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OPINION of GEORGE DEUKMEJIAN Attorney General Joseph Barkett Deputy Attorney General	: : : : : : : :	No. CV 78-114 May 11, 1979

SUBJECT: NURSE-MIDWIVES—As referred to in Business and Professions Code section 2746.5, nurse-midwives may not perform episiotomies or administer local anesthesia under the direction of her physician employer during cases of normal childbirth.

The Honorable Richard Lehman, Assemblyman, Thirty-First District, has requested an opinion on the following question:

May a nurse-midwife as referred to in section 2746.5 of the Business and Professions Code perform episiotomies and administer local anesthesia under the direction of her physician employer as a part of normal childbirth?

The conclusion is:

A nurse-midwife, as referred to in section 2746.5 of the Business and Professions Code, may not perform episiotomies or administer local anesthesia under the direction of her physician employer during cases of normal childbirth.

ANALYSIS

Section 2746 of the Nursing Practice Act[1] directs the Board of Registered Nursing to issue certificates to practice nurse-midwifery[2] to qualified licentiates.

The scope of practice of a certified nurse-midwife is set forth in section 2746.5 as follows:

> "The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.
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> "As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.
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> "As used in this article, 'supervision' shall not be construed to require the physical presence of the supervising physician.

[1] Business and Professions Code, §§ 2720–2737, inclusive. All references are to the Business and Professions Code unless otherwise stated.

[2] A certificate to practice nurse-midwifery should be distinguished from a certificate to practice midwifery. A provision of section 2135 of the Medical Practice Act previously required the Board of Medical Examiners (now the Board of Medical Quality Assurance) to issue certificates to practice midwifery. Stats. 1949, ch. 898, § 2, omitted from section 2135 the provision for a certificate to practice midwifery. The Board is without authority to issue new certificates to practice midwifery as the Board was formerly authorized by section 2135. (55 Ops. Cal. Atty. Gen. 353; *Bowland v. Municipal Court* (1976) 18 Cal. 3d 479, 490.) Midwives certified under the former section 2135 are governed by the provisions of Article 12.5 (Bus. & Prof. Code, §§ 2350–2359) of the Medical Practice Act. The practice of midwifery without a certificate issued either under former section 2135 or section 2746 is prohibited. (Bus. & Prof. Code, §§ 2137, 2141; see also *Bowland v. Municipal Court, supra*, at p. 496.)

"A nurse-midwife is not authorized to practice medicine and surgery by the provisions of this chapter."

Section 2746.5 makes no specific reference to either the performance of an episiotomy or the administration of local anesthesia. Said section, however, specifically prohibits the practice of medicine and surgery or the assisting of childbirth by any artificial, forcible or mechanical means. Do the specific prohibitions of section 2746.5 preclude the practices in question here? Key terms must first be defined.

A. Definitions of Statutory Terms

The term "artificial" is defined as follows: contrived through human art or effort and not by natural causes detached from human agency: relating to human direction or effect in contrast to nature. (Webster's Third Unabridged New International Dictionary (G. & C Merriam Co., (1961) p. 124).)

The term "mechanical" is defined as the performance by means of some apparatus, not manually. (Stedman's Fourth Unabridged Law Edition (1976) p. 835.)

The term "surgery" is defined as the branch of medicine that is concerned with therapy of diseases or injuries by operation or manipulation. (See Stedman's, *infra*, at p. 1370.)

Both the practice of using anesthetic drugs and the practice of severing or penetration of human tissue are encompassed within the term "the practice of medicine or surgery." (*People v. Fowler* (1938) 32 Cal. App. 2d Supp. 737, 749–750; Bus. & Prof. Code, § 2137; *Stevenson v. State Bd. of Medical Examiners* (1970) 10 Cal. App. 3d 433, 438; *Magit v. Board of Medical Examiners* (1961) 57 Cal. 2d 74, 81.)

B. Episiotomy and Administration of Local Anesthesia

An episiotomy is a surgical incision of the vulva (pudenda feminum), to enlarge the space at the outlet thereby facilitating the birth of the child. (Williams, Obstetrics (15th Ed. Appleton-Century-Crofts 1976) p. 346; Stedman's, *infra*, at p. 474; Oxorn Human Labor and Birth (3d Ed. Appleton-Century-Crafts 1975) p. 407; see also *Connecticut G. L. Ins. Co. v. Cal. Unemp. Bd.* (1956) 138 Cal. App. 2d 878.) The incision is usually made with scissors though some prefer a scalpel. (Oxorn, *infra*, at p. 408.)

The episiotomy procedure is commonly chosen for the following reasons:

1. An episiotomy constitutes a clean, surgical incision that is easier to repair and heals better than the ragged laceration that otherwise frequently results;

2. An episiotomy spares the baby's head the necessity of pounding against perineal obstruction, which pounding, if prolonged, may cause brain damage to the baby;

3. An episiotomy shortens the second stage of labor. (Williams, *infra*, at p. 346; Tenney & Little, Clinical Obstetrics (W. B. Saunders Co. 1961) p. 368.)

