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OPINION	:	No. CV 78-63
of	:	April 18, 1979
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SUBJECT: PSYCHIATRIC TECHNICIANS—Within the scope of the psychiatric technician's practice, psychiatric technicians may supervise registered nurses, overrule nursing decisions, and perform nursing functions.

The Honorable Michael R. Buggy, R.N., Executive Secretary, Board of Registered Nursing, has requested an opinion on the following questions:

1. Can psychiatric technicians be placed in a position where they are supervising registered nurses?

2. Can a psychiatric technician overrule a nursing decision made by a registered nurse?

3. Can a psychiatric technician perform those nursing functions which have not been delegated by a registered nurse?"

The conclusions are:

1. Psychiatric technicians may be placed in a position where they are supervising registered nurses.

2. Psychiatric technicians may overrule nursing decisions made by a registered nurse so long as such nursing decisions are ones which fall within the scope of the licensing provisions for psychiatric technicians.

3. Psychiatric technicians may perform nursing functions which have not been delegated by a registered nurse so long as such nursing functions are ones which fall within the scope of the licensing provisions for psychiatric technicians.

ANALYSIS

The reason for this request for our opinion is to a degree summarized by the requester in his supplemental "views letter" as follows:[1]

> "The Board (of Registered Nursing) continues to be concerned about the quality of nursing care being given to the patients in the state hospitals and is of the opinion that the psychiatric technician is not legally permitted nor adequately educated to supervise the practice of nursing."

The concerns of the Board of Registered Nursing, however, go beyond the scope of this office's functions. Our role is solely to determine the question whether a psychiatric technician may *legally* supervise a registered nurse, and to what extent. Whether a registered nurse has a superior educational background to that of a psychiatric technician is not pertinent to our inquiry if the Legislature, in fact, has decreed that psychiatric technicians may supervise registered nurses in certain situations. Likewise the level of care being given patients at state hospitals is not pertinent to our inquiry. That is essentially an administrative and policy question which is determined by a combination of factors. These factors would include such matters as the laws relating to the licensure of the various disciplines which treat such patients and staffing decisions made by the appropriate departmental directors within budgetary limitations. And finally, the conclusion we ultimately reach is not that psychiatric technicians may supervise the practice of nursing, but that psychiatric technicians may, under appropriate circumstances, supervise registered nurses who are performing services, nursing or otherwise, which a psychiatric technician may also legally perform.

[1] In reaching our conclusions herein we have carefully considered the views received from the requester, and additionally those received from or on behalf of 1) the Board of Vocational Nurse and Psychiatric Technician Examiners, 2) the California Association of Human Services Technologists, 3) the California Medical Association, 4) the California Nurses Association, 5) the Department of Consumer Affairs, 6) the Department of Developmental Services, and 7) the Department of Mental Health."

We note also at the outset that the request is couched in very general terms. No particular type of "supervision" is delineated for our decision, though that term has various connotations both within and outside a hospital setting. For example, both registered nurses and psychiatric technicians provide care to patients under a treatment regimen prescribed by a physician. (Bus. & Prof. Code, §§ 2725, subd. (b), 4502, subd. (b).) [2] To the extent that they are under the direction and control of a physician in this regard, nurses and psychiatric technicians are in a sense under the "supervision" of the prescribing physician. However, this clearly is not the type of supervision with which we are concerned herein. Also, psychiatric technicians may legally be placed in administrative positions as "program managers" in state hospitals, where the particular program would be staffed by all disciplines including registered nurses. (Welf. & Inst. Code, §§ 4308, 4488.)[3] This general "administrative" type of supervision necessarily is not the type the requester has in mind, since the law specifically contemplates and permits this. Accordingly, it would appear that the requester envisions "supervision" in the more traditional sense. This would be where an individual has the authority to assign tasks to others and then continuously monitors the activities of the subordinates, with the power to direct and control the manner in which the assignments are carried out. This type of supervision would be "immediate supervision," or could be once, twice or many times removed in a direct "chain of command."

1. Can Psychiatric Technicians Supervise Registered Nurses?

The first question presented is whether psychiatric technicians may legally supervise the activities of registered nurses. We conclude that a psychiatric technician may do so provided that the activities supervised are those which a psychiatric technician may himself perform under his own licensing law. We believe this conclusion flows from an

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[2] All section references are to the Business and Professions Code unless otherwise indicated.

[3] For example, section 4308 of the Welfare and Institutions Code provides in part as to the staffing of state hospitals under the jurisdiction of the Director of Mental Health:

> "The standards for the professional qualifications of a program director shall be established by the Director of Mental Health for each patient program. The director shall not adopt any regulations which prohibit a licensed psychiatrist, psychologist, psychiatric technician, or clinical social worker from employment in a patient program in any professional, administrative, or technical position; provided, however, that the program director of a medical-surgical unit shall be a licensed physician.
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> "If the program director is not a physician, a physician shall be available to assume responsibility for all those acts of diagnosis, treatment, or prescribing or ordering of drugs which may only be performed by a licensed physician."

A similar provision is found in section 4488 of the Welfare and Institutions Code with respect to hospitals under the Department of Developmental Services. Interestingly, in those hospitals a psychiatric technician may even be clinical director of the hospital.

examination of the language of both the Psychiatric Technicians Law (§ 4500 *et seq*.) and the Nursing Practice Act, (§ 2700 *et seq*.) taken in their historical perspective.

The Psychiatric Technicians Law was initially enacted in 1959 after extensive legislative hearings. Its purpose was to grant professional status to the large number of individuals who were working in that civil service classification in state hospitals, and the relatively smaller number of individuals who were performing similar duties in the private sector. (See Subcommittee Report on Psychiatric Technicians (1959) Appendix to Sen. J. (1959 Reg. Sess.).) The law was initially a "certification law" (see Stats. 1959, ch. 1851, § 1, p. 4402 *et seq*.), but in 1968 was amended to provide for the licensing of psychiatric technicians (see Stats. 1968, ch. 1323, § 8, p. 2503 *et seq*.). Significantly, at the time the law was initially passed, psychiatric technicians were acting in supervisory roles in state hospitals. For example, at the senate subcommittee hearings held in 1959 one psychiatric technician testified that she had been in charge of the "Chronic Disturbed Unit" for six years, which had 130 patients and 38 employees. She was a "charge technician." Another testified that as a "supervising psychiatric technician" he had 15 wards, approximately a thousand patients, and approximately 64 to 100 technicians under him. Finally, another, who was an "area supervisor," testified as to the role of psychiatric technicians, including intensive observation of patients over a 24–hour period, taking blood and preparing specimens, taking and testing urine specimens, taking blood pressures, *providing the ordinary nursing care,* and weighing and measuring the patient's food intake and output, etc. (Subcommittee Report, *op. cit*. *supra*, at pp. 41–47).

Section 4502 of the Psychiatric Technicians Act, as enacted in 1959, defined a psychiatric technician as follows:

> "As used in this chapter, 'psychiatric technician' means any person who, *under the direction of a licensed physician or psychiatrist or a registered professional nurse,* performs services in caring for and treatment of the mentally ill or mentally retarded for compensation or personal profit, which services:
>
> '(a) *Involve responsible nursing* and therapeutic *procedures* for such mentally ill or mentally retarded patients requiring interpersonal and technical skills in the observation and recognition of symptoms and reactions of such patients, and the accurate recording of the same, and the carrying out of treatments and medications as prescribed by a licensed physician or psychiatrist; and
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> '(b) Require the application of such techniques and procedures as involve understanding of cause and effect and the safeguarding of life and

health of the patient and others; and

> '(c) Require the performance of such other duties as are necessary to facilitate rehabilitation of the patient or are necessary in the physical, therapeutic, and psychiatric care of the patient; and
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> '(d) Require the application of principles of treatment based upon biological, physical, and social sciences.'" (Emphasis added.)

Thus, in 1959 when the Psychiatric Technicians Law was enacted, it is clear that psychiatric technicians performed a certain level of responsible nursing services. It is also abundantly clear that psychiatric technicians were not "locked in" at the lowest level of practice, but could progress to responsible supervisory positions. Did section 4502, as originally enacted, intend to change this? It could be argued that the introductory paragraph of section 4502 was intended to do so in requiring practice under the direction of a physician or psychiatrist or registered nurse. However, we conclude that such was not the intent of the Legislature.

In construing a statute "it is proper to consider the history and purpose of the enactment[ ]." (*Stafford v. Realty Bond Service Corp*. (1952) 39 Cal. 2d 797, 805; see also, e.g., *People v. Ventura Refining Co.* (1928) 204 Cal. 286, 291; and *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd*. (1979) 88 Cal. App. 3d 43, 53.) As already noted, the history of the Psychiatric Technicians Law demonstrates that its purpose was basically to grant professional status to the thousands of such persons who were staffing state hospitals, and was not to change existing staffing procedures at such hospitals. A reading of the Senate Interim Committee Report, cited above, discloses no evidence of any dissatisfaction with the use of psychiatric technicians in supervisory positions. In fact, all the testimony was laudatory of the role of the psychiatric technician in state hospitals. Additionally, material furnished to us by the Department of Developmental Services discloses that psychiatric technicians *continued* in responsible supervisory roles under the then existing civil service classifications after enactment of the law. Thus, the contemporaneous administrative construction of the statute (§ 4502, as enacted in 1959) by those responsible for its implementation indicated that no change in the law was intended with respect to the supervisory role of psychiatric technicians. "[W]hen an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts 'and will be followed if not clearly erroneous.'" *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1979) 22 Cal. 3d 658, 668.) Apparently, insofar as section 4502 indicated that psychiatric technicians would be under the direction of a registered nurse, this was complied with by continuing the practice that the classification "Superintendent of Nursing Services" be a registered professional nurse, with Assistant Superintendents of Nursing Services being either Psychiatric

Technicians or Registered Nurses.[4]

In short, when the Psychiatric Technicians Law was enacted in 1959, psychiatric technicians held responsible supervisory positions in state hospitals. There is nothing in the history of the act or its implementation which indicates that it was intended to change the existing organization and operation of the state hospital system.

Of additional significance is the fact that in 1959 the Legislature apparently saw no need to amend the Nursing Practice Act to except psychiatric technicians from the licensing requirements of that act. It was not until 1971, or 12 years later, that the Nursing Practices Act was amended to even mention psychiatric technicians by the amendment of section 2728 of that act, and the addition of section 2728.5 thereto. Yet those who argue that a psychiatric technician may not supervise a registered nurse rely heavily upon the wording of section 2728. However, before we analyze section 2728 and 2728.5 of the Nursing Practice Act, we believe a further discussion of historical background is pertinent.

In 1959, when the Psychiatric Technicians Law was, enacted, psychiatric technicians had been acting in supervisory roles on "residential or behavioral wards," for almost two decades. We are advised with regard to the situation in 1959 and also with regard to changes which occurred around 1960 as follows:

> "Until the mid part of the century, the hospitals were primarily organized around the residential care model and very few Registered Nurses were employed. In the late 1950s, as hospitals were organizing around the medical model, the number of Registered Nurses began increasing but their assignments were predominately within physical care units. The Psychiatric Technician continued to function as level-of-care staff as well as supervising psychiatric and behavioral units.
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> "In 1960, hospitals still had their behavioral programs staffed exclusively by Psychiatric Technicians. Registered Nurses began to be used on the behavioral wards along with Psychiatric Technicians even though these wards were supervised by Senior Psychiatric Technicians. Such supervision by Senior Psychiatric Technicians was not inconsistent with the civil service classification which provided for: supervising nursing care on a ward for mentally ill or deficient. In 1969 and 1970, the specification was revised and each time continued to provide for: . . . giving and supervising a

[4] Our source is materials furnished by the Department of Developmental Services indicating that the "Superintendent of Nursing Services" classification requiring an "R.N." was established on 5/7/42 and abolished 10/17/73.

> basic level of general and psychiatric nursing care. The Senior Psychiatric Technician I (shift charge) is supervised by the Senior Psychiatric Technician II or Registered Nurse III (unit manager) who is allowed (according to the class specification) overall responsibility of unit management and supervision."[5]

Thus, about 1960, psychiatric technicians began supervising registered nurses. Or stated otherwise, the state hospital system began using psychiatric technicians and registered nurses interchangeably on non-medical units.[6] A 1968 organizational chart supplied to us

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[5] Views letter received by this office from Department of Developmental Services. See also views letter, California Association of Human Services Technologists (CAHST) indicating that psychiatric technicians have been supervising registered nurses for at least 15 years.

[6] For instance, the views letter received by this office from CAHST points this our as follows:

> "Three other objective sources comment on PT-RN comparability-(Source: Appendix D. Volume 1, *Staffing Standards of Public Mental Hospitals,* Report to the Senate by the California Commission on Staffing Standards, California Department of Mental Hygiene, February 1967.)
>
> 'Registered nurses and psychiatric technicians show sufficiently similar behavior that one may conclude they are used interchangeably. The small differences (about 10%) are in medication, charring, and conferring with off-ward and other personnel which is done slightly more by registered nurses and is balanced by more psychiatric technician time in daily living activities.'
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> "(Source: Nursing Education in California, Coordinating Council for Higher Education, July 1966.)
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> 'However, civil service categories of Psychiatric Technicians are <u>equivalent</u> to those of RNs. (Underlining is ours). If a Psychiatric Technician stays in the civil service system long enough and passes appropriate civil service examinations, he may be promoted to the equivalent of categories established for charge nurses and other supervisory personnel.'
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> "(Source: Statement to Mr. Samuel J. Leask, President, California State Personnel Board, by Mr. Leland F. Erbacher, Chief, Bureau of Personnel, California Department of Mental Hygiene, May 3, 1967.)
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> 'In summary, the organization and staffing of our hospitals gives Psychiatric Technicians and Registered Nurses in State service a unique relationship. This relationship can only continue to be reflected adequately in terms of dollar value of services by increasing Psychiatric Technician salaries and Registered Nurse salaries the same number of salary steps. This is particularly essential at the level of Assistant Superintendent of Nursing Services which the Board staff in past years has agreed represents the same level of responsibility regardless of whether a specific position is filled by a nurse or a Psychiatric Technician.'
>
> "The suggested recognition of comparability expressed in terms of dollar value was

by the Department of Developmental Services for a state hospital sets forth beneath the positions of Superintendent, Associate Superintendent and Superintendent of Nursing Services in a direct line of authority the following positions, which were positions filled by either *psychiatric technicians or registered nurses*: 1) Assistant Supervisor of Nursing Services; 2) Nursing Supervisor; 3) Ward Charge; 4) Shift lead; and 5) Registered Nurses and Psychiatric Technicians at the ward level.

Returning to sections 2728 and 2728.5 after this further historical background, we believe some statutory background as to these sections is now pertinent. Section 2728 was contained in the Nursing Practice Act when that act was enacted in 1939. (Stats. 1939, ch. 807, § 2, p. 2350.) As originally enacted it provided:

> "If adequate medical and nursing supervision by a professional nurse or nurses is provided, nursing service may be given by attendants in Institutions under the jurisdiction of or subject to visitation by the State Department of Public Health or the State Department of Institutions.
>
> "The Director of Institutions shall determine what shall constitute adequate medical and nursing supervision in any institution under the jurisdiction of the State Department of Institutions."[7]

Thus, under adequate supervision by professional nurses, hospital attendants were permitted to provide "nursing service" in virtually any hospital or clinic, public or private, *with respect to any type patient*. Thereafter section 2728 was amended in 1957 to reflect the reorganization of the State Department of Institutions into the Department of Mental Hygiene and the Department of Corrections. Paragraph one was amended to include these two new departments; paragraph two was amended to include only the Department of Mental Hygiene, and its director (Stats. 1957, ch. 558, § 1, pp. l649–1650).[8] However, not

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confirmed by the legislature in the form of SB 481 (Marks) Chapter 1479 two years later which appropriated $3,676,633 for salary equity of which $1,838,317 was approved by the Governor. The hill was an emergency measure to be given immediate affect [sic]."

