April 20, 2000

OPINION NO. 2000-023

Carol L. Egner, M.D., President
State Medical Board of Ohio
77 South High Street, 17th floor
Columbus, Ohio 43266-0315

Dear President Egner:

Your predecessor requested an opinion concerning whether a person who is not expressly authorized by statute to administer an anesthetic or drug to induce anesthesia may do so under the delegated authority of a licensed physician. The specific questions asked are as follows:

1. May a person not specifically authorized by statute or statutory exception be authorized through delegation to administer a drug legally classified as an anesthetic?

2. May a person not specifically authorized by statute or statutory exception be authorized through delegation to administer any drug or combination of drugs with the purpose to induce or maintain anesthesia?

3. Do the functions of administering and maintaining anesthesia, including monitoring, interpreting the data, and adjusting the amount or type of anesthetic constitute the practice of medicine which may only be performed by a person with the requisite statutory authority?

The request letter sets forth the following background for these questions:

> Over the years, certain groups of practitioners in addition to fully licensed allopathic and osteopathic physicians have become legally authorized to administer anesthesia or have been granted limited exceptions to the Medical Practices Act…. The most recent grant of authority is contained in [R.C. 4730.03(E)], which prohibits a physician assistant from administering, monitoring or maintaining an anesthetic, but carves a limited exception permitting a physician assistant to administer a regional anesthetic, such as a "digital block," in connection with the care and suturing of minor lacerations.

> Although it is clear that the above listed groups may administer anesthetics to the extent allowed by statute, the question has arisen concerning what tasks, if any, involved in the administration of anesthesia may be delegated to persons without such a statutory grant of authority or to unlicensed persons.
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> [The Medical Board's position concerning the delegation of medical tasks is that] mechanical tasks which do not require the exercise of medical judgment may be delegated; however, tasks requiring the exercise of judgment based on medical knowledge, interpretation of medical information, complex observations leading to critical decisions, or repeated medical assessments are not suitable for delegation….
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> The Medical Board is presently aware of persons in Ohio whose activities do not appear to be in conformance with the Medical Board's interpretation of the appropriate delegation of tasks associated with the administration of anesthesia. A group of individuals knows as "anesthesiologist assistants," who are not licensed or regulated by any entity of the State of Ohio, practice in several hospitals in Ohio under the supervision of anesthesiologists.[1] It is our understanding that these individuals administer the anesthetic agent, monitor the patient's reaction, and adjust the anesthetic during the surgical procedure, in much the same manner as fully licensed [certified registered nurse anesthetists] and anesthesiologists. (Original footnote omitted; footnote added.)

Before answering the specific questions asked, let us begin by discussing the powers and duties of the State Medical Board. As recently summarized in 1999 Op. Att'y Gen. No. 99-044 at 2-267:

> The State Medical Board is authorized to issue certificates for the practice of medicine. R.C. 4731.14. The practice of medicine without such a certificate is prohibited, and criminal penalties are provided. R.C. 4731.41; R.C. 4731.99. The State Medical Board is authorized to limit, revoke, or suspend a certificate or otherwise discipline the holder of a certificate who commits any of a number of violations. R.C. 4731.22(A); R.C. 4731.22(B)(1)-(35). The Board also has

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[1] In the case of *State Medical Bd. v. Mt. Sinai Medical Center*, No. CV-990158 (C.P. Cuyahoga County December 5, 1983), the parties entered into a consent judgment in which they agreed, among other things, that Mt. Sinai may continue to employ "medical assistants," without claim, demand, or action by the State Medical Board, so long as Mt. Sinai complies with the Medical Board's position paper, dated September 14, 1977, concerning medical assistants and extenders, and does not request or permit such assistants to exercise independent medical judgment or to practice medicine. The medical assistants also agreed "to comply with the position paper in all other respects," slip op. at 2. The position paper states, in pertinent part, that any person not holding a license from the State Medical Board, including a medical assistant or extender, is prohibited from practicing medicine, and that licensed physicians using the services of such an unlicensed person are responsible for assuring that the unlicensed person does not practice medicine.

