

MENTAL HEALTH, DEPARTMENT OF: Properly trained technicians,  
NURSES: nurses' aides or their  
equivalent may administer  
non-injectable medications and insulin at community residential  
facilities which are licensed long-term care facilities;  
however, the Department of Mental Health may not adopt rules  
allowing 1) individuals other than nurses to administer  
injectable medications at community residential facilities which  
are licensed long-term care facilities, 2) individuals other  
than nurses to administer medications, either injectable or  
non-injectable, at community residential facilities which are  
not licensed long-term care facilities, or 3) individuals other  
than nurses to insert gastrostomy tubes, naso-gastric tubes or  
Foley catheters at community residential facilities, regardless  
of whether or not the facility is a licensed long-term care  
facility.

April 8, 1991

OPINION NO. 25-91

Keith Schafer, Director  
Department of Mental Health  
1915 Southridge Drive  
Jefferson City, Missouri 65109

Dear Director Schafer:

This opinion is in response to your question asking:

May the Department of Mental Health  
licensure rules for the community  
residential facilities allow other than  
LPNs or RNs to perform the following  
procedures:

1. Administer medications;
2. Insert gastrostomy tubes;
3. Insert naso-gastric tubes;
4. Insert foley catheters;
5. Administer tube feedings;

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6. Other procedures specifically  
addressed in the Nurse Practice Act.

We begin by assuming that the non-nurses are not otherwise licensed, except possibly a license limited to a specific type of facility, to provide the care which you describe.

Sections 335.011 to 335.096, RSMo, are commonly referred to as The Nursing Practice Act. Section 335.016 (7) and (8), RSMo 1986, provides:

335.016. Definitions.--As used in sections 335.011 to 335.096, unless the context clearly requires otherwise, the following words and terms shall have the meanings indicated:

\* \* \*

(7) "Practical nursing" is the performance for compensation of selected acts for the promotion of health and in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires substantial specialized skill, judgment and knowledge. All such nursing care shall be given under the direction of a person licensed in this state to prescribe medications and treatments or under the direction of a registered professional nurse;

(8) "Professional nursing" is the performance for compensation of any act which requires substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences, including, but not limited to:

(a) Responsibility for the teaching of health care and the prevention of illness to the patient and his family; or

(b) Assessment, nursing diagnosis, nursing care, and counsel of persons who

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are ill, injured or experiencing alterations in normal health processes; or

(c) The administration of medications and treatments as prescribed by a person licensed in this state to prescribe such medications and treatments; or

(d) The coordination and assistance in the delivery of a plan of health care with all members of the health team; or

(e) The teaching and supervision of other persons in the performance of any of the foregoing;

\* \* \*

Section 335.076.3, RSMo 1986, provides:

3. No person shall practice or offer to practice professional nursing or practical nursing in this state for compensation or use any title, sign, abbreviation, card, or device to indicate that such person is a practicing professional nurse or practical nurse unless he has been duly licensed under the provisions of sections 335.011 to 335.096.

Based on Section 335.076.3, non-nurses are prohibited from performing any procedures specifically addressed in The Nursing Practice Act unless they are exempt under Section 335.081, RSMo 1986. Subsection 2 of Section 335.081 provides:

335.081. Exempted practices and practitioners.--So long as the person involved does not represent or hold himself out as a nurse licensed to practice in this state, no provision of sections 335.011 to 335.096 shall be construed as prohibiting:

\* \* \*

(2) The services rendered by technicians, nurses' aides or their equivalent trained and employed in public or private hospitals and licensed long-term care facilities except the services rendered in licensed

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long-term care facilities shall be limited  
to administering medication, excluding  
injectables other than insulin;

\* \* \*

Long-term care facilities are any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility. Section 344.010(2), RSMo Supp. 1990. We understand that some of the the community residential facilities referenced in your question are long-term care facilities. In those facilities, pursuant to Section 335.081(2), technicians, nurses' aides and their equivalent who are properly trained can administer non-injectable medications and insulin to the residents. "Properly trained," as used in this section, is a phrase which is explained through the Division of Aging statutes and regulations.

Section 335.081(2) only allows at long-term care facilities the administration of non-injectable medications and insulin by technicians, nurses' aides or their equivalent. That section does not permit individuals not licensed as nurses to insert gastrostomy tubes, naso-gastric tubes and Foley catheters at long-term care facilities. Administering tube feedings is not the same as the administration of medication but we must first address the issue of whether administering a tube feeding is the practice of nursing before we determine whether non-nurses at long-term care facilities can perform this procedure.

If the community residential facilities are not long-term care facilities, Section 335.081(2) does not apply. Therefore, we must address the question of whether each of the procedures you have listed are within the definition of the practice of nursing. The administration of medications is expressly listed as a part of the practice of nursing in Section 335.016(8)(c), RSMo 1986. The question which must be answered with regard to the insertion of gastrostomy tubes, naso-gastric tubes and Foley catheters is whether the procedure "requires substantial specialized skill, judgment and knowledge" (Section 335.016(7)) or "substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences" (Section 335.016(8)). If the procedure falls into either of these two categories, it is the practice of nursing and may not be performed by non-nurses.

Stedman's Medical Dictionary (Fifth Lawyers' Ed. 1982) defines the relevant terms:

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gastrostomy - The establishment of a new opening into the stomach.

naso-gastric tube, a stomach tube passed through the nose.

catheter- A tubular instrument for the passage of fluid from or into a body cavity, especially one designed to be passed through the urethra into the bladder to drain it of retained urine.

Foley catheter, a catheter with a retaining balloon.

We believe that the insertion of a gastrostomy tube, naso-gastric tube or Foley catheter does require such knowledge and skill that these procedures fall within the definition of the practice of nursing. We decline to give an opinion regarding administration of tube feedings. We believe that various factors, including the contents of the feeding, could affect the answer to that question.

Because the definition of the practice of nursing and the prohibition against practicing nursing without a license are found in the statutes, no state agency has the authority to adopt contradictory rules. Parmley v. Missouri Dental Board, 719 S.W.2d 745, 755 (Mo. banc 1986); Missouri Hospital Association v. Missouri Department of Consumer Affairs, Regulation and Licensing, 731 S.W.2d 262, 264 (Mo. App. 1987). Therefore, the Department of Mental Health cannot adopt regulations which would allow non-nurses to perform procedures which constitute the practice of nursing unless those non-nurses are exempted from coverage of The Nursing Practice Act and are in compliance with the requirements of the exemption.

#### CONCLUSION

It is the opinion of this office that properly trained technicians, nurses' aides or their equivalent may administer non-injectable medications and insulin at community residential facilities which are licensed long-term care facilities; however, the Department of Mental Health may not adopt rules allowing 1) individuals other than nurses to administer injectable medications at community residential facilities which are licensed long-term care facilities, 2) individuals other than nurses to administer medications, either injectable or non-injectable, at community residential facilities which are

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not licensed long-term care facilities, or 3) individuals other than nurses to insert gastrostomy tubes, naso-gastric tubes or Foley catheters at community residential facilities, regardless of whether or not the facility is a licensed long-term care facility.

Very truly yours,

A handwritten signature in cursive script, appearing to read "W. L. Webster", with a long horizontal flourish extending to the right.

WILLIAM L. WEBSTER  
Attorney General