

**OPINION NO. 98-035****Syllabus:**

1. Pursuant to R.C. 4723.02, R.C. 4723.07, R.C. 4723.09, and R.C. 4723.28, the Board of Nursing has authority to promulgate rules setting forth the manner and conditions under which a licensed practical nurse is permitted to perform the nursing function of medication administration, including intravenous therapy, provided that the rules are reasonable and not in direct conflict with statutory provisions.
2. The promulgation by the Board of Nursing of rules governing the licensed practical nurse's role in the nursing function of intravenous therapy and the administration of medications via the intravenous route does not expand the scope of practice of the licensed practical nurse so as to conflict with the provisions of R.C. 4723.02(B) and (F) defining the scope of practice of the registered nurse and the licensed practical nurse, provided that the rules are reasonable and not in direct conflict with statutory provisions.
3. For purposes of this opinion, it is presumed that the General Assembly has properly delegated to the Board of Nursing its rulemaking authority under R.C. Chapter 4723, including the authority to promulgate rules governing the licensed practical nurse's role in the function of intravenous therapy.
4. Nothing on the face of the existing provisions of 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 indicates that they exceed the rulemaking authority of the Board of Nursing.

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**To: Dorothy L. Fiorino, Executive Director, Ohio Board of Nursing, Columbus, Ohio**  
**By: Betty D. Montgomery, Attorney General, November 13, 1998**

We have received your request for an opinion on several questions concerning the rulemaking authority of the Board of Nursing, as it relates to the functions of a licensed practical nurse (LPN) or a registered nurse (RN) in various respects and particularly with regard to the administration of medications through intravenous (IV) therapy. Your specific questions are these:

1. Does the Board of Nursing have the proper statutory basis to promulgate rules setting forth the manner and conditions under which an LPN can perform the nursing function of medication administration, including IV therapy?
2. Does promulgating rules governing the LPN's role in the nursing function of IV therapy and the administration of medications via the IV route

expand the scope of practice of the LPN, thus conflicting with the law defining the scope of practice of the RN and LPN in R.C. 4723.02?

3. Is promulgating rules which govern the LPN's role in the nursing function of IV therapy a proper delegation of legislative authority to the Board of Nursing by the legislature?
4. Do the present Chapters 4723-10 and 4723-17 of the Ohio Administrative Code exceed the Board's rulemaking authority?

You have informed us that your questions have arisen because the Board is proposing to amend rules currently appearing in 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 to better reflect the LPN's role in medication administration. This proposal has aroused controversy concerning the scope of the Board's rulemaking authority.

In order to answer your questions, let us first consider the statutory powers of the Board of Nursing. The Board of Nursing is created pursuant to R.C. 4723.04 and is given the responsibility of assuming and exercising statutory powers and performing statutory duties "concerning nurses and nursing and the regulation thereof." R.C. 4723.04. The Board has various duties relating to the examination and licensing of registered nurses and licensed practical nurses and the approval of nursing education programs. R.C. 4723.06; R.C. 4723.09. The Board is also given the responsibility of enforcing licensing requirements and disciplining licensees. R.C. 4723.28. The Board has express statutory authority to adopt rules for various stated purposes, including establishing requirements for licensure, and also has general authority to "adopt other rules necessary to carry out the provisions of this chapter." R.C. 4723.07.

R.C. Chapter 4723, which governs nursing and the Board of Nursing, contains definitions of different kinds of nurses. R.C. 4723.02. In particular, a registered nurse is defined as "an individual who holds a current, valid license issued under [R.C. Chapter 4723] that authorizes the practice of nursing as a registered nurse," and a licensed practical nurse is defined as "an individual who holds a current, valid license issued under [R.C. Chapter 4723] that authorizes the practice of nursing as a licensed practical nurse." R.C. 4723.02(A), (E).

Applicable statutes contain definitions of the practice of nursing as a registered nurse<sup>1</sup> and the practice of nursing as a licensed practical nurse.<sup>2</sup> In general, a registered

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<sup>1</sup> The definition of the practice of nursing as a registered nurse states:

"Practice of nursing as a registered nurse" means providing to individuals and groups nursing care requiring specialized knowledge, judgment, and skill derived from the principles of biological, physical, behavioral, social, and nursing sciences. Such nursing care includes:

- (1) Identifying patterns of human responses to actual or potential health problems amenable to a nursing regimen;
- (2) Executing a nursing regimen through the selection, performance, management, and evaluation of nursing actions;
- (3) Assessing health status for the purpose of providing nursing care;
- (4) Providing health counseling and health teaching;

nurse may provide nursing care “requiring specialized knowledge, judgment, and skill derived from the principles of biological, physical, behavioral, social, and nursing sciences.” R.C. 4723.02(B). In contrast, a licensed practical nurse may provide nursing care “requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentist, podiatrist, optometrist, or registered nurse.” R.C. 4723.02(F). Thus, the registered nurse must have specialized knowledge, judgment, and skill, whereas the licensed practical nurse need have only basic knowledge. Further, the licensed practical nurse may provide nursing care only at the direction of a more highly-qualified individual, such as a physician or registered nurse. *Id.*

Pursuant to the statutory definitions, the practice of nursing as a registered nurse includes “[a]dministering medications, treatments, and executing regimens prescribed by licensed physicians; dentists; optometrists; podiatrists; or, until January 1, 2010, advanced practice nurses authorized to prescribe under [R.C. 4723.56].” R.C. 4723.02(B)(5). The practice of nursing as a licensed practical nurse includes the administration of medications and treatments, as prescribed by authorized health professionals, but not the execution of regimens. R.C. 4723.02(F)(3). In addition, a licensed practical nurse must complete a course in medication administration approved by the Board of Nursing in order to administer medications. *Id.*

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(5) Administering medications, treatments, and executing regimens prescribed by licensed physicians; dentists; optometrists; podiatrists; or, until January 1, 2010, advanced practice nurses authorized to prescribe under section 4723.56 of the Revised Code;

(6) Teaching, administering, supervising, delegating, and evaluating nursing practice.

R.C. 4723.02(B).

<sup>2</sup> The definition of the practice of nursing as a licensed practical nurse states:

“The practice of nursing as a licensed practical nurse” means providing to individuals and groups nursing care requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentist, podiatrist, optometrist, or registered nurse. Such nursing care includes:

(1) Observation, patient teaching, and care in a diversity of health care settings;

(2) Contributions to the planning, implementation, and evaluation of nursing;

(3) Administration of medications and treatments prescribed by a licensed physician; dentist; optometrist; podiatrist; or, until January 1, 2010, an advanced practice nurse authorized to prescribe under section 4723.56 of the Revised Code. Medications may be administered by a licensed practical nurse upon proof of completion of a course in medication administration approved by the board of nursing.

R.C. 4723.02(F).

Let us consider next the principles of law that are applicable to rulemaking by an administrative body. It is generally understood that "[t]he purpose of administrative rulemaking is to facilitate the administrative agency's placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency." *Carroll v. Dep't of Admin. Servs.*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704, 706 (Franklin County 1983). The standard for the promulgation of rules is that an administrative body with rulemaking authority may adopt such rules as it deems appropriate to carry out its powers and duties, provided that the rules are not unreasonable or in clear conflict with statutory enactments and do not add to statutorily-delegated powers. *Id.* at 110, 460 N.E.2d at 706-07; *see also*, e.g., 1998 Op. Att'y Gen. No. 98-027. Further, the rulemaking body may not make rules that are discriminatory or contrary to constitutional rights. *See Weber v. Board of Health*, 148 Ohio St. 389, 396, 74 N.E.2d 331, 336 (1947).

Let us turn now to your first question, which asks whether the Board has statutory authority to promulgate rules setting forth the manner and conditions under which an LPN can perform the nursing function of medication administration, including intravenous therapy.<sup>3</sup> As discussed above, the Board has general authority to adopt rules necessary to carry out its duties under R.C. Chapter 4723. R.C. 4723.07. Among the Board's duties are examining and licensing individuals to practice as registered nurses or as licensed practical nurses, R.C. 4723.09, investigating violations of statutes or rules, R.C. 4723.28(E), and imposing sanctions for engaging in activities that exceed the relevant definition of the practice of nursing, R.C. 4723.28(B)(20), (21).

In order to carry out these duties, the Board must have a basis for determining when the practice of nursing as a licensed practical nurse or a registered nurse is being properly exercised and when it is exceeded. For that purpose, the Board may promulgate rules setting forth in greater detail than the statutory provisions the activities that constitute the practice of nursing as a licensed practical nurse or as a registered nurse. Because the statutory definition of the practice of nursing as a licensed practical nurse includes within such practice the "[a]dministration of medications" prescribed by authorized health professionals, it is appropriate for the Board to promulgate rules specifying the manner and conditions under which a licensed practical nurse may administer medications. R.C. 4723.02(F)(3). Similarly, because the statutory definition of the practice of nursing as a registered nurse includes within such practice "[a]dministering medications" prescribed by authorized health professionals, it is appropriate for the Board to promulgate rules specifying the