> authority to investigate possible violations of the statutes and rules governing the practice of medicine, to hold hearings, and to share its information with other licensing boards and with law enforcement agencies. R.C. 4731.22(F). *The Board may seek injunctions against the unauthorized practice of medicine or bring criminal charges*. R.C. 4731.341; R.C. 4731.39; R.C. 4731.99; *see State ex rel. Lakeland Anesthesia Group, Inc. v. Ohio State Med. Bd.*, 74 Ohio App. 3d 643, 600 N.E.2d 270 (Cuyahoga County 1991). Thus, the State Medical Board has authority to regulate the practice of medicine, to investigate allegations of violations of provisions governing the practice of medicine, and to enforce those provisions. (Emphasis added.)

The practice of medicine is defined in R.C. 4731.34,[2] pursuant to which a person is regarded as practicing medicine, surgery, or podiatry, who, among other things:

> examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, *administers*, or dispenses *for compensation of any kind, direct or indirect, a drug or medicine*, appliance, mold or cast, application, operation, or treatment, of whatever nature, *for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease*, provided that the treatment of human ills through prayer alone by a practitioner of the Christian Science church, in accordance with the tenets and creed of such church, shall not be regarded as the practice of medicine; and provided further that sanitary and public health laws shall be complied with, no practices shall be used that may be dangerous or detrimental to life or health, and no person shall be denied the benefits of accepted medical and surgical practices. (Emphasis added.)

The practice of medicine or surgery, or any of its branches "without the appropriate certificate from the state medical board to engage in the practice" is prohibited by R.C. 4731.41. *See also* R.C. 4731.43 (practicing osteopathy without a certificate); R.C. 4731.60 (practicing podiatry without a certificate). *See generally* R.C. 4731.39 (stating, in part, "[t]he secretary of the state medical board shall enforce the laws relating to the practice of medicine and surgery. If he has knowledge or notice of a violation, he shall investigate the matter, and, upon probable cause appearing, file a complaint and prosecute the offender").

Although the General Assembly has prohibited the unauthorized practice of medicine, it has also expressly provided the circumstances in which and the persons to whom R.C. 4731.01-.47, including the prohibition against the unauthorized practice of medicine, do not apply. *See, e.g.*, R.C. 4731.34 (excluding from the practice of medicine, with certain limitations, the treatment of

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[2] Although R.C. 4731.34 defines the practices of medicine, surgery, and podiatry, we will, for ease of discussion, refer to the practices described in R.C. 4731.34 simply as the practice of medicine. We will also refer to the prohibition in R.C. 4731.41 simply as the unauthorized practice of medicine.

human ills through prayer alone by a practitioner of the Christian Science church); R.C. 4731.35 (R.C. 4731.01-.47 "shall not apply to or prohibit in any way the administration of an anaesthetic by a certified registered nurse anesthetist under the direction of and in the immediate presence of a licensed physician"); R.C. 4731.36 (R.C. 4731.01-.47 do not apply to, *inter alia*, emergency situations, domestic administration of family remedies, commissioned medical officers of the United States army, navy, or marine hospital service in the discharge of their professional duties). Thus, the power of the State Medical Board to enforce the prohibition in R.C. 4731.41 against the unauthorized practice of medicine does not extend to those persons and practices that have been excluded from the definition of the practice of medicine or to those persons and practices excluded from regulation under R.C. 4731.01-.47.

With this background in mind, let us turn to the specific questions asked. For ease of discussion, we will begin by addressing the last question, which asks whether the functions of administering and maintaining anesthesia, including monitoring, interpreting the data, and adjusting the amount or type of anesthetic, constitute the practice of medicine which may only be performed by a person with the requisite statutory authority.

