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The Honorable Ollie Speraw, State Senator, Thirty-First District, has requested an opinion on a question which we have rephrased as follows:

May a Registered Nurse prescribe, furnish, or administer drugs or medications under a "standardized procedure"?

CONCLUSION

A Registered Nurse may not prescribe, furnish or administer drugs or medications under a "standardized procedure."

ANALYSIS

This opinion addresses the issue whether the scope of practice currently authorized for registered nurses permits them to prescribe, furnish or administer drugs or medications under a "standardized procedure" but otherwise independently of a

physician's supervision and direction.

In 1974 the California Legislature revised section 2725 of the Nurses Practice Act (Bus. & Prof. Code, div. 2, ch. 6, §§ 2700-2837)[1] which defines the practice of nursing. (Stats. 1974, ch. 355, p. 686, § 1 and *id*., ch. 913, p. 1927, § 1.) In so doing, the Legislature recognized that "nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities," (§ 2725) and intended "to provide clear legal authority for functions and procedures which have common acceptance and usage"(*ibid*.) and to "recognize the existence of overlapping functions between physicians and registered nurses to permit additional sharing of functions within organized health care systems which provide for collaboration between physicians and registered nurses." (*Ibid*.) This would be achieved by permitting registered nurses to perform certain health care functions according to what are called "standardized procedures"—i.e., "policies and protocols"[2] developed either (1) by a health facility licensed pursuant to Chapter 2 of Division 2 (§ 1250 *et seq.)* of the Health and Safety Code through collaboration among administrators and health professionals including physicians or (2) by an organized health care system not so licensed, through collaboration among administrators and health professionals including physicians and nurses. (Health & Saf. Code § 2725, subds. (1) and (2).) While the standardized procedures developed by the latter were made subject to such guidelines as the Division of Allied Health Professions of the Board of Medical Quality Assurance and the Board of Registered Nurses might jointly promulgate,[3] "approval f for them] by the Division or the Board was not required." (*Ibid*.) (See also CV 75/150 IL (July 9, 1975) and CV 76/22 IL (January 27, 1976).)

In March, 1980, the Board of Registered Nursing issued a paper to all registered nurses setting forth its position "that current law allows registered nurses to safely prescribe and dispense medications as long as it is done under standardized

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[1] All unidentified statutory references herein are to the Business and Professions Code.

[2] In an unpublished opinion of this office we viewed the term 'policy" to refer to "a general expression of assent by the committee of administrators, physicians and nurses of a facility or system that a staff nurse will be permitted to perform a specific clinical function or service at that facility or system" and the term "protocol" to refer to "the strict set of rules and procedures to be followed by a staff nurse at that facility or system in the performance of the clinical function or service authorized by a policy." (CV 75/150 IL (July 9, 1975) at p. 11.)

[3] Identical "*Guidelines*" have been promulgated by the Division and the Board. (Tit. 16, Cal. Admin. Code §§ 1374 and 1474, respectively.) They do no: delineate the *types of treatment* which may be provided pursuant to standardized procedures (compare tit. 16, § 1070, subds. (b), (c) and (d) setting forth the types of procedures dental auxiliaries may perform and the attendant degree of supervision by a licensed dentist necessary (63 Ops. Cal. Atty. Gen. 465, 466–467, & 466, fns. 3 & 4, 467, fn. 5(1980)), and see CV 75/150 IL, *supra*, at p. 15).

procedures." (*Administering, Furnishing and Prescribing Drugs In Modern Medical and Nursing Practice;* March 25, 1980.)[4] Effective January 1, 1981, the California Department of Health Services "discontinued citing health facilities and clinics [pursuant to 22 Cal. Admin. Code § 70263, subd. (g)] for allowing registered nurses to dispense and prescribe medications under standardized procedures." (See letter from Beverlee A. Myers, Director, Department of Health Services to Robert C. Johnson, Executive Vice President, California Pharmaceutical Association dated January 6, 1981 and Memorandum from Beverlee A. Myers, Director, Department of Health Services to Richard B. Spohn, Director, Department of Consumer Affairs dated October 7, 1980.)

We have therefore been asked whether registered nurses are presently authorized to prescribe, furnish and administer drugs under a standardized procedure. We conclude that they are not.[5]

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[4] Subdivision (g) provides: "No drugs shall be administered except by licensed personnel authorized to administer drugs and upon the order of a person lawfully authorized to prescribe."

[5] By way of preliminary definitional reference we note the following: The Nurses Practice Act, not mentioning nurses prescribing, furnishing or administering drugs (before 1977) does not define those terms. We must seek guidance elsewhere, and therefore look both to sections in the Business and Professions Code and to those in the Health and Safety Code which deal with the same subject, stand in *pari materia* with the Nurses Practice Act, and are to thus be construed together with it as a unitary system. (*People v. La Barre* (1924) 193 Cal. 388, 391; *People v. Ashley* (1971) 17 Cal. App. 3d 1122, 1126; 58 Cal. Jur. 3d, Statutes, § 108.) We therefore accord these similar phrases the same interpretation used in those other statutes on like subjects in the absence of a contrary indication of legislative intent. (*Hunstock v. Estate Development Corp.* (1943)22 Cal. 2d 205, 210–211; *Estate of Hoertkorn* (1979) 88 Cal. App. 3d 461, 465–466.) Thus:

a. In this opinion, as in the Medical Practice Act, the terms "drugs" and "medications" are used synonymously. (Bus. & Prof. Code § 2051, formerly § 2137.) When used herein they mean:

> (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles (other than food) intended to affect the structure intended for use as a component of any article specified in clause (1), (2), or (3). (§ 4031, *cf*. Health & Sal Code §§ 11014 (substances), 26010; Pen. Code § 383; Veh. Code § 312.)

b. "Furnish" is used to mean the supplying or giving of a drug to a patient for him to use is at a later time. (*Cf*. Bus. & Prof. Code § 4048.5, Health & Saf. Code § 11016.)

c. "Administer" is understood to mean the supplying or giving a drug to a patient for immediate use. (*Cf*. Bus. & Prof. Code § 4213; Health & Saf. Code § 11002.)

d. "Prescribe" is understood to mean the selection of a particular drug (its identity and dosage) for a patient's use, and the issuance of an order for it to be supplied the patient as by a pharmacist. (*Cf*. Bus. & Prof. Code § 4036, subd. (a); Health & Saf. Code § 11027.)