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<sup>3</sup> You have informed us that, based upon existing law and industry standards, intravenous therapy is a type of medication administration and the administration of intravenous fluids always constitutes the administration of medication. Specifically, you have pointed out that the administration of intravenous solutions requires the order of a licensed physician, dentist, or podiatrist and that all intravenous solutions carry a restrictive legend such as: "Caution: Federal law prohibits dispensing without prescription." *See also* 11 Ohio Admin. Code 4723-3-01(L) ("[m]edication means any article recognized in the official United States pharmacopoeia, national formulary or any supplement intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man"). You have cited a reference which indicates that basic intravenous solutions are themselves medications. *See Drug Facts and Comparisons* 35c-52c (1998). In addition, basic intravenous solutions may have other medications added by prescription from a licensed physician, dentist, or podiatrist. *See generally Ohio Nurses Ass'n v. State Bd. of Nursing Educ. and Nurse Registration*, 44 Ohio St. 3d 73, at 73 n.1, 540 N.E.2d 1354, at 1354 n.1 (1989).

manner and conditions under which a registered nurse may administer medications. R.C. 4723.02(B)(5).

Further, the statutory authorization for a licensed practical nurse to administer medications, as prescribed by an authorized health care professional, states that “[m]edications may be administered by a licensed practical nurse upon proof of completion of a course in medication administration approved by the board of nursing.” R.C. 4723.02(F)(3). In addition to its general rulemaking authority under R.C. 4723.07, the Board of Nursing has express statutory authority to adopt rules “[e]stablishing requirements for board approval of courses in medication administration by licensed practical nurses.” R.C. 4723.07(J). The Board of Nursing is thus responsible for determining what type of training a licensed practical nurse must have in order to administer medications. An integral part of approving the training is determining the types of medication that may be administered and the conditions under which a licensed practical nurse may act. In performing this function, the Board may adopt rules prescribing the manner and conditions under which an LPN is permitted to administer medications.

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. *See, e.g.,* 1995 Op. Att’y Gen. No. 95-009, at 2-47 (“the fact that a particular procedure or treatment method is not specifically listed in [the statutory] definition [of the practice of speech-language pathology or the practice of audiology] does not preclude its inclusion within the definition of that practice”); *see also* 1994 Op. Att’y Gen. No. 94-042.

It is the Board’s function to adopt rules that enable it to accomplish the legislative purposes set forth in the statutes it has been directed to administer. For rules adopted by the Board to be valid, they must be reasonable, not in conflict with statutory provisions, and consistent with the authority granted to the Board by statute. As discussed above, it appears to be consistent with existing statutes for the Board to use its rulemaking authority to address the extent to which the administration of medication through intravenous therapy is included in the practice of nursing as a licensed practical nurse, within the standard of reasonableness.

It is beyond the scope of this opinion to consider the validity of any particular rules. Questions of reasonableness may be raised and deliberated through the statutorily-established rulemaking process. *See Ohio Nurses Ass’n v. State Bd. of Nursing Educ. and Nurse Registration*, 44 Ohio St. 3d at 77, 540 N.E.2d at 1357 (rulemaking procedures set forth in R.C. Chapter 119 “provide the fullest and fairest analysis of the impact and validity of proposed rules”); R.C. 119.02-.04. Determinations of reasonableness ultimately are left to the courts, which give deference to the expertise of the agency that adopted the rule. *See, e.g., Midwestern College of Massotherapy v. Ohio Med. Bd.*, 102 Ohio App. 3d 17, 24-25, 656 N.E.2d 963, 968 (Franklin County 1995), *discretionary appeal not allowed*, 73 Ohio St. 3d 1428, 652 N.E.2d 800 (1995); 1983 Op. Att’y Gen. No. 83-012.

In general, it can be concluded that, within certain limits, the Board may adopt rules that define the practice of nursing as an LPN. Pursuant to R.C. 4723.02, R.C. 4723.07, R.C. 4723.09, and R.C. 4723.28, the Board of Nursing has authority to promulgate rules setting forth the manner and conditions under which a licensed practical nurse is permitted to perform the nursing function of medication administration, including intravenous therapy, provided that the rules are reasonable and not in direct conflict with statutory provisions.

Let us turn now to your second question, which asks whether promulgating rules governing the LPN's role in the nursing function of IV therapy and the administration of medications via the IV route expands the scope of practice of the LPN, thus conflicting with the law defining the scope of practice of the RN and LPN in R.C. 4723.02. In the instant case, the Board of Nursing has clear statutory authority to adopt rules governing the administration of medications by an RN or an LPN and, as discussed above, those rules may address the manner and conditions under which medications are administered. The Board is limited by the conditions that the rules may not conflict with statutory enactments or constitutional provisions and may not add to the statutory powers of the Board, and that they must be reasonable.

Neither the statutory definition of the RN nor the statutory definition of the LPN mentions the administration of medications through intravenous therapy. Therefore, rules that address the administration of medications through intravenous therapy are not in direct conflict with the statutes. Further, rules that more precisely define the practice of nursing as an RN or an LPN do not expand the Board's duties beyond those granted by statute but, rather, enable the Board to carry out the duties that have been imposed upon it. The rules that are adopted must be reasonable and not discriminatory. Within these limitations, the rules may name specific procedures that are not named in the statutes, and may permit persons subject to regulation to perform procedures that were not previously permitted. *See, e.g., Ohio Nurses Ass'n v. State Bd. of Nursing Educ. and Nurse Registration*; 1994 Op. Att'y Gen. No. 94-042, at 2-217 ("the statute provides for some flexibility in a nurse's scope of practice based on the professional development of the nursing sciences").

One argument that the promulgation of rules governing the LPN's role in the nursing function of intravenous therapy expands the scope of practice of the LPN, in conflict with statutory definitions, is that the administration of intravenous therapy is nursing care that requires specialized knowledge, judgment, and skill, so that it can never be performed by a licensed practical nurse, who is required to meet only the standard of basic knowledge. *See* R.C. 4723.02(B), (F). The argument to the contrary is that intravenous therapy is a method of administering medications, and that the statute permits a licensed practical nurse to administer medications upon completion of a course approved by the Board of Nursing. Therefore, if the Board approves for licensed practical nurses a course in the administration of medications that includes the administration of medications by intravenous therapy, then the Board is demonstrating its determination that licensed practical nurses who complete the course have the knowledge necessary to administer medications by intravenous therapy in accordance with the training received in the course, even though the administration of medications in that manner may also be performed by registered nurses.

An argument that a conflict with statutory provisions would result from the adoption of rules that permit an LPN to administer medications through intravenous therapy may also be based on the fact that at one time intravenous therapy was included within the scope of practice of the RN but not within the scope of practice of the LPN. *See Ohio Nurses Ass'n v. State Bd. of Nursing Educ. and Nurse Registration*. This fact does not prevent the Board

from deciding to issue rules that define the scope of practice differently, provided that the rules are reasonable, do not exceed its authority, and are not inconsistent with existing statutory provisions. That certain rules are not consistent with earlier rules or statutes or with prior practice does not mean that they are in conflict with current law. The Board of Nursing has authority not only to adopt rules but also to amend and rescind them. R.C. 4723.07. If, in the reasonable exercise of its discretion, the Board determines that it can more effectively carry out its functions by adopting rules that are different from the ones previously promulgated, the Board may adopt such rules, provided that the new rules are not in conflict with current statutory provisions. *See, e.g., Ohio Nurses Ass'n v. State Bd. of Nursing Educ. and Nurse Registration; Midwestern College of Massotherapy v. Ohio Med. Bd.*

The Board is given authority to define the scope of practice of the RN and the LPN, within the limits prescribed by statute. The statutes do not directly address the administration of medications through intravenous therapy. Therefore, the promulgation by the Board of Nursing of rules governing the licensed practical nurse's role in the nursing function of intravenous therapy and the administration of medications via the intravenous route does not expand the scope of practice of the licensed practical nurse so as to conflict with the provisions of R.C. 4723.02(B) and (F) defining the scope of practice of the registered nurse and the licensed practical nurse, provided that the rules are reasonable and not in direct conflict with statutory provisions.

Your third question asks whether the General Assembly's act of delegating to the Board of Nursing the authority to promulgate rules that govern the LPN's role in the nursing function of IV therapy is a proper delegation of legislative authority. It is firmly established that it would be unconstitutional for the General Assembly to delegate its legislative powers to an administrative body. The General Assembly, however, may delegate administrative powers. *See Matz v. J.L. Curtis Cartage Co.*, 132 Ohio St. 271, 272, 7 N.E.2d 220, 222 (1937) (syllabus, paragraph 6); *Midwestern College of Massotherapy v. Ohio Med. Bd.*