It has long been established that the administration, for compensation, of drugs to induce anesthesia falls within the practice of medicine.[3] The rationale has been that, because the statutory definition of the practice of medicine, *see* R.C. 4731.34, includes the administration for compensation of any drug or medicine for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, "[t]he giving of drugs to produce anesthesia is a practice of medicine under our laws which defines what shall constitute the practice of medicine in Ohio." 1917 Op. Att'y Gen. No. 528, vol. II, p. 1497 (syllabus). *See* 1998 Op. Att'y Gen. No. 98-003 at 2-15 ("R.C. 4731.34 defines the practice of medicine or surgery in terms that encompass the administration of anesthesia" (footnote omitted)); 1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, at 876 ("[u]nless … I misapprehend the technical facts in the case, one who gives an anaesthetic 'administers a drug' and if this is done for a compensation whether paid by the patient or not, and if it is done for the care or relief of a bodily infirmity, it unquestionably constitutes the practice of medicine or surgery").

The question submitted by your predecessor, however, specifically asks whether certain aspects of administering and maintaining anesthesia, including monitoring, interpreting data, and adjusting the amount of anesthesia, fall within the practice of medicine. These tasks are not expressly mentioned in the language of R.C. 4731.34 defining the practice of medicine. Rather, the General Assembly has assigned to the members of the State Medical Board, the greater portion of whom are licensed to practice medicine and surgery and have been appointed because of their expertise and scientific knowledge in the area of medicine and surgery, the duty to determine in finer detail whether particular acts or practices fall within the statutory definition of the practice of

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[3] Whether the administration of a drug classified as an anesthetic or the administration of any drugs or medication to produce anesthesia may fall within the scope of practice of any other profession is a separate question that is not before us and one that we will not address.

medicine. *See, e.g., Arlen v. State*, 61 Ohio St. 2d 168, 399 N.E.2d 1251 (1980); *State v. Rich*, 44 Ohio St. 2d 195, 339 N.E.2d 630 (1975) (State Medical Board's authority to adopt rules defining the practice of chiropractic). *See generally* R.C. 4731.05(A) (stating, in part, "[t]he state medical board shall adopt rules in accordance with [R.C. Chapter 119] to carry out the purposes of this chapter").

Assuming that the administration of anesthesia is the administration of a drug, whether the tasks or functions in the administration and monitoring of anesthesia described in the request letter fall within the scope of administering a drug or medicine or any other aspect of the practice of medicine, as defined in R.C. 4731.34, is, therefore, a determination to be made by the State Medical Board in a reasonable exercise of its discretion and expertise.[4] *See State ex rel. Lakeland Anesthesia Group, Inc. v. Ohio State Med. Bd.*, 74 Ohio App. 3d 643, 600 N.E.2d 270 (Cuyahoga County 1991); 1994 Op. Att'y Gen. No. 94-052 at 2-261 ("it is clear that interpretation of the ethical standards applicable to the professions regulated under R.C. Chapter 4731 has been delegated to the expertise of the State Medical Board. It would be inappropriate, therefore, for the Attorney General to opine on a matter left to the expertise and discretion of the members of the State Medical Board for determination").[5] *See generally Pons v. Ohio State Med. Bd.*, 66 Ohio St. 3d 619, 621, 614

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[4] Your predecessor informed us that the State Medical Board has, in fact, adopted position papers that address both the delegation of tasks by licensed physicians and the administration and monitoring of anesthesia.

[5] In addressing a similar question regarding the authority of the Board of Nursing to define the role of licensed practical nurses in performing the nursing function of medication administration, 1998 Op. Att'y Gen. No. 98-035 stated at 2-209 to 2-211:

> The statutes nowhere address the matter of administering medications through intravenous therapy. *See, e.g., Ohio Nurses Ass'n v. State Bd. of Nursing Educ. and Nurse Registration*, 44 Ohio St. 3d 73, 76, 540 N.E.2d 1354, 1357 (1989) ("[t]he new statutory definition does not state that LPNs can now start IVs; it simply provides a somewhat more specific, but still very general, description of the scope of LPN practice"). Therefore, the Board, in the reasonable exercise of its discretion, may determine the extent to which the administration of medications through intravenous therapy is included in the practice of nursing as a licensed practical nurse and the extent to which the administration of medications through intravenous therapy is included in the practice of nursing as a registered nurse.
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> ….
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> The General Assembly has provided a statutory framework for the regulation of the nursing profession and has authorized the Board of Nursing, acting within that framework, to exercise its discretion in adopting rules to implement the statutes. In order to provide for the training, licensing, and discipline of nurses, the Board must determine, in greater detail than is contained in R.C. 4723.02 [(defining, among other things, the types of nursing practice)], the nature of the practice of nursing as a

N.E.2d 748, 751 (1993) ("[w]hen reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession").