[7] Interestingly, between the years 1937 and 1947 there was a certificated group called "trained attendants." These "trained attendants" were obviously to be found in all types of hospital settings, since section 4519 required applicants to be examined in "elementary anatomy and physiology, hygiene, diet for the sick, nursing methods in the care of the sick, including children and aged people, and obstetrics. (See generally, Stats. 1937, ch. 417, pp. 1377–1378, as repealed by Stats. 1947, ch. 234, § 1, p. 805.)

[8] The background supplied to us by the Director of Developmental Services shows a progression in state hospitals from "Hospital Attendant" to "Psychiatric Technicians." Thus he

until 1971[9] was the Nursing Practice Act amended to allude to psychiatric technicians *for the first time*. Statutes of 1971, Chapter 1007, amended section 2728 and added section 2728.5 to read as follows:

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states in his views letter:

> "Prior to 1951, the classification of 'Psychiatric Technician was not in existence. The predominant class used in State hospitals was Hospital Attendant. Although the incumbents had only 45 hours of in-service training, the duties performed by the Hospital Attendant included administration of medication and treatment usually under the supervision of a psychiatrist. In 1951, the title of Hospital Attendant was changed to Psychiatric Technician and over the next years the amount of formal training was increased and the Psychiatric Technician developed into a licensed clinical profession."

We would presume that until the Psychiatric Technician Law was passed in 1959, a psychiatric technician would have been an "attendant" within the meaning of the Nursing Practice Act. The former act would then have removed psychiatric technicians from the scope of the latter act in 1959.

[9] In the interim, section 4502 had been amended several times to read as it presently does (Stats. 1968, ch. 1323, § 2, pp. 2501–2502; Stats. 1970, ch. 1058, § 2, pp. 1889–1890). It now reads:

> "As used in this chapter, 'psychiatric technician' means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or mentally retarded persons and who has one or more of the following:
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> (a) *Direct responsibility* for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.
>
> (b) *Direct responsibility* for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of inch symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.
>
> "The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.
>
> "Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law." (Emphasis added.)

"2728. If adequate medical and nursing supervision by a professional nurse or nurses is provided, nursing service may be given by attendants or psychiatric technicians in institutions under the jurisdiction of or subject to visitation by *the State Department of Public Health, the State Department of Mental Hygiene or the Department of Corrections*. Services so given by a psychiatric technician shall be limited to services which he is authorized to perform by his license as a psychiatric technician.

"The Director of Mental Hygiene shall determine what shall constitute adequate medical and nursing supervision in any institution under the jurisdiction of the State Department of Mental Hygiene." (Emphasis added.)

"2727.5. *Except for those provisions of law relating to directors of nursing services,* nothing in this chapter or any other provision of law shall prevent the utilization of a licensed psychiatric technician in performing services used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or mentally retarded persons within the scope of practice for which he is licensed in facilities under the jurisdiction of or licensed by the Department Mental Hygiene or the Department of Public Health, or their successor agency or agencies, that he is licensed to perform as a psychiatric technician, including any nursing services under Section 2728, in facilities under the Jurisdiction of the Department of Mental Hygiene." (Emphasis added.)[10]

As noted, those who argue that a psychiatric technician may not supervise a registered nurse rely heavily, if not primarily, upon the language of section 2728. They additionally rely upon the present wording of section 4502 to the extent that that section gives a psychiatric technician "*direct responsibility*" for various functions. They argue that such language negates the legal ability of a psychiatric technician to act as a supervisor. This latter argument, of course, would mean that a physiatrist technician not only could not supervise registered nurses but could not supervise psychiatric technicians as well. We reject these arguments for a number of reasons.

The argument that section 2728 precludes a psychiatric technician from supervising a registered nurse relies upon the premise that the language of that section states and requires that psychiatric technicians must be supervised by registered nurses when

[10] These sections have been amended several times to reflect the subsequent reorganizations of the functions of the then Department of Public Health and the Department of Mental Hygiene, which now repose in the Departments of Health Services, Mental Health and Developmental Services.

providing any nursing services. Or stated otherwise, section 2728 provides an exception to the Nursing Practice Act for psychiatric technicians, as long as they are supervised by registered nurses. This argument is not persuasive for a number of reasons:

1. This argument ignores the fact that for decades psychiatric technicians had been supervising other psychiatric technicians as to 'nursing services." These nursing services properly fell within the ambit of their traditional hospital functions, and subsequently within the ambit of their certification and licensing laws. It also ignores the fact that for about ten years before section 2728 was amended, psychiatric technicians had been supervising those *registered nurses* who were being used interchangeably with psychiatric technicians on non-medical wards.