Prior to its revision in 1974, section 2725 of the Nurses Practice Act defined the practice of Nursing as follows:

> "The practice of nursing within the meaning of this chapter is the performing of professional services requiring technical skills and specific knowledge based on the principles of scientific medicine, such as are acquired by means of a prescribed course in an accredited school of nursing as defined herein, and practiced in conjunction with curative or preventive medicine as prescribed by a licensed physician and the application of such nursing procedures as involve understanding cause and effect in order to safeguard life and health of a patient and others." (Emphasis added.) (Stats. 1939, ch. 807, p. 2349, § 2.)[6]

At the same time section 2726 made it clear that the Nurses Practice Act "confer[ed] no authority 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 any provision of law." (§ 2726; Stats. 1939, ch. 807, p. 2349, § 2.) (Compare section 7 of the Chiropractic Act and see 63 Ops. Cal. Atty. Gen. 403, 408, 413–416 (1980).)

The practice of medicine is presently defined, as it has been at least since 1937, by section 2052 (formerly § 2141) of the State Medical Practice Act (Div. 2, ch. 5,

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e. "Dispense" in its technical sense means the furnishing of drugs upon a prescription (*cf*. Bus. & Prof. Code § 4049, Health & Saf. Code § 11010). In a broader nontechnical sense it can be synonymous with "furnish."

[6] "The original California statutes dealing with registered nurses did not expressly define or restrict their functions but merely provided for their certification or registration. (Stats. 1908, ch. CDV, § 1, p. 533; Stats. 1913, ch. 319, § 1, p. 613.) The first or 1905 statute provided for qualified persons to be certified as registered nurses after passing such practical examination(s) as the Board of Regents of the University of California deemed proper 'to test the fire qualifications and fitness." (Stats. 1905, ch. CDV, §§ 1, 3.) It declared it to be a misdemeanor for a person to use the title registered nurse or to append the letters "RN." or any other words, letters or figures to indicate that the person using them was a registered nurse, unless lawfully entitled to do so. (*Id*., § 7.) The 1913 statute apparently repealed the one of 1905 and in its stead directed the state Board of Health to "establish and maintain a department of examination and registration of graduate nurses" and, to appoint a director (Stats. 1913, ch. 319, § 1). It made it the duty of the Board to examine all qualified applicants for registration and to issue the successful ones a certificate (*id.*, § 2) which enabled them "to be styled and known as . . . registered nurse[s], and . . . to place the initials 'RN.' after [their] name[s]" (*id.*, § 5). It declared it to be unlawful "for any person not holding a certificate of registration issued by the state Board of Health to use the title 'registered nurse' or the letters 'R.N.,' in connection with or following his or her name, or to impersonate in any manner, or pretend to be, a 'registered nurse.'" (*Id*., § 7.)

§ 2000 *et seq*.) as follows:

> "*Any person*, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or *who* diagnoses, *treats*, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury *or other mental or physical condition of any person, without* having at the time of so doing a valid, unrevoked certificate as provided in this chapter, or without *being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision* of law, is guilty of a misdemeanor." (Emphasis added.) (Stats. 1937, ch. 414, p. 1377, as amended by Stats. 1967, ch. 1103, p. 2741, § 1 and renumbered by Stats. 1980, ch. 1313, p. -, § 2.)

(See *Bowland v. Municipal Court* (1976)18 Cal. 3d 479, *passim*.) without doubt the prescribing, furnishing and administering of drugs falls within the ambit of the practice of medicine as defined in section 2052 ("who diagnoses, treats, or prescribes for any ailment") and it therefore may not be undertaken by any person other than a physician and surgeon unless he or she is authorized to . . .treat . . . or prescribe . . . pursuant to . . . some other provision of law." (§ 2052.) The question for determination then is whether the Legislature has authorized registered nurses to "perform such acts."

Unlike the Medical Practice Act which has always contained a specific grant of authority for licensed physicians "to use drugs or what are known as medical preparations in or upon human beings . . . (§ 2051 (formerly§ 2137); Stats. 1937, ch. 414, p. 1377; see also Stats. l875–l876, p. 792 and Stats. 1913, ch. 354, p. 725, § 8; and see *People v. Christie* (1949) 95 Cal. App. 2d Supp. 919, 922), until 1977[7] there never has been express statutory authority for registered nurses to independently utilize drugs as part of their practice. Until 1974 whenever the question arose of a registered nurse, not under the direction and supervision of a physician, prescribing, furnishing or administering drugs, it

[7] In 1972 the Legislature has authorized certain experimental health manpower pilot projects to be undertaken to study the role of various health care practitioners including registered nurses in the health care delivery systems. (Stats. 1972, ch. 1350, p. 2682, § 1; Health & Saf. Code §§ 429.70, 429.77.) In 1977 it approved a 5 year trial period during which time registered nurses engaged in such a pilot project could prescribe, dispense and administer drugs (Health & Saf. Code §429.77, subd. (a)(7)) under the general supervision of a licensed physician and surgeon (Bus. & Prof. Code § 2725.1) (Stats. 1977, ch. 843, pp. 2525, 2531, §§ 14, 1, respectively.) These developments are discussed in detail below. (See fns. 18 & 19, *post* & accompanying text.) We note at this point however that this opinion is *not* concerned with the prescribing, furnishing or administering of drugs or medications under 'standardized procedures" by registered nurses who are engaged in such pilot projects. (See fn. 21, *post*.)

