



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226
www.ag.nd.gov

MEMORANDUM

TO: Darleen Bartz, Chief, Health Resource Section, North Dakota Department of Health

FROM: Edward E. Erickson, Assistant Attorney General

RE: Radiology Technicians Receiving Telephone Orders

DATE: June 10, 2011

Thank you for asking whether telephone and verbal orders may be given to a radiology technician who does not hold a state-issued license or permit under hospital licensing rules for medical records services. In my opinion, a radiology technician who does not hold a state-issued license or permit may not record orders concerning the scope of his or her duties under the administrative rules governing hospital medical record services. This limitation applies to persons holding non-governmental credentials, such as a certification from a non-profit corporation.

N.D.A.C. § 33-07-01.1-20(1)(i)(2) requires all entries in the medical record to be authenticated by the individual making the entry, and further states that telephone and verbal orders may be used if they are given only to qualified licensed personnel. The Department of Health has defined a licensed health care practitioner for purposes of hospital regulation as "an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota."¹ Therefore, qualified licensed personnel, as used in N.D.A.C. § 33-07-01.1-20(1)(i)(2) regarding entries in the patient's medical record, would include both licensed and certified individuals. But terms such as license, certificate, permit, etc., are legal terms referring to permission from a governmental authority to undertake an act which is not allowed without governmental permission.² Therefore, it is my opinion that a radiologic technologist who does not have a state-issued license or permit would not satisfy the definition of being a licensed individual for the purpose of receiving and recording telephone or verbal orders under N.D.A.C. § 33-07-01.1-20(1)(i)(2).

¹ N.D.A.C. § 33-07-01.1-01(4)(h).

² See Black's Law Dictionary, 829-30 (5th ed. 1979) (defining license for these purposes as including certificates and permits).

Darleen Bartz
June 10, 2011
Page 2

But you also asked about an individual holding a private certification. While licensed and certified are synonyms for government-granted authorization to undertake an otherwise forbidden act, there is no basis to extend that authority to a person who merely has a certification from a private entity such as a non-profit corporation or a private association. The State may license and regulate occupations in the interest of public health and safety under its police powers.³ However, while an administrative agency or political subdivision may be delegated such authority,⁴ the Legislature cannot constitutionally delegate this authority to private parties or even the federal government.⁵ And therefore, when N.D.A.C. § 33-07-01.1-01(4)(h) references "an individual who is licensed or certified," the license or certification must be from a governmental entity in order to be recognized under law.⁶

Further, even where a radiology technician has a state-issued license or permit, the medical records rule also requires that the person be qualified as well as being licensed. Qualified is a term that has not been defined. Therefore, the meaning of this term should be taken from its plain and ordinary meaning and the context in which it is used.⁷ In this instance, qualified must relate to the person's knowledge or experience in medical or health care matters. It would therefore be reasonable to conclude that when a radiologic technologist is acting to record telephone and verbal orders in a patient's medical record under N.D.A.C. § 33-07-01.1-20(1)(i)(2), that person may only so act in areas in which that individual is qualified. This specifically would relate to orders concerning the scope of duties and instructions received by the radiologic technologist. If the order does not relate to something within the scope of that individual's state-issued license or permit, then that individual would not be deemed to be qualified for purposes of recording information in that patient's medical records.

³ Bob Rosen Water Cond. Co. v. City of Bismarck, 181 N.W.2d 722, 724 (N.D.1970), Harrie v. Kirkham, Michael & Associates, Inc., 179 N.W.2d 409, 410 (N.D.1970).

⁴ Id., see also A & H Services, Inc. v. City of Wahpeton, 514 N.W.2d 855, 857-858 (N.D.1994).

⁵ Montana-Dakota Utilities Co. v. Johaneson, 153 N.W.2d 414, 421 (N.D.1967), State v. Juleson, 567 N.W.2d 145, 151 (N.D.1972), McCabe v. Workers Comp. Bureau, 567 N.W.2d 201, 204-205 (N.D.1997).

⁶ An additional, practical, reason for this conclusion is that a person holding a governmental license or certificate must meet the legal standard that is defined in the governing law, but a private entity issuing a certificate may either set meaningful standards or it may have no standards or only negligible standards. It is illegal to use false academic degrees and credentials or to operate an accreditation mill. N.D.C.C. §§ 15-20.4-15 and 15-20.4-18. However, there is no regulation of non-academic certifications.

⁷ N.D.C.C. §§ 1-02-02, 1-02-03.

Darleen Bartz
June 10, 2011
Page 3

Therefore, a radiology technician holding a state-issued license or permit may record telephone or verbal orders that are within the scope of his or her duties under the license or permit pursuant to the administrative rules governing hospital medical record services, but a radiology technician who does not hold a state-issued license or permit, such as a certification from a non-profit corporation or private association, may not so record orders.

vkk