We now turn to the first question, which asks whether a person not specifically authorized by statute or statutory exception to administer a drug legally classified as an anesthetic may be authorized to do so through delegation by a licensed physician.[6] Similarly, the second question asks whether a person not specifically authorized by statute or statutory exception may be authorized through delegation by a licensed physician to administer any drug or combination of drugs with the purpose to induce or maintain anesthesia. These questions distinguish between the act of administering a drug that is an anesthetic and the act of administering a drug for the purpose of inducing anesthesia. It does not appear, however, that the law recognizes a distinction between the two acts for purposes of determining whether a person who is not authorized by statute to perform either act may, without violating the prohibition against the unauthorized practice of medicine, perform either task through delegation by a licensed physician.

The portion of the definition of the practice of medicine that we must examine states, with certain exceptions not here relevant, that a person is considered to be practicing medicine who, among other things, "prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, … for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease." R.C. 4731.34.[7] R.C. 4731.34 does not expressly distinguish between types of drugs or medicines falling within its scope. Similarly, R.C. 4731.34 does not distinguish between drugs or medicines based upon the particular use of such drugs or medicines, other than to include drugs used "for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease." In the absence of such distinctions in R.C. 4731.34, we may address the first and second questions together as concerning the administration, for compensation, of a drug or medicine, whether or not an anesthetic and whether or not for purposes of anesthesia, for "the cure

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> registered nurse or as a licensed practical nurse. The Board of Nursing is an administrative body with expertise in this area, and it appears to be entirely appropriate for the General Assembly to delegate to the Board the authority to *adopt rules that clarify the precise nature of the practice of nursing*, including the extent to which a particular type of nurse may administer intravenous therapy. (Emphasis added; various citations omitted.)

[6] For ease of discussion we will refer to a person who has been issued a certificate to practice medicine in accordance with R.C. Chapter 4731 simply as a "licensed physician."

[7] *See generally State v. Henning*, 83 Ohio App. 445, 450, 78 N.E.2d 588, 591 (Franklin County 1948) (in determining whether the prescription of certain medicines and the injection of oxygen by means of a hypodermic needle fell within the practice of medicine, the Franklin County Court of Appeals stated that, "[m]edicine … may not be only a drug but also a remedy. The statute may be violated by the dispensing of a remedy as well as a drug").

or relief of a wound, fracture or bodily injury, infirmity, or disease," R.C. 4731.34, by a person who is not expressly authorized by statute to administer such drug or medicine.[8]

As a preliminary matter, we must note that the General Assembly has expressly recognized that delegation occurs within the practice of medicine. *See, e.g.*, R.C. 4730.03(C) (nothing in R.C. Chapter 4730, concerning physician assistants, prohibits "a physician from delegating responsibilities to any nurse or other qualified person not registered as a physician assistant provided such an individual does not hold himself or herself out to be a physician assistant"); R.C. 4753.12(I) (nothing in R.C. Chapter 4753, concerning the practices of speech-language pathology and audiology, "[r]estrict[s] a physician from engaging in the practice of medicine and surgery or osteopathic medicine and surgery or prevent[s] any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery or osteopathic medicine and surgery"). The General Assembly has not, however, provided clear or comprehensive direction regarding the nature of tasks or responsibilities within the practice of medicine that may be delegated, or the extent to which or persons to whom tasks within the practice of medicine may be delegated.[9] Moreover, while the General Assembly has expressly conditioned the performance of certain acts upon the oversight or participation by a licensed physician, it has not defined in detail the extent to which a licensed physician may delegate tasks or responsibilities to unlicensed persons.[10]

Let us, therefore, examine the concept of "delegation." According to *Webster's New World Dictionary* 372-73 (2d college ed. 1978), the verb "delegate" means, in part, "to entrust (authority, power, etc.) to a person acting as one's agent or representative." Thus, when you question the

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[8] The State Medical Board is statutorily responsible for issuing licenses to physicians in order to engage in the practice of medicine, and for regulating the conduct of licensed physicians when they are practicing medicine. Therefore, in this opinion we will only address the authority of licensed physicians to administer drugs or medicines or to delegate that power, and we will not address the authority of other licensed medical professionals in that regard. R.C. 109.12 (the Attorney General shall advise state boards only with respect to "matters relating to their official duties"). *See* note three, *supra*.