invariably would meet a negative response. (See e.g., *Randle v. Cal. State Bd. of Pharmacy* 240 Cal. App. 2d 254, 259 (prescribing); 57 Ops. Cal. Atty. Gen. 93, 97 (furnishing); *cf. Magit v. Board of Medical Examiners* (1961) 57 Cal. 2d 74, 83*; Chalmers-Francis v. Nelson* (1936) 6 Cal. 2d 402.) Not only did the Nurses Practice Act, define the practice of nursing to be one "*in conjunction* with curative or preventative medicine as *prescribed by a licensed physician*" (former § 2725, *supra*), but various code sections restricted the ability to prescribe, administer or furnish drugs (and controlled substances) to other professionals than registered nurses. Thus, with respect to prescribing, section 4036 of the Pharmacy Law,[8] prior to its amendment in 1977, provided that "No person other than a physician, dentist, podiatrist or veterinarian shall *prescribe* or write a prescription."[9] (Accord, Health & Saf. Code § 11150.) *Furnish* was (and still is) defined by the Pharmacy Law to mean "to supply by any means, by sale or otherwise" (§ 4048.5; accord Health & Saf. Code § 11016), and its section 4227, subdivision (a) provided (until amended in 1977) that "no person shall furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist or veterinarian." Its section 4228, subdivision (b) provided (until amended in 1977) that:

> "Physicians, dentists, podiatrists and veterinarians may personally *furnish* any dangerous drug prescribed by them to the patient for whom prescribed, provided that such drug is properly labeled to show all information required in Sections 4047.5 and 4048 except the prescription number . . ."

Further its section 4051 provided (and still provides) that the Pharmacy Law does not apply to or interfere with a *physician's "furnishing* his own patients with such remedies as are necessary in the treatment of the condition for which he attends [them] *if he acts as their physician* and is employed by them as such," and specifically also provided (and still provides) that "such drugs *may not be furnished by a nurse* or attendant." With parallel application to controlled substances, the California Uniform Controlled Substances Act (Health & Saf. Code, Div. 10, § 11000 *et seq*.) adopted the Pharmacy Law's definition of "furnish" (Health & Saf. Code § 11016) and subsumed it within its definition of "dispense,"[10] and provided that no narcotic controlled substance classified in schedule II

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[8] Chapter 9 of Division 2 (i.e., section 4000 *et seq.*) of the Code constitutes the Pharmacy Law. (§ 4049.6.)

[9] Section 4036 defined prescription as ". . . [A]n oral order *individually* for the person for whom prescribed, directly from the prescriber to the furnisher, or indirectly by means of a written order, signed by the prescriber." (See also Health & Saf. Code § 11027.)

[10] Section 11010 defined "dispense" to mean: "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, *furnishing*, packaging, labeling, or compounding necessary to prepare the substance

could be *dispensed* without the written prescription of a practitioner (*id*., § 11181, subd. (a)) nor could any substance in schedule III, IV or V '[e]xcept when dispensed [i.e., furnished] directly by [a] practitioner . . . to an ultimate user . . .' (*Id*., § 11181, subd. (b).) The term "practitioner," as defined, did not specifically include registered nurses. (*Id*, § 11026.)[11] Finally, the term "administer" was defined (in connection with the regulation of dangerous drugs) by section 4213 of the Pharmacy Law which (until amended in 1978) spoke of it as "the furnishing by a physician and surgeon, dentist, podiatrist, or veterinarian to his patient of such amount of drugs or medicines as are necessary for the immediate needs of the patient." With some variation, the California Controlled Substance Act provided that "Administer means the *direct application* of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient for his immediate needs or to the body of a research subject by any of the following: (a) A *practitioner* or, in his presence, by his authorized agent. (b) The patient or research subject at the direction and in the presence of the *practitioner*." (Health & Saf. Code § 11002.) Again, the term "practitioner" did not specifically include registered nurses. (*Id*., § 11026; see fn. 11, *ante*.)[12] Finally, until its amendment in 1978, section 11210 of the Health and Safety Code, which authorized the prescribing, furnishing and administering of controlled substances and set forth the requirement that a medical indication be demonstrated before they were so used in treating a patient, did not include registered nurses within the classes of professionals permitted to undertake that activity. (Health & Saf. Code § 11210.)[13]

Based on these statutory provisions, the pre-1975 authorities concluded that a registered nurse was not authorized to prescribe medications at all and was not permitted

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for the delivery."

[11] Section 11026 defined "practitioner" to mean any of the following:

> "(a) A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.
>
> "(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state."

[12] We find no significant difference between a drug being furnished for a patient's immediate needs and its being directly applied for those needs.

[13] Section 11210 provided:

> A physician, surgeon, dentist, veterinarian, or podiatrist may prescribe for, furnish to, or administer controlled substances to his patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance . . . [¶] only when in good faith he believes the disease, ailment, injury, or infirmity, requires such treatment . . . [and] only in such quantity and for such length of time as are reasonably necessary.

to furnish or dispense them *sua sponte*, i.e., without the effective supervision and direction of a licensed physician and surgeon. Thus, with respect to *prescribing*, it was accepted that a registered nurse simply 'does not come within the class of persons authorized to prescribe or write a prescription. (Bus. & Prof. Code, § 4036.)" (*Randle v. Cal. State Bd. of Pharmacy* (1966) 240 Cal. App. 2d 254, 259; see also 57 Ops. Cal. Atty. Gen., *supra*, at p. 100.) With respect to "furnishing," we concluded in a 1974 opinion that without effective supervision by a physician, a registered nurse could not 'furnish" either prescription or non-prescription drugs. (57 Ops. Cal. Atty. Gen. 93, 96–99, & 96 fn. 1.) The dangers of their so doing were cogently stated:

> "There is a sound basis for the legislative determination that a nurse may not 'furnish" drugs to patients. The training of a registered nurse in pharmacology is limited. Although pharmacology must be included in the curriculum of California's nursing schools, there is no specific course requirement; the regulations require merely that a minimum total of fifteen semester units be devoted to seven subjects, of which pharmacology is just one. 16 Cal. Admin. Code § 1433 subd. (a)(1).[14] This contrasts with the four years of specialized training which a pharmacist must undergo. See 16 Cal. Admin. Code § 1730. Further, there are an overwhelming number of prescription drugs currently on the market. Less than one-tenth of the prescription drugs available today were available 25 years ago. Phinney, "The Impact of Change on the Teaching of Pharmacology," *17 Nursing Outlook 54* (February 1969). It has been estimated that one new drug or combination of drugs goes on the market each day. Slonaker, 'Administering Drugs from a Central Drug Room," *62 Am. J Nursing 108* (December 1962). To aggravate the problem of numbers, the same drug often comes in several different strengths and dosage forms, each having a distinctly different therapeutic effect when administered to a given patient. See Anderson, "The Physician's Contribution to Hospital Medication Errors," *28 Am. J. Hosp. Pharmacy 18* (January 1971).
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> Finally, the names of many of these drugs look and sound alike. See Terplitsky, "500 Drugs Whose Names Look-Alike or Sound-Alike,"

[14] The current regulations require 18 semester units in "theory" and 18 semester units in clinical practice. "Theory and courses with concurrent clinical practice . . . include the following: areas of nursing: medical-surgical; maternal/child mental health; psychiatric nursing; and geriatrics. Instruction [is] given in, but not limited to, the following: personal hygiene; human sexuality; child abuse; cultural diversities/ethnic content; community health; nutrition, including therapeutic aspects; *pharmacology*; legal, social and ethical aspects of nursing; nursing management and leadership skills." (Tit. 16 Cal. Admin. Code, § 1433 subd. (c)(1).)

Pharmacy Times 58 (November 1969).

> "Given the great potential for error which these factors create whether in communicating the drug order, interpreting it, transcribing it, selecting the drug, or accurately labeling the patient's drug container with the name and strength of the drug and directions for use-it is evident why the Legislature determined that a nurse should not "furnish" drugs to patients. The limited training in pharmacology of registered nurses impairs their ability to recognize errors and ambiguities which require clarification. It also makes them susceptible to inadvertent errors in the selection of the proper drug, drug strength, and drug dosage form. Studies of medication errors in hospital drug distribution systems have confirmed this. See Anderson, *supra*." (57 Ops. Cal. Atty. Gen., *supra*, at pp. 96–97.)

With respect to the *administration* of drugs (such as anesthesia), it was generally accepted that that could only be done by a registered nurse when under the direction and supervision of a physician. (*Magit v. Board of Medical Examiners* (1961) 57 Cal. 2d 74, 83–84; *Chalmers-Francis v. Nelson* (1936) 6 Cal. 2d 402, 404-405.) In fact the concept of direct and immediate supervision by a physician who bore responsibility for treating the patient was a crucial factor in permitting registered nurses to perform many acts which constitute the practice of medicine. (See generally, *Chalmers-Francis v. Nelson*, 6 Cal. 2d 74, 402 (1936); *Magit v. Board of Medical Examiners*, 57 Cal. 2d 74 (1961); 56 Ops. Cal. Atty. Gen. 1 (1972); 57 Ops. Cal. Atty. Gen., *supra*, 93.)

In 1974, the Legislature revised section 2725 of the Nursing Practice Act to read as follows:

> "The practice of nursing within the meaning of [the Nursing Practice Act] means those functions helping people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:
>
> "(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.
>
> "(b) Direct and indirect patient care services, including, but not limited to, *the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen prescribed by a physician, dentist, or podiatrist.*

"(c) The performance, *according to standardized procedures,* of basic health care, testing, and prevention procedures, including, but not limited to, skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

"(d) Observation of signs and symptoms old/ness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance *exhibit abnormal characteristics; and (2) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.*

"Standardized procedures, as used in this section, means either of the following:

"(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses;

"(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Such policies and protocols shall be subject to any guidelines for standardized procedures which the [Division of Allied Health Professions of the] Board of Medical Quality Assurance and the Board of Registered Nursing may jointly promulgate; and if promulgated shall be administered by the Board of [Registered Nursing].

"Nothing in this section shall be construed to require approval of the standardized procedures by the [Division of Allied Health Professions] of the Board of Medical Quality Assurance of the Board of [Registered Nursing]." (Emphases added.)[15]

[15] The bracketed material was added in 1978 (Stats. 1978, ch. 1161, p. 3639, § 172) following an informal opinion from this office (CV 76/22 IL (January 27, 1976)).

At the time however, the Legislature *did not* revise the other sections of the Pharmacy Law and the California Controlled Substances Act discussed above which excluded registered nurses from the classes of professionals who were authorized to prescribe, furnish and administer drugs, nor did it substantively revise section 2726 which continued to provide that the Nursing Practice Act does not confer any authority to practice medicine or surgery, except as otherwise provided therein.

