

1979 WL 43104 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 8, 1979

\*1 Mrs. Ruth Q. Seigler, R.N.  
Executive Director  
State Board of Nursing  
Suite 102  
1777 St. Julian Place  
Columbia, South Carolina 29204

Dear Mrs. Seigler:

This is in response to your request regarding the legality of a registered nurse acting as a first assistant. Under [Section 40-47-60 of the South Carolina Code](#) of Laws, 1976, no person can practice medicine unless authorized under the South Carolina Medical Practice Act. The practice of medicine is defined by Section 40-47-40 as follows:

Any person shall be regarded as practicing medicine within the meaning of this article who (a) shall as a business treat, operate on or prescribe for any physical ailment of another, (b) shall engage in any branch or specialty of the healing art of (c) shall diagnose, cure, relieve any human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin, by attendance or advise, by prescribing, using or furnishing any drug, appliance, manipulation, adjustment or method or by any therapeutic agent whatsoever.

The practice of professional nursing is defined by Section 40-33-10(f) as follows:

A professional nurse may perform additional acts requiring special education and training which are recognized jointly by the medical and nursing professions as proper for such nurse to perform if licensed under this chapter and recognized by the Board of Nursing through its rules and regulations.

There is no uniform definition which delineates the functions of a first assistant. First assistants have been in the past physicians, or residents; however, nurses and technical operating personnel have performed the role of first assistant in many instances. The fact that a first assistant performs tasks ordinarily performed by a physician does not mean that the first assistant is practicing medicine. A licensed physician may delegate tasks to be performed under his direct supervision, control and direction, and in his physical presence. Unlike the delegation to a nurse practitioner of tasks, this is a more limited form of delegation and requires much greater physician control.

It is not illegal for a physician to use a registered nurse as a first assistant, provided that to the extent she performs medical tasks she does so under the direct supervision, control and direction of the physician and is in his physical presence.

It is therefore the function of the individual institution to determine as a matter of policy, with consideration of the various aspects of legal liability, the issue of whether or not a registered nurse can serve as first assistant. In considering the aspects of liability, it must be determined who has performed the tasks assigned to the first assistant in the past and how their skills and training in this area compare with the registered nurse.

It should also be noted that third party reimbursement methods may or may not reimburse for a registered nurse first assistant. This question is one which depends solely on the terms of the contract.

Sincerely,

**\*2** Kay G. Crowe  
Assistant Attorney General

1979 WL 43104 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.