The routine use of episiotomies was suggested in 1918. With marked improvement in anesthetic and surgical technics, episiotomies had a profound influence on the practice of modern obstetrics in this country. (Douglas & Stromme, Operative Obstetrics (3d Ed. Appleton-Century-Crofts 1976) p. 717.) There are complications, however, which are associated with the episiotomy procedure. (Tenney, *infra*, at p. 368; see also Douglas & Stromme, *infra*, at pp. 717–725.) For example, the episiotomy procedure may cause perineal abscess that leads to the development of anal or rectovaginal fistula or painful scar. (The Staff of Mount Sinai Hospital, Medical Surgical and Gynelogical Complications of Pregnancy (2d Ed. Williams & Wilkins Co. 1965) pp. 262–263.) There is also a significant danger, in a median or midline episiotomy, of accidental extension of the incision through the anal sphincter. (Williams, *infra*, at p. 347.)

A regional anesthesia is the use of local anesthetic solutions to produce circumscribed areas of loss of sensation. (Stedmans, *infra*, at p. 72.) A local anesthesia is a regional anesthesia produced by direct infiltration of local anesthetic solution into the operative site. (*id.*) Anesthesia is usually given to facilitate the performance of an episiotomy. (Tenney, *infra*, at p. 368.) Where general anesthesia or a spinal is not used, the type of anesthesia often employed for performance and repair of an episiotomy for a spontaneous delivery is a pudendal block. (*Id.*; see also Williams, *infra*, at p. 361.) A pudendal block involves an intravascular injection of a local anesthetic. Complications, including systemic toxicity, hematoma and infection, can result. (Williams, *infra*, at p. 361.) The administration of obstetric anesthesia requires technical facility and medical judgment. (Reid & Christian, Controversy in Obstetrics and Gynecology II (W.B. Saunders Co. 1974) p. 179.)

An episiotomy requires the severance of tissue and is therefore a surgical procedure. There appears to be no dispute of that fact in the medical literature. Furthermore, the performance of an episiotomy requires the use of scissors or scalpel to enlarge the space at the outlet of the vulva; therefore, the episiotomy procedure involves an artificial and mechanical means of assisting childbirth within the meaning of section 2746.5.

The administration of local anesthesia during a spontaneous delivery for the performance and repair of an episiotomy constitutes the practice of medicine. There appears to be no dispute of that fact in the medical literature. Furthermore, the administration of local anesthesia involves an artificial means of assisting childbirth within the meaning of section 2746.5.

One must conclude, therefore, that specific prohibitions within section 2746.5 preclude nurse-midwives from performing episiotomies or administering local anesthesia under the direction of a physician employer as a part of normal childbirth.

This analysis takes into consideration the fact that registered nurses are not precluded from performing all acts which are medical or surgical in character. (*Magit v. Board of Medical Examiners, supra*, at p. 84.) Any authority that registered nurses have to perform such acts, however, is derived from their special statutory position. (*Id*.) Section 2746.5 is a special statute dealing expressly with the subject of the scope of practice of nurse-midwifery. A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. (*Bailey v. Superior Court* (1977) 19 Cal. 3d 970, 977 fn. 8; *In re Williamson* (1954) 43 Cal. 2d 651, 654; *Div. of Labor Law Enforcement v. Moroney* (1946) 28 Cal. 2d 344, 346.) Since we have concluded that section 2746.5 prohibits nurse-midwives from performing episiotomies and administering local anesthesia in connection therewith, it is unnecessary to address the question of whether a registered nurse may perform said procedures under the supervision of a physician within the scope of sections 2725 and 2726.[3]

This opinion addresses itself solely to the issue of the scope of practice of certified nurse-midwives under section 2746.5. Whether certified nurse-midwives or any licensed nurse may perform episiotomies and administer local anesthesia under standardized procedures within the meaning of sections 2725 and 2726 involves separate issues that are not addressed in this opinion.

It is important to note that the issue of the competence of a certified nurse-midwife to perform an episiotomy and administer local anesthesia is not addressed. The performance of an episiotomy has been described as the most common operation in obstetrics (except for cutting the umbilical cord). (Williams, *infra*, at p. 346.) An assumption, for purposes of discussion only, that nurse-midwives are adequately trained to perform episiotomies, administer local anesthesia in connection therewith, repair the incisions and recognize and properly respond to potential difficulties and complications

[3] See 56 Ops. Cal. Atty. Gen. 1, which concludes that licensed registered nurses may not administer spinal, epidural and regional anesthesia.

that may occur, does not alter the conclusion. The performance of an episiotomy constitutes the practice of medicine and surgery and the assisting of childbirth by artificial and mechanical means. The administration of local anesthesia constitutes the practice of medicine and the assisting of childbirth by artificial means. Section 2746.5, therefore, prohibits a nurse-midwife from performing an episiotomy or administering local anesthesia.

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