In 1980 the Legislature again amended section 2725: Pertinent to our discussion, the reference to "the performance, according to standardized procedures of basic health care, testing and prevention procedures" in subdivision (c) was deleted; the reference to the "administration of medications . . . necessary to implement a . . . regimen *prescribed* by a physician" was changed to their administration necessary to implement such a regimen *ordered* by and within the scope of licensure of a physician; and the preamble defining the practice of nursing was changed. (Stats. 1980, ch. 406, p. -, § 1.) In germane part the statute now reads as follows:

> "The practice of nursing within the meaning of this chapter means those functions, including basic health care, which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:
>
> "(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.
>
> "(b) Direct and indirect patient care services, including, but not limited to, the *administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician*, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.
>
> "(c) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.
>
> "(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (2) implementation,

based on observed abnormalities, of appropriate reporting, or referral, or *standardized procedures*, or changes in treatment regimen in accordance with *standardized procedures*, or the initiation of emergency procedures." (Stats. 1980, ch. 406, p. -, § 1.)

We thus must ascertain whether the Legislature, in revising section 2725 to provide that registered nurses be able to implement "standardized procedures," or to change treatment regimen in accordance with them, intended that registered nurses be permitted to prescribe, furnish or administer medications thereby without other direction and supervision by a licensed physician and surgeon. We must make it abundantly clear at this point that we are not discussing the situation where a registered nurse furnishes or administers drugs or medications pursuant to a physician's order or otherwise under the physician's direction and supervision. As we have noted before:

> "Opinions of the California Supreme Court and of this office have consistently taken the position that a registered nurse may perform certain functions under the direction and supervision of a physician which, but for such supervision, would constitute the practice of medicine. E.g., *Magit v. Board of Medical Examiners*, 57 Cal. 2d 74, 83–84 (1961); *Chalmers-Francis v. Nelson*, 6 Cal. 2d 402 (1936); 56 Ops. Cal. Atty. Gen. 1 (1972) . . . The cited opinions and section 2725 make clear that although registered nurses are not competent to themselves practice medicine, they are possessed of special skills which enable them to assist physicians in their practice of medicine in a fashion that unlicensed persons could not." (57 Ops. Cal. Atty. Gen., *supra*, at pp. 97–98.)

In the situation presented in the request, i.e., a nurse's performing functions according to "standardized procedures," however, the "supervision and direction" by a licensed physician necessary for a nurse to carry out functions and perform certain tasks (*Magit v. Board of Medical Examiners*, *supra*, at p. 83) may not be present, and the relationship between the two is found only in the "standardized procedure" itself. (*Cf.* 16 Cal. Admin. Code § 1374, subd. (b)(7): "Each standardized procedure shall . . [s]pecify the scope of supervision required for performance of standardized procedure functions . . .") In these instances a patient is first observed by a registered nurse who makes the initial assessment of whether there are "abnormal characteristics" and who then either reports or refers the case, or takes appropriate independent action according to a protocol established by a "standardized procedure." (§ 2525; subdi. (d).) Where no referral is mandated we thus have what amounts to otherwise independent activity by the registered nurse. Did the Legislature intend that that action include the prescribing, furnishing or administering of drugs or medications?

To ascertain the Legislature's intent so that the purpose of the law may be effectuated (*People v. Shirokow* (1980) 26 Cal. 3d 310, 306–307) we turn first to the words of section 2725 itself. (*People v. Knowles* (1950) 35 Cal. 2d 175, 182; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Subdivision (d) authorizes nurses to perform procedures according to "standardized procedures," but is silent as to whether those procedures might entail the administering, furnishing or prescribing of drugs. Subsection (b), in contrast addresses that matter. It provides that the practice of nursing includes the function of the "administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention or rehabilitative regimen ordered by a physician. . . . (§ 2725, subd. (b).) Thus, whatever the outer limits of the general authorization for nurses to perform health care functions according to "standardized procedures" pursuant to subdivision (d) might be, they are circumscribed by the specific limitations contained in subdivision (b) by which a treatment regimen may only be undertaken as ordered by a physician. (*Cf. Kennedy v. City of Ukiah* (1977) 69 Cal. App. 3d 545, 552; *Agricultural Labor Relations Bd. v. Superior Court* (1976)16 Cal. 3d 392, 420; *People v. Gilbert* (1969) 1 Cal. 3d 475, 479–480.) No mention is made for a registered nurse to otherwise administer medications, even under "standardized procedures" and the authority to perform functions pursuant to the latter does not expressly extend to the "administration of medications and therapeutic agents." Indeed, the 5 year old authority in subdivision (c) for nurses to perform "basic health care, testing and prevention procedures" according to "standardized procedures" was deleted in 1980.

We are convinced that the "standardized procedures" mechanism does not accommodate the requirements set forth in subdivision (b). We perceive its specific mention that nurses may administer medications "necessary to implement a regimen ordered by a physician" to be indicative of a legislative intent that (1) a course of treatment involving medications be based on a *physician's* judgment in each individual case and (2) that that treatment be *only as ordered by the physician*. A physician must ascertain the relevant facts about a patient to enable him to make a diagnosis and provide a course of treatment, and this must be done on an individualized patient basis. (*Cf.* § 2242, formerly § 2399.5; Health & Saf. Code § 11210.) A physician cannot delegate to a nurse his authority to diagnose and to direct a course of treatment that he deems appropriate although he may utilize the services of others to help him ascertain the facts and to carry out his ordered treatment. (*Cf.* 45 Ops. Cal. Atty. Gen. 116, 117 (1965).) In the performance of functions under "standardized procedures" however, it is the registered nurse and not the physician who makes the assessment of the patient's condition, discerns abnormalities and then takes action according to a protocol established by a "standardized procedure." Although the establishment of a protocol takes place through collaboration with physicians, we do not consider that participation to be tantamount to their "ordering" a course of treatment involving medication within the meaning of subdivision (b). There is certainly no express or implied indication that a protocol should serve as such and its general nature

is at odds with the notion of an order for medication, i.e., a prescription, expressed elsewhere in the Codes, involving as it does direction for medication given on an individualized patient basis.[16] (§ 4036, Health & Saf. Code § 11027; see fn. 9, *ante*, *cf. Hunstock v. Estate Development Corp., supra*; *Estate of Hoertkorn*, *supra*.) Thus, from the wording of the statute itself we would not be inclined to conclude that section 2725 was meant to authorize registered nurses to administer, furnish or prescribe drugs and medications under a "standardized procedure" that otherwise obviates the required degree of direction and supervision by a licensed physician.[17]

When other code sections are taken into account and subsequent legislative developments considered, any lingering doubt on the issue is dispelled.

