



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

November 7, 1996

Patti J. Patterson, M.D., M.P.H.
Acting Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

Letter Opinion No. 96-125

Re: Whether the Texas Board of Health is authorized by the Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m, to promulgate rules establishing a class of certificate for students who perform radiologic procedures in an academic or clinical setting as part of a training program which meets minimum standards adopted by the board (ID# 39225)

Dear Dr. Patterson:

On behalf of the Texas Department of Health (the "department"), you ask whether the Texas Board of Health (the "board") is authorized to adopt certain rules under the Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m, (the "act"), *as amended by* H.B. 1200, Act of May 24, 1995, 74th Leg., R.S., ch. 613, 1995 Tex. Gen. Laws 3463, 3463. In particular, you ask whether the board is authorized to promulgate rules establishing a class of certificate for students who perform radiologic procedures in an academic or clinical setting as part of a training program which meets minimum standards adopted by the board. We conclude that the board is authorized to do so.¹

In Letter Opinion No. 96-077, this office addressed a variety of questions posed by the department regarding the act and the 1995 amendments. Your query arises as a result of our analysis in that opinion of section 2.05(g) of the act, which requires the board, with the assistance of other state agencies, to "identify radiologic procedures that are dangerous or hazardous and that may only be performed by a practitioner or a medical radiologic technologist certified under this Act." You asked whether a person who is

¹Given our conclusion, we do not consider your question about the board's authority to establish different categories of dangerous and hazardous procedures.

excepted from certification under section 2.07 (and who is not a practitioner²) may perform a dangerous or hazardous procedure. Our response follows:

Section 2.05(h) excepts certain dental radiologic procedures from section 2.05(g). In addition, section 2.05(k) provides that, in adopting rules under section 2.05(g), the board "may consider whether the radiologic procedure will be performed by a registered nurse or a licensed physician assistant." This provision authorizes, but does not require, the board to permit a registered nurse or physician assistant who is not certified to perform a dangerous or hazardous procedure.

You ask whether a person who is excepted from certification under section 2.07 (and who is not a practitioner) may perform a dangerous or hazardous procedure. Sections 2.05(h) and 2.05(k) provide the only express exceptions to section 2.05(g). Again, the existence of a particular exception indicates that the legislature intends no other exceptions. 67 TEX. JUR. 3D, *Statutes* § 120 (1989). *Therefore, we conclude that a person who is excepted from certification under section 2.07 (and who is not a practitioner) may not perform a dangerous or hazardous procedure, except under section 2.05(h) or as permitted by the board under section 2.05(k).*

Letter Opinion No. 96-077 (1996) at 9 (emphasis added).

You explain that section 2.05(g) poses certain problems for radiologic technologist certification training programs. Section 2.07(a) of the act provides that a person must hold a certificate issued under the act in order to perform a radiologic procedure. Section 2.07(e) provides that a person is not required to hold a certificate in order to perform radiologic procedures "if the person is a student enrolled in a program which meets the minimum standards adopted under Section 2.05 of this Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program." This exception permits students to perform procedures in the context of a training program.³ Section 2.05(g), however, in prohibiting any person (except a practitioner or a certified medical radiologic technologist, and perhaps a registered nurse or a licensed physician assistant) from performing dangerous or hazardous procedures, precludes students, who are not certified and perform procedures under the section 2.07(e) exception, from

²A practitioner is defined as a "doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons." See V.T.C.S. art. 4512m, § 2.03(6).

³Students who perform radiologic procedures under the section 2.07(e) exception to certification must have completed the requisite hours of mandatory training under section 2.05(f) before administering radiation to another person. See Letter Opinion No. 96-077 (1996) at 6 n.4.

performing dangerous or hazardous procedures as part of their training. As your letter states, "students will not be able to receive any clinical experience in performing such procedures. Yet once the students become certified as MRTs, they would be permitted to perform the dangerous or hazardous procedures."

In order to deal with this problem, the board is considering adopting rules establishing a new class of certificate for students who are generally excepted from certification requirements by section 2.07(e). This certification "would allow students to perform dangerous or hazardous procedures (under proper supervision) in compliance with [section] 2.05(g)." We believe that the board is authorized to promulgate such a rule. In Attorney General Opinion DM-292, this office considered whether the board is authorized to promulgate rules discontinuing general certification of medical radiologic technologists, and implementing a system of specialty certification for three disciplines. We concluded that the board had the authority to adopt such a rule both because section 2.05(b) of the act gives the board broad authority to establish a variety of certificates and based on our review of the act as a whole:

Section 2.05(a)(1) provides that the board shall adopt rules establishing "minimum standards for issuing, renewing, suspending, and revoking certificates issued under [the act]." In addition, section 2.04(d) provides that the "advisory board shall recommend for the consideration of the Texas Board of Health rules to implement standards adopted under [the act] and shall recognize existing standards that apply to the scope of practice for both general and limited certifications." Furthermore, section 2.02 of the act states that its purpose is "to protect the health and safety of the people of this state from the harmful effects of excessive radiation used for medical purposes by establishing minimum standards for the certification of medical radiologic technologists." These provisions give the board broad power to promulgate standards for certification, and the authority to consider both practice standards and public health and safety in doing so. We believe that promulgating rules implementing specialty certification would be consistent with this authority and the general purpose of the act.

Attorney General Opinion DM-292 (1994) at 4.

In this case, we believe that the act, when read as a whole, authorizes the board to promulgate a rule establishing a class of certificate for students, who perform radiologic procedures in an academic or clinical setting as part of a training program which meets minimum standards adopted by the board, to authorize them to perform dangerous or hazardous procedures if the board provides minimum standards for the certificate⁴ and

⁴See, e.g., note 3 *supra*.

determines that such a class of certificate is consistent with public health and safety. We believe that a student who performed a dangerous or hazardous procedure under the authority of such a certificate would not run afoul of section 2.05(g). Again, section 2.05(g) requires the board to "identify radiologic procedures that are dangerous or hazardous and that may only be performed by a practitioner *or a medical radiologic technologist certified under this Act.*" (Emphasis added.) A medical radiologic technologist is defined by that act as a "person certified under this Act, other than a practitioner, who, under the direction of a practitioner, intentionally administers radiation to other persons for medical purposes." V.T.C.S. art. 4512m, § 2.03(7). This definition does not require that a medical radiologic technologist have any specific class of certificate.

S U M M A R Y

The Texas Board of Health (the "board") is authorized under Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m (the "act"), to promulgate rules establishing a class of certificate for students, who perform radiologic procedures in an academic or clinical setting as part of a training program which meets minimum standards adopted by the board, to authorize them to perform dangerous or hazardous procedures. A student who performed a dangerous or hazardous procedure under the authority of such a certificate would not run afoul of section 2.05(g) of the act.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee