

1974 S.C. Op. Atty. Gen. 136 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3764, 1974 WL 21278

Office of the Attorney General

State of South Carolina

Opinion No. 3764

April 30, 1974

**\*1 RE: Authority to License Nursing Technicians.**

State Board of Nursing for South Carolina

2711 Middleburg Drive, Suite 216

Columbia, S. C. 29204

Dear Board Members:

By letter dated April 3, 1974, you state that a proposal has recently been received by the State Board of Nursing which requests that the Board exercise its regulatory powers to establish a class of 'nurse technicians' who would then be granted a permit by the Board to practice nursing in this State, under whatever further rules and regulations the Board might apply to them. You request that this office provide an opinion regarding the authority of the Board to establish and regulate this proposed class of 'nurse technicians.'

Pursuant to S. C. Code § 56–967, as amended, the State Board of Nursing has been given authority to 'make such rules and regulations as it may deem necessary for the purposes of carrying out the provisions of [the Nurse Practice Act]'. The case law is clear, however, that whereas such regulatory authority may be exercised to implement the purpose and intent of the Nurse Practice Act, yet that authority does not extend so far as to permit the Board to legislate anew or to use its regulatory powers to contravene the purpose and intent of other statutory provisions of the nursing laws. See [Lee v. Michigan Millers Mutual Insurance Co.](#), 250 S.C. 462, 158 S.E.2d 774 (1969); [Banks v. Batesburg Hauling Co.](#), 202 S.C. 273, 24 S.E.2d 496 (1942). In every case, therefore, the initial task is to determine the legislature's intent relative to a particular question. Once that is accomplished the Board's authority becomes clear.

With regard to determining the intent of the legislature relative to the Board being able to establish and regulate a class of 'nurse technicians', the first point of reference is the language of the Nurse Practice Act itself. This Act, S. C. Code §§ 56–951 et seq. (Supp. 1973), is a thoroughly integrated set of statutes wherein many of the statutory provisions refer for meaning to other statutes within the Act. However, a recitation of the numerous statutes which play upon the Board's overall duties in the regulation of the practice of nursing is not necessary. Suffice it to say that under the Nurse Practice Act there are but two categories of nurses for which the legislature has specified licensing requirements. These categories are those of 'registered nurse' and 'licensed practice nurse'. See eg., S. C. Code §§ 56–951(d & e) and 56–953 (Supp. 1973). Moreover, under a 1969 amendment to the Nurse Practice Act, the legislature has expressly exempted 'nursing aides' and 'nursing assistants' from regulation by the Board. This was accomplished by adding language to S. C. Code § 56–951 as follows:

Nothing contained in this section shall be deemed to prevent an unlicensed person from performing selected acts of nursing pursuant to the instruction and under the direction of a licensed physician, dentist, registered nurse or practical nurse within their respective areas of responsibility.

**\*2** In the opinion of this office, the intent of the legislature in passing the Nurse Practice Act and its subsequent amendment was to insure the licensure of registered nurses and licensed practical nurses. The Board has full powers under Section 56–967 to implement these licensure requirements through reasonable rules and regulations. However, the legislature has not given to the Board authority to require any other persons to become licensed. Any attempt by

the Board to issue permits or certificates, even on a voluntary basis, to persons other than registered nurses or licensed practical nurses would go beyond its authority. In the opinion of this office, the legislature does not intend that nursing aides, nursing assistants, or any other class of auxiliary nursing personnel should be certified or licensed by the State Board of Nursing for South Carolina, and the Board is bound by that intent.

Very truly yours,

John B. Grimball  
Assistant Attorney General

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