It is a 'well settled rule of statutory construction that the separation of the various statutes into codes is for convenience only, and the codes are to be read together

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[16] We do not suggest that a physician may not exercise *his* judgment in an individual case and by an individualized physician's order so directing, adopt a protocol to be used for he patient's treatment. In that situation the judgment directing treatment is still the physician's, and it is done on an individualized patient basis.

[17] Regarding that supervision, in *Magi v. Board of Medical Examiners, supra*, 57 Cal. 2d 74, 83, our Supreme Court noted that:

> "It has generally been recognized that the functions of nurses and physicians overlap to some extent, and a licensed nurse, when acting under the direction and supervision of a licensed physician, is permitted to perform certain tasks which, without such direction and supervision, would constitute the illegal practice of medicine or surgery." (Emphasis added; footnotes omitted.)

In enacting section 2725 the Legislature expressed its intent "to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional *sharing* of functions . . ." (§ 2725.) We believe the Legislature intended those functions to be formally shared through the standardized procedures mechanism. (*Id.*, subds. (c) and (d).) Now, the practice of medicine embraces all the functions within the practice of registered nursing, but the converse of that proposition is not true Registered nurses may perform certain functions in their own right and retain other functions (which involve the practice of medicine) only when under the direction and supervision of a licensed physician. Yet other functions which involve the practice of medicine may not be performed by a registered nurse even under the direction and supervision of a physician. *Magit* did not attempt to delineate between these and those which could. (57 Cal. 2d, *supra*, at p. 84.) The sharing of functions that the Legislature expected to occur under a standardized procedure had to contemplate the first two classes, i.e., those functions which a registered nurse could perform in his or her own right and those which could only be performed under effective supervision. We do not believe, however, that the Legislature ever intended for standardized procedure mechanism to obviate the need for the requisite supervision in the second class of functions. Yet we have assumed that that is the situation envisioned in the request.

and regarded as blending into each other thereby forming but a single statute . . ." (*People v. Ashley* (1971) 17 Cal. App. 3d 1122, 1126.) We therefore cannot ignore those other sections in the Business and Professions Code and the Health and Safety Code which the Legislature did *not* amend with its 1974 revision of section 2725, and which after that revision *still excluded registered nurses from the classes of professionals who could prescribe, dispense, administer and furnish drugs and controlled substances*—i.e., Business and Professions Code sections 4036 (who can write a prescription), 4213 (who can administer dangerous drugs), 4227 (whose prescription is necessary to furnish dangerous drugs), 4228 (who can furnish dangerous drugs), and Health and Safety Code sections 11026 (definition of practitioner who can furnish controlled substances under section 11181, subd. (b) and who can administer them under section 11002), 11150 (who can write a prescription) and 11210 (who can prescribe, furnish or administer controlled substances). Any interpretation of section 2725 must effectuate them as well. (See *Tripp v. Swoap* (1976) 17 Cal. 3d 671, 679; *Pesce v. Dept. of Alcoholic Bev. Control* (1958) 51 Cal. 2d 310, 312; *Armenta v. Churchhill* (1954) 42 Cal. 2d 448, 455, *Pareses v. State Board of Prison Directors* (1929) 208 Cal. 353, 355.) Our conclusion that section 2725 was not meant to be a fount of authority for registered nurses to prescribe, furnish or administer medications following "standardized procedures" fulfills that charge. Those statutes carefully delineate the classes of professionals who may be involved in the prescribing, furnishing or administering of drugs and they do not include the situation of registered nurses described in the request. We are therefore reluctant to carve exceptions and insert qualifications in them under the guise of statutory construction and interpretation that were not incorporated by the Legislature. (*Mount Vernon Memorial Park v. Board of Funeral Directors & Embalmers* (1978) 79 Cal. App. 3d 874, 885; *Pacific Motor Transport Co. v. State Board of Equalization* (1972) 28 Cal. App. 3d 230, 235; 61 Ops. Cal. Atty. Gen. 335, 339 (1978); *Pardee Construction Co. v. California Coastal Com.* (1979) 95 Cal. App. 3d 471, 478. See also *Goins v. Board of Pension Commissioners* (1979) 96 Cal. App. 3d 1005, 1009.) Had the Legislature intended to vest registered nurses with authority to prescribe, furnish and administer drugs pursuant to standard protocols in the 1974 amendment to section 2725, subsequent developments to which we now refer demonstrate that it surely "knows how to do so" (*cf. Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 927). In 1977 the Legislature amended section 429.77 of the Health and Safety Code to provide specific authority, on a five year trial basis, for registered nurses engaged in an experimental health manpower pilot project to prescribe, dispense or administer drugs.[18]

[18] In 1972 the Legislature had authorized the implementation of certain health manpower pilot projects under the aegis of the State Department of Health Services. (Stats. 1972, ch. 1350, p. 2681, § 1 adding Art. 18 (§ 429.70 *et seq*.) to pt. 1, of Div. 3 of the Health & Saf. Code. Since 1978, designated projects are approved by the Office of Statewide Health Planning and Development which oversees the program. (§ 429.71, subd. (a), added by Stats. 19`8, ch. 429, p. 1367, § 70.)) Under the program Health Care personnel were to be utilized in new roles and their tasks

