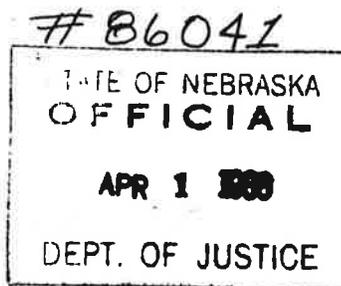


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 31, 1986

SUBJECT: Proposed Amendments in LB 924 Sec. 3 to
Neb.Rev.Stat. §71-2017.02 (Supp. 1984)

REQUESTED BY: Senator Don Wesely
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Marilyn Hutchinson, Assistant Attorney General

In regard to proposed amendments in LB 924 Sec. 3, you have asked what is the legal distinction between "approving" unlicensed persons to administer medications and "certifying" them to do so. We have concluded there is very little distinction, as discussed below, but some clarification and consistency with other statutes may result from using "approved."

One proposed amendment would change the authority of the Department of Health to make regulations. Instead of setting requirements for "certification" of certain unlicensed staff to administer medications in named health care facilities and providing for denial or revocation of such certification as now provided in Neb.Rev.Stat. §71-2017.02 (Supp. 1984), the department would be authorized to make rules and regulations requiring "approval" of them to do so and providing for denial of such approval. Another amendment would change the exemption allowing unlicensed persons in such facilities to administer medications from those "certified" by the Department of Health to those "approved by the facility" and by the Department of Health.

The present statute does not define "certification" and the proposed amendment does not define "approved". In such cases we look to the usual and ordinary meaning of those terms. See, Garcia v. City of Omaha, 215 Neb. 714, 340 N.W.2d 409 (1983).

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The American Heritage Dictionary of the English Language defines "approved" as: "To confirm or consent to officially; to sanction; ratify." It defines "certify" as: "To confirm formally as true, accurate, or genuine; to testify to or vouch for in writing." In Ashby v. Peters, 128 Neb. 338, 349, 258 N.W. 639, 644 (1935), the court defines "approved" to mean: "[T]o sanction officially, to regard as good, to commend."

Thus there is very little to distinguish the two terms except the requirement that the certification be in writing. Where the approval is to be given by a state agency, administrative procedures already require that it be in writing. Thus, in fact, that distinction is also one without a difference. One possible distinction may arise in the health care industry because of the connotation that certification is made by the federal government for participation in the medicare and medicaid programs while licensure is made by the state.

The critical fact both under the present statute and the proposed amendments is that a line is being drawn between those who may administer medications and those who may not. The Legislature has already determined that the administration of medications is an occupation which the state may regulate to promote the health, safety, morals or general welfare of the public. See, Nelsen v. Tilley, 137 Neb. 327, 337, 289 N.W. 388 (1939), for a discussion of its authority to do so. See, statutes authorizing the administration of medications by certain licensed health care practitioners and by Care Staff Members as evidence that it has done so.

In conclusion, whether the Legislature requires unlicensed persons to be "certified" or "approved" by the Department of Health before they can administer medications is a distinction without a difference. However, because certification may connote federal involvement to health care providers, use of approved may clarify that this is consent from the state to administer medications. Approve is also the term used with respect to Care Staff Members, another class of unlicensed persons who may administer medications. Thus, use of a similar term here may promote clarity.

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Of greater concern are potential constitutional problems from the proposed amendments to delete the right to revoke approval, if given, and to delegate approval functions to a private entity. A continuing problem is the omission of statutory guidelines for qualifications needed for certification or approval. However, a discussion of those problems is beyond the scope of this opinion.

Sincerely,

ROBERT M. SPIRE
Attorney General



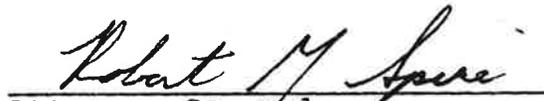
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cc: Patrick J. O'Donnell
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1/04

APPROVED:



Attorney General