

OPINION NO. 82-039**Syllabus:**

Physicians who contract with a hospital to render services in its emergency room may employ physician's assistants pursuant to R.C. Chapter 4730.

To: Evelyn L. Cover, D.O., President, The State Medical Board, Columbus, Ohio
By: William J. Brown, Attorney General, June 17, 1982

I have before me your request for my opinion concerning whether emergency room patients are "patients of the employing physician or physicians" for purposes of R.C. 4730.02. In your request, you indicate that a question has arisen concerning a hospital which contracts with a group of emergency room physicians and compensates the physicians pursuant to such contract. Patients come to the emergency room for treatment by the emergency room physicians. Both the emergency room and emergency room records are owned by the hospital. Your specific question is whether physicians who practice in this type of setting may employ physician's assistants.

In resolving this question, it is necessary to examine R.C. Chapter 4730 which governs the registration and permissible functions of a physician's assistant.

R.C. 4730.01(A) defines a physician's assistant as: "a skilled person qualified by academic and clinical training to provide services to patients under the supervision and direction of a licensed physician or group of physicians who are responsible for his performance." R.C. 4730.02(A) sets forth the allowable scope of duties of a physician's assistant as follows:

The physician's assistant shall function under the supervision and control of a physician or physicians. Supervision requires the availability of a physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising physician at the place where services are rendered. The physician's assistant may provide services only to patients of the employing physician or physicians. He may function in any setting within which the employing physician or physicians routinely practice. . . . (Emphasis added.)

In interpreting R.C. 4730.02(A), I stated in 1979 Op. Att'y Gen. No. 79-080 that:

R.C. 4730.02 sets forth the allowable scope of duties and

functions of a physician's assistant. The physician's assistant must function under the supervision and control of a physician and may "provide services only to patients of the employing physician or physicians" R.C. 4730.02(A). Consequently, before a physician's assistant may perform any service, the requisite physician-patient relationship must be established. Further, the physician's assistant may perform a service only for a person who is an actual patient of the physician's assistant's employing physician. R.C. 4730.02(A).

It is clear, therefore, that before a physician's assistant may perform any service for a patient, the physician employing the assistant must have established the requisite physician-patient relationship. R.C. 4730.02(A) also limits the physician's assistant's activities to any setting "within which the employing physician or physicians routinely practice." From the facts you have presented, however, it is my understanding that the employing physicians are "emergency room physicians" who "routinely practice" in the emergency room of a hospital. Therefore, the issue to be decided is solely whether when a person enters the emergency room of a hospital seeking treatment and an emergency room physician employed by the hospital attends to such person, the requisite physician-patient relationship is established.

The rule in Ohio is that, regardless of the physician's source of employment, if a physician attends a person in a professional capacity and his objective is primarily to benefit that person and only indirectly, if at all, to benefit his employer, a physician-patient relationship is established. Compare Youngstown Park & Falls Street Railway Co. v. Kessler, 84 Ohio St. 74, 95 N.E. 509 (1911) (physician-patient relationship established where physician employed by railroad company treated passenger for injury she received in alighting from one of the company's cars) with New York Central Rd. Co. v. Wiler, 124 Ohio St. 118, 177 N.E. 205 (1931) (no physician-patient relationship created where railroad company requires employee to submit to physical examination by a physician employed by it for such purpose, and the purpose of the examination is the information of the company as distinguished from the treatment or cure of the employee). Accord, Tweith v. Duluth Mi. and I. R. Ry. Co., 66 F.Supp. 427 (D.C. Minn. 1946) (physician-patient relationship created when physician employed by defendant railroad company attended injured employee on his arrival at the hospital and during the period of his convalescence).

The situation about which you inquire is somewhat different because of the services provided by, and duties imposed upon, hospitals which operate emergency rooms and contract for the services of full-time emergency room physicians. In Hannola v. Lakewood, 68 Ohio App. 2d 61, 69, 426 N.E.2d 1187, 1192 (Ct. App. Cuyahoga County 1980), the court recognized the unusual nature of the emergency room setting and found that "[g]iven the unique nature of an emergency room and the public's lack of meaningful choice in a dire medical emergency, a hospital may well have a more specific and precise independent duty in the emergency room than in other parts of the hospital to monitor the treatment procedures and medical care provided patients." There is nothing in the court's decision to suggest, however, that the hospital's duty to monitor the treatment procedures and medical care provided emergency room patients supplants, or otherwise disturbs, the physician's traditional relationship with his patients. Nor could any such result be implied in view of the express limitation that only a licensed physician may practice medicine. R.C. 4731.41. Accordingly, I must necessarily conclude that a physician practicing in an emergency room setting establishes a physician-patient relationship with those he treats.

Therefore, it is my opinion, and you are advised, that physicians who contract with a hospital to render services in its emergency room may employ physician's assistants pursuant to R.C. Chapter 4730.