

LETTER OPINION
97-L-196

December 23, 1997

Ms. Rebecca Hill
Chairperson
North Dakota Board of Clinical
Laboratory Practice
4103 55th Street SE
Minot, ND 58701

Dear Ms. Hill:

Thank you for your letter requesting clarification regarding two exemptions in N.D.C.C. § 43-48-03. N.D.C.C. ch. 43-48 establishes the North Dakota State Board of Clinical Laboratory Practice for the purpose of licensing and regulating clinical laboratory personnel. N.D.C.C. § 43-48-02 provides "[n]o person may practice as a clinical laboratory scientist or a clinical laboratory technician unless the person is the holder of a current license issued by the board, or is exempt from licensure." N.D.C.C. § 43-48-03 provides, in part, that provisions of N.D.C.C. ch. 43-48 do not apply to "[p]hysicians duly and currently licensed to practice medicine" and "[n]urses duly and currently licensed to practice nursing and practicing within the scope of the nursing license." You question whether the exemption applies to physician assistants and what "level" of nursing licensure is required for the exemption to apply.

N.D.C.C. § 43-48-02 does not specifically exempt physician assistants from the licensure requirements of N.D.C.C. ch. 43-48. The fact physician assistants are not enumerated in N.D.C.C. § 43-48-02 does not necessarily mean they are not exempted from the requirements of N.D.C.C. ch. 43-48. North Dakota law provides for the licensure and regulation of a number of health care professionals. The scope of practice of some of the licensed professions overlap. For this reason, many practice acts exempt from licensure other licensed professionals doing work within the standards and ethics of the person's profession. However, whether a practice act specifically exempts from its licensure requirements other licensed professionals practicing within the scope of their profession, such an exemption necessarily exists when overlapping practice acts are read together. See generally Harris v. United States, 215 F.2d 69, 76 (4th Cir. 1954) ("All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character."); 82

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C.J.S. Statutes 82b (1953). In other words, a licensed professional may provide services within the scope of practice of his or her profession without being licensed by all other boards that might have overlapping jurisdiction of a particular activity. Thus, the fact physician assistants are not enumerated in N.D.C.C. § 43-48-02 is not dispositive of whether they are exempt from the requirements of N.D.C.C. ch. 43-48. To determine whether physician assistants are exempt from the requirements of N.D.C.C. ch. 43-48, it is necessary to determine the scope of practice of physician assistants.

N.D.C.C. § 43-17-02.2 provides for the certification of physician assistants. N.D.C.C. § 43-17-02(10) provides physician assistants may provide medical service "if such service is rendered under the supervision, control, and responsibility of a licensed physician" and in accordance with rules prescribed by the State Board of Medical Examiners. See N.D. Admin. Code ch. 50-03-01. N.D.C.C. § 43-17-02(10) further provides, however, a specific limitation on the medical services that can be provided by physician assistants. It states:

Physicians' trained assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

The above language provides physician assistants may not perform services otherwise regulated by licensing laws. N.D.C.C. ch. 43-48 is a licensing law regulating clinical laboratory testing. Accordingly, it is my opinion physician assistants may not perform clinical laboratory testing.

The second part of your letter deals with which level of licensed nurses can perform clinical laboratory testing within the scope of their license. N.D.C.C. § 43-48-03 specifically exempts from the licensure requirements of N.D.C.C. ch. 43-48 licensed nurses practicing within the scope of their license. N.D.C.C. § 43-12.1-01 further "recognizes the existence of overlapping functions within the practice of nursing and other providers of health care."

"Clinical laboratory testing" is defined as "a microbiological, serological, chemical, hematological, radiobioassay, biophysical, or immunological assay which is derived from the human body, to provide information for diagnosis, prevention, or treatment of a disease or

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assessment of a medical condition." N.D.C.C. § 43-48-01(5). The definition of "clinical laboratory testing" is broad. The definition of "nursing" is also broad. N.D.C.C. § 43-12.1-02(6) provides:

"Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. Nursing includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:

- a. The maintenance of health and prevention of illness.
- b. Diagnosing human responses to actual or potential health problems.
- c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
- d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
- e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under title 43.

The standards of practice for nurses are outlined in N.D. Admin. Code art. 54-05.

Which, if any, clinical laboratory tests may be performed by registered nurses, nurse practitioners, and licensed practical nurses is a mixed question of fact and law which in this case is an issue more appropriately addressed by the Board of Nursing. State licensing boards are responsible for interpreting their practice acts and administrative rules. Based upon its practice acts and promulgated rules, the Board of Nursing should be able to delineate which, if any, clinical laboratory tests are within the scope of practice of registered nurses, nurse practitioners, and licensed practical nurses. I recommend you contact the Board of Nursing for their clarification regarding this issue.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dab/lt
cc: Board of Medical Examiners
Board of Nursing