[9] *Cf*. R.C. 4723.02(B)(6) (including within the practice of nursing as a registered nurse "[t]eaching, administering, supervising, *delegating*, and evaluating *nursing practice*" (emphasis added)).

[10] *Cf*. R.C. 4730.21(A) (stating in part, "[t]he supervising physician of a physician assistant exercises oversight, control, and direction of the physician assistant," and prescribing the duties of a supervising physician); R.C. 4765.39 (except in cases of certain emergencies, a paramedic may perform the activities set forth in R.C. 4765.39(B) "only pursuant to the written or verbal authorization of a physician or of the cooperating physician advisory board, or pursuant to an authorization transmitted through a direct communication device by a physician or registered nurse designated by a physician").

authority of a licensed physician to delegate tasks or responsibilities to an unlicensed person, you question whether the licensed physician may impart to an unlicensed person the authority to perform tasks or assume responsibilities that the physician, by virtue of his certificate or license, is personally authorized to perform or assume, *i.e.*, tasks and responsibilities within the practice of medicine.

The notion of delegation described in the opinion request, however, must be viewed within the statutory scheme governing the practice of medicine. As discussed above, R.C. 4731.41 prohibits the practice of medicine, including the administration of a drug or medicine for compensation for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, without a certificate issued in accordance with R.C. Chapter 4731. Moreover, the General Assembly has specifically excepted certain activities and persons from regulation as part of the practice of medicine. *See, e.g.*, R.C. 4731.34; R.C. 4731.35; R.C. 4731.36. No statute of which we are aware, however, authorizes a licensed physician to impart to an unlicensed person the authority to administer a drug or medicine that the physician, by virtue of his license, is personally authorized to administer. In addition, no statute of which we are aware excepts from the prohibition against the unauthorized practice of medicine the administration of a drug or medicine by a person who is not licensed to administer such drug or medicine, whether or not the unlicensed person is acting through the purported delegation of authority of a licensed physician.

This conclusion finds support in prior Attorney General opinions that have examined questions similar to those asked by your predecessor. Specifically, 1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, considered whether a licensed physician possesses the authority to delegate to an individual who is not licensed as a physician the task of administering an anesthetic. 1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, began by examining the statutory definition of the practice of medicine, which read, in pertinent part, in terms substantially identical to its current definition in R.C. 4731.34.[11]

The syllabus of the opinion acknowledged that the questions whether the administration of anesthesia is the administration of a drug for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, and whether the administration of anesthesia requires the technical knowledge and professional skill of a licensed physician, are questions of fact which cannot be resolved through an opinion of the Attorney General. The opinion proceeded to analyze the question, however, based upon the assumption that the administration of anesthesia occurs through the administration of a drug, and stated:

> The question [is] whether or not the function of administering an anaesthetic might be performed by an unqualified person under the personal direction of a qualified physician, and thus, in a sense, indirectly by the physician himself. It is perfectly clear that a person need not be qualified as a physician in order to be

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[11] R.S. 4403f (predecessor of G.C. 1286 (now R.C. 4731.34)) (1908 Ohio Laws 492 (H.B. 1268, § 43, approved May 9, 1908)).

> permitted under the law to perform some necessary services in connection with an operation under the direction of a physician or a surgeon. Thus, any person may, under the surgeon's direction, arrange the instruments for him, or hand him such appliances as he needs. I do not, however, regard the administration of an anaesthetic as such an act as those described, unless I have a wrong impression of the nature of the act. *It is the act of administering itself the doing of which requires technical knowledge and professional skill. That would be such an act as could not be, under the law, delegated to another by a qualified physician even though the person to whom it is delegated acts under the personal direction of the physician*.