2. This argument ignores the fact that section 2728 essentially *gives something to psychiatric technician.* As already noted, for 12 years psychiatric technicians had been providing "nursing services" which fell within the scope of their practice as to those persons designated to be within the scope of their act. Such persons were those who were and are "mentally ill, emotionally disturbed, or mentally retarded." Section 2728 would then seem to have been unnecessary legislation unless the reason was to expand the scope of what a psychiatric technician may legally do. As noted above, section 2728 as first enacted basically permitted the "supervised" rendering of nursing services by hospital attendants as to *any type of patient in any type of hospital*. When this is considered, it is seen that section 2728 really grants psychiatric technicians the power to render supervised "nursing services" in virtually any hospital for any type of patient provided that the services are the type provided for in their own licensing act. In short, section 2728 provides that a psychiatric technician is not restricted to caring for persons who are "mentally ill, emotionally disturbed or mentally retarded" if he is adequately supervised.[11]

3. Finally, the argument ignores the provisions of section 2728.5. It is this section, and not section 2728 which really provides the exception to the Nursing Practices Act for psychiatric technicians, if needed."[12] The language of section 2728.5 to the effect that

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[11] Interestingly, on January 28, 1977 the Counsel for the Department of Consumer Affairs rendered his opinion to the effect that section 2728 permits "services" by a psychiatric technician as to patients other than those in the three specified categories found in their act. (Legal Op. 77–7.)

[12] The absence of the proviso for 12 years casts serious doubt upon such need.

The views submitted by the California Nurses Association attempt to explain away the presence of section 2728.5 in the law as follows:

> "Section 2728.5 was apparently placed in the Nursing Practice Act *to reiterate* that the provisions of the Act should not be interpreted as preventing the performance by psychiatric technicians of the services they are authorized to perform under sections

"nothing in this chapter . . . prevents, . . . etc. makes this clear. However, it is not that language, but the introductory phrase "[e]xcept for those provisions of law relating to directors of nursing services" which is the most significant. In fact, that phrase, when read in its historical perspective, virtually conclusively answers affirmatively the question whether psychiatric technicians may supervise other psychiatric technicians, or even those *registered nurses* who are providing the same type of patient care. As to the meaning of the introductory phrase, an examination of the law discloses a number of situations where administrative regulations have been enacted with respect to "directors of nursing services," and which require that such positions be filled by a registered nurse. (See Cal. Admin. Code, tit. 22, § 70215, general acute care hospital; § 71215, acute psychiatric hospital; § 72323, skilled nursing facility.) Additionally, at this point in time (1971) the superintendent or supervisor of nursing services in state hospitals had been a registered nurse. Psychiatric technicians were limited to advancement only to the position of *assistant* supervisor of nursing services under civil service provisions. Thus, although section 2728.5 is not the most clearly drafted section,[13] it is seen that it has independent significance, and it is not a mere reiteration of portions of section 2728.

What then was the purpose of section 2728.5 which was enacted 1) 12 years after the Psychiatric Technicians Law was enacted, and 2) 20 years after the establishment of supervisory psychiatric technicians' classes in state hospitals, and 3) 10 years after the initiation of the practice of placing registered nurses under the supervision of psychiatric technicians in "residential or behavioral" wards?

2728 and 4502." (Emphasis added.)

Such argument ignores the cardinal rule of statutory construction that a statute should be construed to avoid making some of the words surplusage. (*People v. Gilbert* (1969) 1 Cal. 3d 475, 480.) Section 2728.5's role merely as "reiteration" of a rule would render the whole section surplusage. Such argument also ignores the introductory phrase of section 2728.5. That phrase, when put in its historical perspective, indicates that psychiatric technicians may continue as supervisors, contrary to the possible opposite inference which might arise from reading section 2728 above. See further the discussion *ante* and *infra* on this point, and the argument also raised by the California Nurses Association, and others, that only registered nurses may supervise nursing services by virtue of not only section 2728, bet the present wording of 4502 and the case law and opinions of this office.

Such argument also would fail to give section 2728 any independent significance.

[13] For example, the last clause in the section would appear to be redundant and searching for something to modify. An examination of Assembly Bill Number 1076, 1971 Regular Session, discloses that this is the result of the piecemeal amendment of the section as it progressed through the Legislature.

The opening phrase is the que. That phrase would not have been necessary *unless* the section was intended to mean that psychiatric technicians were to continue to be utilized in state hospitals in supervisory roles. Section 2728.5 then sets forth its limitation, which is that nothing should prevent the "utilization" of psychiatric technicians within the scope of their usual practice, (which section 2728 had expanded somewhat with respect to the classes of patients.)[14] Stated otherwise, it appears that section 2728.5 was intended to maintain the status quo with regard to the usual scope of practice of psychiatric technicians.

That this is the case is graphically demonstrated by the earlier versions of section 2728.5 as it progressed through the Legislature. For example, the bill as amended on May 26, 1971, provided that section 2728.5 should read as follows:

'Sec. 2. Section 2728.5 is added to the Business and Professions Code, to read:

> "2728.5. Nothing in this chapter or any other provision of law shall prevent the utilization of a licensed psychiatric technician in performing services in facilities under the jurisdiction of or licensed by ~~any agency that it the successor~~ the Department of Mental Hygiene or the Department of Public Health, *or their successor agency or agencies*, that he currently performs in facilities under the jurisdiction of or licensed by the Department of Mental Hygiene ~~or the Department of Public Health~~."