The courts have found it a permissible delegation of administrative authority for the General Assembly to grant administrative agencies the authority to regulate the training and licensing of various health care professionals. *See Midwestern College of Massotherapy v. Ohio Med. Bd.* Through this arrangement, the General Assembly is safeguarding the public's interest in the competence of health care workers. *Id.*; *see also State ex rel. Copeland v. State Med. Bd.*, 107 Ohio St. 20, 140 N.E. 660 (1923). When it is impossible or impracticable for the General Assembly to establish all the standards necessary for such regulation, the General Assembly may delegate to an administrative body the authority to exercise discretion in implementing the regulation authorized by statute. *Weber v. Board of Health; Matz v. J.L. Curtis Cartage Co.; State ex rel. Copeland v. State Med. Bd.; Midwestern College of Massotherapy v. Ohio Med. Bd.*

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, the nature of the practice of nursing as a 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.

In any event, it is inappropriate for the Attorney General to use the opinions function to purport to determine the constitutionality of actions taken by the General Assembly. That power rests in the judicial branch of government. *See State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 114 N.E. 55 (1916), *aff'd*, 241 U.S. 565 (1916); 1997 Op. Att'y Gen. No. 97-027; 1988 Op. Att'y Gen. No. 88-030; 1980 Op. Att'y Gen. No. 80-085. It should be noted, however, that a regularly enacted statute is presumed to be constitutional, and it appears to be appropriate to adopt that presumption in the instant case. R.C. 1.47(A); 1997 Op. Att'y Gen. No. 97-027; 1980 Op. Att'y Gen. No. 80-085; *see also, e.g., Midwestern College of Massotherapy v. Ohio Med. Bd.* For purposes of this opinion, therefore, it is presumed that the General Assembly has properly delegated to the Board of Nursing its rulemaking authority under R.C. Chapter 4723, including the authority to promulgate rules governing the licensed practical nurse's role in the function of intravenous therapy.

You have asked, also, whether the existing provisions appearing in 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 exceed the Board's rulemaking authority. Chapter 4723-10 governs medication administration by licensed practical nurses, exclusive of intravenous medications and fluids. *See* 11 Ohio Admin. Code 4723-10-01(A) and 4723-10-02(A). Chapter 4723-17 governs the role of licensed practical nurses in performing intravenous therapy procedures and also governs courses preparing licensed practical nurses to perform those procedures. *See* 11 Ohio Admin. Code 4723-17-01 to 4723-17-10. In addition, Chapter 4723-17 includes provisions prohibiting licensed practical nurses from performing certain types of intravenous therapy procedures. *See* 11 Ohio Admin. Code 4723-17-11.

As noted above, the standard for the validity of rules is that they be reasonable and not in conflict with provisions of statute or constitution, and that they do not exceed the authority granted by statute. Our review discloses no respect in which the existing rules appearing in 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 violate this standard. They do not clearly conflict with existing provisions of statute or constitution, and they appear to constitute a reasonable exercise of the rulemaking authority set forth in R.C. 4723.07. *See, e.g., State ex rel. Curtis v. DeCorps*, 134 Ohio St. 295, 297, 16 N.E.2d 459, 461 (1938) (a rule is inconsistent with a statutory provision only if it contravenes or is in derogation of the statute). The ultimate determination as to whether rulemaking authority is properly exercised is left to the courts. *See, e.g., Midwestern College of Massotherapy v. Ohio Med. Bd.* However, nothing on the face of the existing provisions of 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 indicates that they exceed the rulemaking authority of the Board of Nursing.

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 4723.02, R.C. 4723.07, R.C. 4723.09, and R.C. 4723.28, the Board of Nursing has authority to promulgate rules setting forth the manner and conditions under which a licensed practical nurse is permitted to perform the nursing function of medication administration, including intravenous therapy, provided that the rules are reasonable and not in direct conflict with statutory provisions.
2. The promulgation by the Board of Nursing of rules governing the licensed practical nurse's role in the nursing function of intravenous therapy and the administration of medications via the intravenous route does not expand the scope of practice of the licensed practical nurse so as to conflict with the provisions of R.C. 4723.02(B) and (F) defining the scope of practice of the registered nurse and the licensed practical



nurse, provided that the rules are reasonable and not in direct conflict with statutory provisions.

3. For purposes of this opinion, it is presumed that the General Assembly has properly delegated to the Board of Nursing its rulemaking authority under R.C. Chapter 4723, including the authority to promulgate rules governing the licensed practical nurse's role in the function of intravenous therapy.
4. Nothing on the face of the existing provisions of 11 Ohio Admin. Code Chapters 4723-10 and 4723-17 indicates that they exceed the rulemaking authority of the Board of Nursing.