

**LETTER OPINION
2004-L-20**

March 8, 2004

Mr. Richard Riha
Burleigh County State's Attorney
514 E Thayer Ave
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter asking whether detention center personnel are required to have some specialized training and be licensed or certified before they may administer medication to inmates.

"This office has consistently found that the prescription and administration of medication is so inimically connected to the health of the public that it is for the Legislature to determine which persons are authorized to prescribe or administer medication." N.D.A.G. 99-F-09. Medication administration is included within the definition of nursing. N.D.C.C. § 43-12.1-02(5)(c). There are exceptions to N.D.C.C. ch. 43-12.1, but daily correctional facility operations do not fall within these exceptions. See N.D.C.C. § 43-12.1-04. One exception that may apply to medication administration in detention centers is N.D.C.C. § 43-12.1-04(8). That section allows a person licensed or registered under Title 43 and who is carrying out the therapy or practice for which that person is licensed or registered, such as a physician, podiatrist, optometrist, or dentist, to administer medication.

In addition to the exceptions in N.D.C.C. § 43-12.1-04, a licensed nurse may delegate and supervise medication administration to medication assistants who have completed a prescribed training program in medication administration or who have been delegated to deliver specific medication to a specific client. N.D.A.C. ch. 54-07-05; N.D.A.C. § 54-07-05-01. These medications must not require determination of need, drug calculation, or dosage conversion. Id. Medication administration in acute care settings or for individuals with unstable or changing nursing care needs may not be delegated. Id. The licensed nurse must be available to monitor the client's progress and the effectiveness of the prescribed medication regimen. Id. In a licensed nursing facility, the nurse must be in the unit and available for immediate direction. N.D.A.C. § 54-07-05-04. In any other setting where a licensed nurse delegates medication

administration, the licensed nurse must establish in writing a process for providing supervision¹ in order to provide appropriate safeguards for the medication recipients. Id.

Section 54-07-05-02(2), N.D.C.C., defines a “medication assistant” to mean “an individual who has a current registration as a nurse assistant, has successfully completed an approved medication assistant program, has demonstrated competency in the administration of routine, regularly scheduled medications, and possesses a current registration from the board as a medication assistant.” Chapter 54-07-05, N.D.A.C., includes the requirements for registration as a medication assistant and allowable types of medication administration by a medication assistant. Ch. 54-07-06.1, N.D.A.C., and 54-07-07 include the requirements for board-approved medication assistant programs.

It is my opinion that medication administration in a county detention center must be by a nurse licensed under N.D.C.C. ch. 43-12.1; by some other licensed person acting within the scope of his or her license; or by a medication assistant acting pursuant to appropriate delegation from a licensed nurse under rules adopted by the Board of Nursing. That person must have completed a board-approved program of medication administration and possess a current registration from the board as a medication assistant.

You also asked a follow up question concerning whether these requirements also apply to the distribution of nonprescription medications. Significant changes were made to the laws governing nursing in 1995. Prior to the 1995 changes, the practice of nursing as a licensed practical nurse included “[a]dministering prescribed medications.” 1995 N.D. Sess. Laws ch. 403, § 3. After the 1995 changes, “nursing” was defined as including “medication administration” without including a specific limitation to prescriptions. Id. Neither the context of this change nor the legislative history provides a clear indication whether the Legislature intended to change the definition of nursing to include the administration of non-prescription medications. See City of Fargo v. Annexation Review Commission, 148 N.W.2d 338, 349 (N.D. 1966) (mere changes of phraseology in a revision or recodification of the law do not operate to change the meaning of a statute unless the changes clearly and unmistakably manifest a legislative intent to change the law). Further, the Board of Nursing has promulgated a definition of “medication administration” which does not indicate an intent to regulate medications that are routinely self-administered by the general public. N.D.A.C. § 54-01-03-01(29) (limiting this definition to only those clients whose use of the medication must be evaluated and

¹ Supervision may be either direct or indirect as required by the nurse’s professional judgment, and indirect supervision includes being available through periodic inspection and evaluation, telecommunication, or both, for direction, consultation and collaboration. N.D.A.C. § 54-01-03-01(51).

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monitored by a skilled nurse). There is, however, a risk of potential liability if inmates possess nonprescription medications without appropriate supervision. This liability may be minimized by requiring nonprescription medications to be administered in the same manner as prescription medications.

Sincerely,

Wayne Stenehjem
Attorney General

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