There were three successive amendments to the bill thereafter. For example, the June 30, 1971 amendment first declared the necessity to insure that directors of nursing services were to be excepted from the scope of a psychiatric technician's practice. That version read:

"Section 2728.5 is added to the Business and Professions Code, to read:

> "~~Nothing~~ *Except for those provisions of law relating to directors of nursing services*, *nothing* in this chapter or any other provision of law shall

[14] Also, insofar as one might point out that section 2728, paragraph two, alludes solely to hospitals under the jurisdiction of the Department of Mental Hygiene; that therefore, one would normally only expect to find persons therein who were "mentally ill, emotionally disturbed, or mentally retarded," we conclude that the Director of Mental Hygiene could determine that, insofar as Section 2728 might require adequate nursing supervision by a registered nurse for such patients, this was satisfied by the continued requirements that the supervisor of nursing services in state hospitals be a registered nurse. Also, patients in state hospitals have not necessarily been restricted to the three categories set forth in section 4502. See 62 Ops. Cal. Atty. Gen. 21 (1979), Opinion No. 78–98, dated January 5, 1979.

> prevent the utilization of a licensed psychiatric technician in performing services in facilities under the jurisdiction of or licensed by the Department of Mental Hygiene or the Department of Public Health, or their successor agency or agencies, that he currently performs in facilities under the jurisdiction of the Department of Mental Hygiene."

Successive amendments, however, changed the plain language used to that of a more legalized format. Also, more caveats were added. However, the thrust of the bill could not have been much clearer when examined as above, that is, to maintain at least the *status quo* with respect to psychiatric technicians.

The various versions of a bill as it progressed through the Legislature may be used in ascertaining the legislative intent. (See *Prudential Insurance Co. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal. 3d 776, 782–783; *Bragg v. City of Auburn* (1967) 253 Cal. App. 2d 50, 52–53; *Dami v. Dept. of Alcoholic Bev. Control* (1959) 176 Cal. App. 2d 144, 148–149; 59 Ops. Cal. Atty. Gen. 266, 270–271 (1976).) We conclude from an examination of these changes, when compared with the final version of the statute, that section 2728.5 was intended to insure that the scope of practice of psychiatric technicians with respect to those for whom they normally provided care (mentally ill, etc.) was not altered by the enactment of section 2728, or any other law. As described at length above, the scope of that practice included responsible supervision of other psychiatric technicians, and registered nurses who performed comparable service.

We will, however, address several other contentions which have been advanced to support the argument that psychiatric technicians may not supervise registered nurses. One contention is that section 4502 was amended in 1968 to provide that a psychiatric technician has "direct responsibility" for providing the services enumerated in section 4502 (see text of section at note 9, *supra*); that, therefore, such language precludes supervision, which is the *indirect* providing of services. However, considering the history of the use of psychiatric technicians as supervisors for decades before this 1968 amendment, we believe another reason for the use of this language must be sought. It is to be recalled that, as originally enacted, section 4502 placed the psychiatric technician's practice "under the direction of a licensed physician or psychiatrist or a registered professional nurse." The section now contains no such language, but makes the psychiatric technician responsible "to the director of the service in which his duties are performed," who "may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel." We believe that this addition of the language "direct responsibility" was intended to upgrade psychiatric technicians, to provide specifically that they performed their services pursuant to their own professional licensing laws, and not derivatively through others. The expansion of the language to include numerous disciplines other than physicians, psychiatrists and nurses, indicates the

change in the mode of treatment in recent years under the "program management concept. This expansion of disciplines also militates against the concept that psychiatric technicians must always be responsible to registered nurses, one of the "linchpins" for the various arguments that psychiatric technicians may not supervise registered nurses.[15]

Another variation of this "direct versus indirect" argument emanates from the Nursing Practice Act, case law, and opinions of this office. Section 2725 defines the practice of nursing as including "direct and indirect patient care services." In 59 Ops. Cal. Atty. Gen. 537 (1976) this office held that "supervision" fell within the meaning of "indirect" patient care. This was significant in determining if the Board of Registered Nursing had jurisdiction to discipline one of its licensees for inadequate supervision of other nurses. In I.L. 74–26, this office considered a number of questions relating to the inability of psychiatric technicians to delegate functions to unlicensed personnel. This letter opinion relied heavily upon *Magit v. Board of Medical Examiners* (1961) 57 Cal. 2d 74[16] in holding, inter alia, that psychiatric technicians could not delegate their professional duties to unlicensed "center technicians." This letter opinion is sometimes cited for the proposition that the 'direct responsibility" language of section 4502 means a psychiatric technician must personally perform all services. Therefore, so goes the argument, a psychiatric technician who acts in a supervisory capacity is illegally practicing nursing by rendering indirect patient services. A *fortiori*, a psychiatric technician may not supervise a registered nurse.

This argument, of course, ignores the history of the Psychiatric Technicians Law to the effect that psychiatric technicians have supervised others, including registered nurses, for many years, and that that law was enacted and amended in this historical context. Additionally, this argument does not disclose that in I.L. 74–26 this office held only that a psychiatric technician could not delegate duties to an unlicensed person (as in *Magit*, *supra*). That this is clear is exemplified in the following quote from that opinion (*Id*. at p. 5).

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[15] The "upgrading" construction of the 1970 amendment is fortified by an examination of Statutes of 1968, Chapter 1323, where it is seen that in 1968 the statute still provided for practice under the direction of a physician, psychiatrist or registered nurse yet provided that their practice would require "close work" with all the disciplines enumerated in the present section.