Subsection (a)(7) was added to subdivision (a) of that section to provide as follows:

> "(a) Pilot projects may be approved in the following fields:
>
> . . . . . .
>
> "(7) The *prescribing, dispensing, and administering of drugs or devices* by registered nurses, physician's assistants, or pharmacists. No pilot project involving such prescription, dispensing, or administration by registered nurses, physician's assistants, or pharmacists shall be approved after January 1, 1983, unless it is otherwise within the scope of licensure of such personnel. *Prescribing by registered nurses, physician's assistants, or pharmacists shall be specifically approved or denied as within the scope of any pilot project authorized after the effective date of amendments made to this section at the 1977–78 Regular Session of the Legislature and until January 1, 1983*. If prescribing of drugs or devices is authorized, any excluded drugs or devices shall be specified. No registered nurse, 'physician's assistant, or pharmacist shall be authorized to prescribe any controlled substances included in Schedule I, II, or III as defined in Section 11054, 11055, or 11056 of this code or any narcotic drug in Schedule IV or V as defined in Section 11057 or 11058 of this code, or any poison as defined in Section 4160 of the Business and Professions Code. No more than two projects for pharmacists, three projects for physician's assistants, or five projects for registered nurses shall be approved under this paragraph. All statutory and regulatory requirements relating to proper storage, security, recordkeeping, labeling, and otherwise safely handling drugs and devices shall be complied with by any persons authorized to prescribe, dispense, or administer drugs or devices pursuant to this paragraph." (Emphases added.) (Stats. 1977, ch. 843, P. 2531, § 14.)

At the same time that that authorization was given, various sections of the healing arts practice acts in the Business and Professions Code and various sections of the California

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reallocated on an experimental basis, with the goal of improving the effectiveness of health care delivery systems to better meet the health needs of the citizenry (Health & Saf. Code § 429.70). For the purpose of that experimentation, the Legislature found that 'a select number of publicly evaluated health manpower pilot projects *should be exempt* from the healing arts practices acts." (*Ibid*.) "Health care services' was defined to include the practice of "medicine and nursing" (*id*., § 429.71, subd. (e)) and pilot projects were specifically authorized for "expanded role nursing" (*id*., § 429.77, subd. (a)(2)). No provision was made at the time however, for authorized registered nurses to prescribe, administer or furnish drugs.

Controlled Substances Act in the Health and Safety Code were amended to accommodate it. A section 2725.1 was first specifically added to the Nursing Practice Act to include "the prescribing, dispensing, and administration of drugs . . . [by a] nurse engaged in an experimental manpower project" within the scope of practice of registered nursing. (Stats. 1977, ch. 843, p. 2725, § 1.[19] Sections 4036, 4213 and 4228/4227 of the Pharmacy Law were amended to provide that nurses so engaged could prescribe, administer and furnish (dangerous) drugs (Stats. 1977, ch. 843, pp. 2526, 2527, 2528/2527, §§ 4, 7, 9/8) and sections 11026, 11150 and 11210 of the California Controlled Substances Act were amended to provide that they could do the same with respect to controlled substances so far as authorized (*id*., pp. 2532, 2533, 2534, §§ 16, 18, 20).

The legislative effort at accommodating the amendment to section 429.77 of the Health and Safety Code to enable nurses engaged in an experimental health manpower project to prescribe, dispense or administer drugs was extensive; all tolled some eighteen code sections were amended or added to achieve that end. (Bus. & Prof. Code sections 2725.1, 4033, 4036, 4145, 4213, 4227, 4228, 4230, 4231, 4232, and Health & Saf. Code sections 11026, 11122, 11150, 11173, 11210, 11250, 11251, 11377 and 11379.)[20] Without question those revisions plainly demonstrate a legislative ability to accomplish such a result when it so intends. (*Cf. Safer v. Superior Court* (1975) 15 Cal. 3d 230, 236.) Certainly in light of them we cannot interpret the amendments made to section 2725 to have reflected a legislative intent for nurses not engaged in an experimental health manpower pilot project to engage in those activities as well, for "where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject [in this case, the same subject] is significant to show that a different

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[19] Section 2725.1 presently reads in full as follows:

> "*The scope of practice of a registered nurse shall include the prescribing, dispensing, and administration of drugs or devices when the nurse is engaged in an experimental health manpower project* authorized under Article 18 (commencing with Section 429.70) Chapter 2 of Part 1 of Division 1 of the Health and Safety Code and is acting within the scope of such project as defined by the *Office of Statewide Health Planning and Development*. No *registered nurse shall prescribe drugs except under the general supervision of a licensed physician and surgeon*. This section shall remain in effect until January 1, 1983, and on such date is repealed. (Emphases added.)

[20] Other sections of the 1977 legislation also authorized physician's assistants and registered pharmacists to prescribe, dispense, and administer drugs when engaged in an experimental health manpower project. (§§ 3502.1, 4037.1; Stats. 1977, ch. 843, pp. 2525, 2526, §§ 2 and 5, respectively.) Curiously, section 4051 which authorizes physicians to furnish their patients with drugs and precludes a nurse or attendant from doing so, was *not* amended. We consider this to be inconsequential in light of the amendments to sections 4228 and 4227 authorizing that furnishing upon the nurse s own prescription.

intention existed. (23 Cal. Jur. 778, § 154; *Estate of Garthwaite* (1933), 131 Cal. App. 321, 326 [21 P. 2d 465].)" *People v. Valentine* (1946) 28 Cal. 2d 121, 142 (original emphasis and brackets). Further, since section 2726 continues to provide that "Except as otherwise provided herein, [the Nursing Practice Act] confers no authority to practice medicine or surgery" and inasmuch as the prescribing, furnishing and administering of drugs and medications does constitute the practice of medicine (Bus. & Prof. Code §§ 2052 and 2051, formerly §§ 2041 and 2137) we may not imply a broader or more general exception to the prohibition contained in section 2726 than the Legislature has specifically made for nurses engaged in an experimental health manpower pilot project in section 2725.1 (see fn. 19, *ante*). (*Pardee Construction Co. v. California Coastal Commission* (1979) 95 Cal. App. 3d 471,478; see also *Goins v. Board of Pension Commissioners* (1979) 96 Cal. App. 3d 1005, 1009; *City of National City v. Fritz* (1949) 33 Cal. 2d. 635, 636.)