1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, at 876-77 (emphasis added). Thus, based upon the assumptions that the administration of anesthesia is the administration of a drug and that the administration of a drug requires the technical knowledge and professional skill such as that of a licensed physician, the opinion concluded in the syllabus that an unlicensed person may not administer anesthesia under the direction of a licensed physician, by way of assistance to a licensed physician, or otherwise.

The issue of delegation by a licensed physician was again examined in 1917 Op. Att'y Gen. No. 528, vol. II, p. 1497, which relied upon the analysis of the 1911 opinion, but stated further at 1499, "[i]t cannot be disputed that the anesthetist administers a drug and that said administration is for a fee or compensation no matter whether such fee or compensation is paid by the patient or by the hospital, and that the administration is for the relief of bodily injury, infirmity or disease." The 1917 opinion thus took the position that, as a factual matter, the administration of anesthesia is the administration of a drug, and, when a drug is administered, for compensation, for the relief of bodily injury, infirmity, or disease, that act constitutes the practice of medicine. 1917 Op. Att'y Gen. No. 528, vol. II, p. 1497 (syllabus).

In rejecting the notion that the administration of a drug is a task that a licensed physician may delegate to a person who is not licensed to administer a drug, the 1917 opinion reasoned that:

> [I]f the administering of the anesthetic might be delegated to a person other than one who is licensed to perform such act under our law, then any other act which is required to be performed in the practice of medicine can likewise be delegated to a person other than one who is licensed to practice under our law. That is to say, a physician could delegate to one person the authority to diagnose and to another to prescribe and to another to perform operations, and all that would be necessary would be to simply show that the persons who were performing such acts were doing so under the proper delegated authority of a licensed physician. This cannot be understood to be the law in Ohio.

1917 Op. Att'y Gen. No. 528, vol. II, p. 1497, at 1499. In support of its conclusion, 1917 Op. Att'y Gen. No. 528, p. 1497, observed that, although the General Assembly had excepted from regulation as part of the practice of medicine various other practices, like those currently appearing in R.C.

4731.36(A),[12] it had not similarly excepted the administration of anesthesia by nurses, interns, or other hospital employees acting under the delegated authority of a physician.

Since the issuance of these two opinions, the General Assembly has created additional exceptions from the prohibition in R.C. 4731.34 against the unauthorized practice of medicine and also has provided for licensed practitioners of other professions to perform acts that are also encompassed within the practice of medicine. *See, e.g.*, R.C. 4723.56(E) (notwithstanding, among other things, R.C. Chapter 4731, advanced practice nurses in pilot programs may prescribe drugs and therapeutic devices); R.C. 4731.35 (R.C. 4731.01-.47 do not apply to certified registered nurse anesthetists); R.C. 4765.39(B)(5) (authorizing a paramedic to administer "appropriate drugs and intravenous fluids"). Despite the many statutory changes since the issuance of the 1911 and 1917 opinions, however, the General Assembly has not enacted a statute that permits a person who is not authorized by statute to administer a drug or medicine to do so under the delegated authority of a licensed physician or that excepts from the prohibition against the unauthorized practice of medicine contained in R.C. 4731.41 the administration of a drug under the delegated authority of a licensed physician.

Because the General Assembly has enacted a comprehensive scheme regulating persons who may administer drugs, we must conclude that the General Assembly did not intend that a person who is not licensed or certified to administer a drug may be authorized to do so solely at the request of, or with the approval of, a licensed physician.[13] We conclude, therefore, that a person

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[12] R.C. 4731.36(A) states:

> [R.C. 4731.01-.47] shall not prohibit service in case of emergency, or domestic administration of family remedies. Such sections shall not apply to a commissioned medical officer of the United States army, navy, or marine hospital service in the discharge of his professional duties, or to a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anaesthetics, or to a physician or surgeon residing in another state or territory who is a legal practitioner of medicine or surgery therein, when in consultation with a regular practitioner of this state; nor shall such sections apply to a physician or surgeon residing on the border of a neighboring state and authorized under the laws thereof to practice medicine and surgery therein, whose practice extends within the limits of this state; provided equal rights and privileges are accorded by such neighboring state to the physicians and surgeons residing on the border of this state contiguous to such neighboring state. Such practitioner shall not open an office or appoint a place to see patients or receive calls within the limits of this state.