In short, as of 1970, the "accountability" of a psychiatric technician solely to an M.D. or an R N. was eliminated from the statute, weakening the argument that psychiatric technicians *must* be supervised by R.N.s.

[16] The *Magit* case held that a licensed physician, in such case an anesthesiologist, could not delegate his medical functions (administration of anesthetics) to unlicensed persons, no matter how competent such persons might be.

> ". . . Thus, keeping in mind that there are no other subordinate healing art licensees to whom the described functions and responsibilities could be delegated and the fact that the psychiatric technician is responsible to his director of service for the performances of his duties, it must be concluded that *unless the described functions and responsibilities are being performed by other authorized licensed personnel*, a psychiatric technician in being directly responsible for his functions and responsibilities must be presumed to be personally responsible for performing his duties." (First emphasis added.)

This language is consistent with the idea that a psychiatric technician may delegate responsibilities to another psychiatric technician, or registered nurse, or even a physician. It in no way holds that a psychiatric technician must always personally perform his duties.[17] Nor is it contrary to *Magit v. Board of Medical Examiners*, *supra*, 57 Cal. 2d 74 to conclude that a psychiatric technician may supervise other personnel *who are also licensed.* We essentially so held in our 1974 letter opinion.

Accordingly, it is concluded from an examination of the historical background of the Psychiatric Technicians Law, its administrative construction and the amendments thereto read in juxtaposition with the Nursing Practice Act, that psychiatric technicians may supervise registered nurses within the scope of the practice of a psychiatric technician. We realize the line is vague as to those nursing services a psychiatric technician may perform. However, that fact would not justify holding that a psychiatric technician must always remain at the lowest level of patient care service, when, as a matter of administrative practice, psychiatric technicians and registered nurses have been used interchangeably both at the ward level and as supervisors for over 15 years.

In so concluding, we of course are in no way holding that a psychiatric technician may act as a supervisor of a medical-unit, where intensive nursing service is required. And it is our understanding that psychiatric technicians have never been so utilized, but that registered nurses are properly assigned such supervisory roles.

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[17] "The confusion may have been engendered because conclusion three, at page one of the opinion, is not as complete as the analysis. It states:

> "3. The term 'direct responsibility' as used in section 4502 requires a psychiatric technician to *personally* perform the described functions and responsibilities."

See, however, conclusion 2 to that letter opinion, at page one:

> "2. The described functions and responsibilities performed by licensed psychiatric technicians under section 4502 cannot be delegated unless delegated to someone licensed to perform those functions."

2. Can Psychiatric Technicians Overrule A Nursing Decision?

The foregoing analysis should make it clear that when a psychiatric technician performs a basic level of nursing care in a state hospital or similar institution, he does so under his own licensing act, the Psychiatric Technicians Law, and not at the sufferance of the Nursing Practice Act, although the two acts may overlap to some degree. This has been graphically demonstrated by the fact that for 12 years the Nursing Practice Act did not even allude to psychiatric technicians as a limited exception to its licensing requirements. (*Cf. Mains v. Bd. of Barber Examiners* (1967) 249 Cal. App. 2d 459, 463, overlap between practice of barbering and cosmetology; *Lehmann v. Dalis* (1953) 119 Cal. App. 2d 152, 154, overlap between practice of architecture and civil engineering.)

The second question presented is whether a psychiatric technician may overrule a "nursing decision." No particular nursing decision is presented for resolution. However, in that 1) psychiatric technicians may legally perform certain nursing services, and 2) psychiatric technicians may supervise other psychiatric technicians, or other licensees such as registered nurses performing the same services, it follows that a psychiatric technician could overrule a "nursing decision" if such a decision falls within the purview of the licensing provisions of the Psychiatric Technician Law. If the "nursing decision" is one beyond the *legal* competence of a psychiatric technician, the opposite conclusion would follow.

In so concluding, we again realize that the line may be difficult to draw or ascertain. This problem, if it is a problem, is one which should be directed to the Legislature.

In so concluding, we note that in reality this may be more an administrative problem than a legal problem-that is-to have an immediate and effective appeal by a registered nurse when a decision she makes is overruled by a supervising psychiatric technician. This procedure should also insure that there would be no reprisals for its use. Such a procedure would then provide the registered nurse at the ward care level assurance that the supervisor is not acting beyond his or her *legal* competence.[18]

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[18] For example, the views letter submitted to this office by the Department of Mental Health stated:

> "Question number (2) is handled by an appeal process system within the State hospital. If a decision is made by a supervisor and the working staff does not agree with that decision, the staff has the right to appeal through the hospital chain of command. This appeal process is available on a twenty-four hour basis and it includes the hospital executive director. The Department cannot conceive of a situation so drastic that the working staff could not place a telephone call to the appropriate party for a decision. This then means that both psychiatric technicians and registered nurses can avail

3. Can A Psychiatric Technician Perform Those Nursing Functions Which Have Not Been Delegated By a Registered Nurse?

The third question presented is whether a psychiatric technician may perform nursing functions which have not been delegated by a registered nurse.