The very fact that the Legislature has enacted an amendment indicates that it intended to change preexisting law, often by creating new rights or withdrawing existing ones. (*People v. Valentine*, *supra*; *Abbott v. City of San Diego* (1958) 165 Cal. App. 2d 511, 524; *Smith v. Ricker* (1964) 226 Cal. App. 2d 96, 101; *Subsequent Injuries Fund v. Industrial Acc. Com.* (1963)59 Cal. 2d 842, 844.) Whether in analyzing section 2725 in light of the 1977 legislation, particularly the addition of section 2725.1, we consider a new right to have been created (i.e., for registered nurses engaged in experimental health manpower pilot projects to prescribe, furnish and administer medications) where none had existed before, or a pre-existing right of nurses to undertake that activity to have been withdrawn, it would appear that the enactment of section 2725.1 and the kindred amendments to the other sections of the codes serve to limit the authority of registered nurses to prescribe, dispense (furnish) and administer medications only to those engaged in such a pilot project. We therefore reach our conclusion that registered nurses not engaged in an experimental health care manpower pilot project may not prescribe,[21] furnish or administer drugs or medications under standardized procedures.

The practice of medicine is not an exact science that can be nearly detailed in stepped protocols. It is an art that requires a learned assessment of each *individual* patient's case before a preventative treatment or rehabilitative regimen with drugs or medications is undertaken. (§§ 4036, 2242 (formerly § 2399.5); Health & Saf. Code §§ 11127, 11210.) Further, the use of those substances in the treatment of patients is certainly one of the most important, and complex, aspects of the practice of medicine, and one which poses substantial risks. Their proper use requires a detailed knowledge of a host

[21] We note that section 2725.1 provides that when a nurse engaged in an experimental health manpower project prescribes drugs, it must be done under the general supervision of a physician. We need nor decide whether a protocol established by standardized procedure supplies that general supervision. (See also fn. 7, *ante.*)

of scientific and biological disciplines and a thorough background knowledge about illness and the human body. In part to determine whether the role of registered nurses can be expanded in the area, the Legislature has authorized an experimental study of registered nurses prescribing, furnishing and administering drugs (Health & Saf. Code § 429.77, subd. (a)(7)) as one of "a select number of publicly evaluated health manpower pilot projects . . . exempted from the healing arts practice acts" (*id*., § 429.70). The project was open to careful public scrutiny before its inception, receiving input from professional societies and state licensing boards (*id*., § 429.80), and is continually subject to state review in "periodic onsite inspection (*id*., § 429.78) and evaluation." The Legislature is kept abreast of its workings through the Office of Statewide Health Planning and Development (*id*., § 429.78), and intends to incorporate proven innovations developed therein which are likely to improve the effectiveness of health care delivery, into the appropriate healing arts licensure laws (*id*., § 429.70). In contrast to that legislative effort, the revision of section 2725 in 1974 to permit registered nurses to *share* functions with physicians under "standardized procedures" was not accompanied by the provisions for public oversight, by an expectation of an assessment of its operation with a view to formalize changes in licensure laws, by a legislative desire to be apprised of its operation, or by changes in restrictive related legislation. We view this lack of similar provision as further indication that a truly innovative step, which would be in derogation of the traditional functions of registered nurses was not contemplated by the 1974 and certainly not by the 1980 amendment to section 2725.[22] If anything the latter would indicate otherwise.

The prescribing and the independent furnishing and administering of drugs and medications by registered nurses is a marked departure from their traditional role in the health care system. The Legislature, desirous of improving the effectiveness of health care delivery systems in utilizing health care personnel in new roles to better meet the health needs of the citizenry (Health & Sal. Code § 429.70), has taken a first step in specifically authorizing registered nurses to undertake that activity in carefully defined and scrutinized situations. (*Id*., § 429.77, subd. (a)(7); Bus. & Prof. Code § 2725.1.) That authorization however, was not extended to registered nurses functioning under "standardized procedures" and any "[s]uch . . . change should come from the Legislature,

[22] It has been suggested that just as the Legislature meant to experiment with expended and innovative functioning of registered nurses in publicly evaluated health manpower projects by section 2725.1 and Health and Safety Code section 427.79, subdivision (a)(7), it meant to authorize that experimentation by private health delivery systems by section 2725. We reject the suggestion. The declarations of legislative intent (*Cf. The Housing Authority v. Dockweiler* (1939) 14 Cal. 2d 437, 449) and the associated legislative efforts accompanying each enactment are simply not comparable and there is no support for the suggestion other than mere conjecture. The amendment of section 2725 in 1974 was not meant to provide open ended authority for private facilities to expend the practice of registered nursing without limit. (*Cf.* § 2726.)

after the full investigation and debate which legislative organization and methods permit." (*People v. Pacific Health Corp*. (1938) 12 Cal. 2d. 156, 161; *cf*. 63 Ops. Cal. Atty. Gen. 465, 473 (1980).) Undoubtedly the results of the experimental health manpower pilot project authorized by Health and Safety Code section 479.77, subdivision (a)(7) will be part of that debate. For the present however, there is no indication of a legislative intent that registered nurses be authorized to prescribe, to furnish or to administer medications or drugs according to a protocol established by a "standardized procedure." We conclude that they may not do so.

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