[13] The State Medical Board has provided for the delegation of certain tasks in 11 Ohio Admin. Code 4731-18-01, which states in pertinent part:

who is not specifically authorized by statute to administer a drug is not exempt from the prohibition in R.C. 4731.41 against the unauthorized practice of medicine when that person administers a drug, for compensation, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, even if such act is performed at the request of, or with the approval of, a licensed physician.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Whether particular tasks or functions in the administration and monitoring of anesthesia fall within the scope of administering a drug or medicine or any other aspect of the practice of medicine, as defined in R.C. 4731.34, is a determination to be made by the State Medical Board in a reasonable exercise of its discretion and expertise.

2. A person who is not specifically authorized by statute to administer a drug or medicine is subject to the prohibition in R.C. 4731.41 against the unauthorized practice of medicine when that person administers a drug or

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(B) Management of postoperative medical care is the responsibility of the surgeon of record. The surgeon of record shall fulfill this responsibility by:

(1) Personally performing the postoperative medical care; or

(2) *Delegating* postoperative medical care *to* another physician or *physicians who are qualified by training and experience to provide the level of care required*, provided that the surgeon of record shall remain primarily responsible for the patient's overall care unless the patient and the other physician have agreed in advance to shift that responsibility to the other physician; or

(3) *Delegating defined aspects* of the postoperative medical care *to appropriately trained and supervised allied health care personnel in compliance with applicable standards*, provided that the surgeon of record shall retain personal responsibility for the quality of the care rendered by personnel who are under his supervision and control. The surgeon of record shall obtain the patient's fully informed consent, or the consent of a person authorized to act on the patient's behalf, in advance of surgery, before delegating aspects of patient care to allied health care personnel under this paragraph. The surgeon of record need not obtain the patient's informed consent for aspects of care to which the patient has already consented, such as consent to treatment and care by hospital personnel under an informed consent form signed upon the patient's admission to the hospital; or

(4) *Delegating defined aspects of the postoperative medical care to licensees of other health regulatory boards who are licensed to independently provide the scope of practice and the level of care required*, provided that the surgeon of record shall remain primarily responsible for the patient's overall care and must examine the patient during the postoperative period. (Emphasis added.)

See also note four, *supra*.

medicine, for compensation, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, even if such act is performed at the request of, or with the approval of, a licensed physician.

3. The administration, for compensation, of a drug or medicine, whether or not an anesthetic and whether or not for the purpose of inducing anesthesia, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease is part of the practice of medicine, as defined in R.C. 4731.34, and may not be delegated by a licensed physician to a person who is not authorized by statute to administer a drug or medicine. (1917 Op. Att'y Gen. No. 528, vol. II, p. 1497; 1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, approved and followed.)

Respectfully,

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Attorney General

April 20, 2000

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SYLLABUS: 2000-023

1. Whether particular tasks or functions in the administration and monitoring of anesthesia fall within the scope of administering a drug or medicine or any other aspect of the practice of medicine, as defined in R.C. 4731.34, is a determination to be made by the State Medical Board in a reasonable exercise of its discretion and expertise.

2. A person who is not specifically authorized by statute to administer a drug or medicine is subject to the prohibition in R.C. 4731.41 against the unauthorized practice of medicine when that person administers a drug or medicine, for compensation, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, even if such act is performed at the request of, or with the approval of, a licensed physician.

3. The administration, for compensation, of a drug or medicine, whether or not an anesthetic and whether or not for the purpose of inducing anesthesia, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease is part of the practice of medicine, as defined in R.C. 4731.34, and may not be delegated by a licensed physician to a person who is not authorized by statute to administer a drug or medicine. (1917 Op. Att'y Gen. No. 528, vol. II, p. 1497; 1911-1912 Op. Att'y Gen. No. E 222, vol. I, p. 876, approved and followed.)