It should be clear from the discussion on question one above that the Psychiatric Technicians Law has contemplated this result from its enactment in 1959. Psychiatric technicians have been legally supervising other psychiatric technicians and registered nurses under that act for approximately two decades. That act permits psychiatric technicians to perform a certain level of nursing services with respect to patients who are 'mentally ill, emotionally disturbed or mentally retarded." So long as the parameters of that act are not exceeded, it follows that such nursing functions need not be delegated by a registered nurse. In short, the Psychiatric Technicians Law and the Nursing Practice Act overlap the former is not subservient to the latter. As held in the analogous situation in *Lehmann v. Dalis*, *supra*, 119 Cal. App. 2d at page 154: "[t]o the extent that architectural services and civil engineering services overlap, they may be rendered either by a licensed architect or by a registered civil engineer." Likewise, to the extent that the Psychiatric Technicians Law and the Nursing Practice Act overlap, the overlapping services may be performed by either a psychiatric technician or a registered nurse.

Accordingly, a psychiatric technician may perform nursing services which have not been delegated by a registered nurse so long as such nursing services fall within the scope of the licensing provisions for psychiatric technicians.

SUMMARY

The psychiatric technician evolved as a civil service classification in 1951 from the previous position of hospital attendant in the state hospital system.

In 1959, after extensive legislative hearings, the Legislature enacted the Psychiatric Technicians Law to grant professional status to psychiatric technicians. It was initially a "certification law," but in 1968 became a "licensing law."

At the time the Psychiatric Technicians Law was enacted, psychiatric technicians had worked not only the ward level, but had held responsible supervisory positions supervising other psychiatric technicians. There is no indication in the legislative history of the law that the Legislature was dissatisfied with this or intended to change it. In fact, the administrative construction of the statute by those required to implement it was

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themselves to [sic) the hospital appeal process."

otherwise, since they continued to permit psychiatric technicians to fill supervisory positions, to and including the position of Assistant Supervisor of Nursing Services.

The Psychiatric Technicians Law as initially enacted provided in section 4502 that the psychiatric technician performed his services under the direction of a physician or psychiatrist or registered nurse. As originally enacted, the law provided that such services included responsible nursing services," and enumerated (as it now does) many services which traditionally have been basic nursing services. The Psychiatric Technicians Law was amended in 1968, and became a licensing act. The 1968 amendments to section 4502 retained the language regarding the performance of services under direction of a physician or a psychiatrist or a registered nurse, but added language that in performing their patient services, psychiatric technicians would be required to work closely with many disciplines, to wit, "licensed physicians and surgeons, psychiatrists, psychologists, rehabilitation therapists, social workers, registered nurses, and other personnel."

In 1970, the Psychiatric Technicians Law was again amended. The language requiring services to be rendered under the direction of a physician or psychiatrist or a registered nurse was deleted, and the psychiatric technician was given "direct responsibility" for the performance of his services, with, however, ultimate responsibility to the director of his service. The "director of service" was to be and is defined as any of the many disciplines enumerated in the 1968 amendment set forth above. The 1970 amendment also continued in section 4502 the language which it has had from its inception that a psychiatric technician will be "carrying our treatments and medications as prescribed by a licensed physician or surgeon or a psychiatrist."

Thus, the Psychiatric Technicians Law itself has never provided that a psychiatric technician must always be supervised by a registered nurse, and the language that he must be under the direction of a physician *or* psychiatrist *or* a registered nurse in performing all services was deleted in 1970.

Insofar as the Nursing Practice Act is concerned, it was not until 1971 that it even mentioned psychiatric technicians. Thus, for 12 years, psychiatric technicians practiced as a certificated profession, and subsequently as a licensed profession with no indication that they did so at the sufferance of the Nursing Practice Act, or only as delegatees of nurses. In 1971 the Nursing Practice Act was amended so as to amend section 2728 thereof and to add section 2728.5 thereto. Section 2728, which had since 1939 basically provided that "hospital attendants" could provide nursing services in any hospital with respect to any type of patient, if adequate medical or nursing supervision was provided, was amended to include psychiatric technicians so long as the nursing services they provided were of the type falling within the scope of their own licensing law.

Although many argue that the wording of section 2728 means that psychiatric technicians may only provide nursing services under the supervision of a registered nurse, such an inference is not persuasive for several reasons. First of all, section 2728 must have been intended to *grant* psychiatric technicians something, since for 12 years they already had been providing the "services" specified in section 2728 under their own certification and, later, licensing law. In short, section 2728 would have been unnecessary legislation unless it was intended to increase the scope of practice for psychiatric technicians. Secondly, an analysis of section 2728.5 demonstrates that section 2728 was clearly not intended to restrict the psychiatric technicians' powers in any way. Section 2728.5 provides that, insofar as psychiatric technicians had been rendering patient care to the "mentally ill, emotionally disturbed and mentally retarded," the status quo was to be maintained. This *status quo* included supervision of other psychiatric technicians and registered nurses. This being so, the true intent of the amendment to section 2728 appears to have been to remove any restrictions upon psychiatric technicians as to the type of patient for whom they may provide care.

From the foregoing analysis, it follows that psychiatric technicians may supervise registered nurses within the proper scope of the psychiatric technician's practice. It also follows that, within that proper scope of their practice, psychiatric technicians may overrule "nursing decisions." Finally, it follows from the above analysis, that psychiatric technicians practice under their own licensing provisions, which happen to overlap with the Nursing Practice Act. Therefore, they may perform nursing services within the proper scope of that practice without a delegation therefor from a registered nurse.

If the scope of such practice is too vague and uncertain, it would appear that the solution is either an administrative problem to be resolved within the hospital organizational structure, or is a problem to be directed to the Legislature for clarification.

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