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THE HONORABLE PAUL B. CARPENTER, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

May a Certified Registered Nurse Anesthetist lawfully administer regional anesthetics pursuant to a "standardized procedure."

CONCLUSION

A Certified Registered Nurse Anesthetist may lawfully administer a regional anesthetic when ordered by and within the scope of licensure of a physician, dentist or podiatrist but not pursuant to a "standardized procedure."

ANALYSIS

We are asked whether a Certified Registered Nurse Anesthetist may lawfully administer regional anesthetics under a standardized procedure established pursuant to section 2725[1] of the Nursing Practice Act.

Chapter 696, Statutes of 1983, added article 7 (commencing with § 2825) entitled "Nurse Anesthetists" to the Nursing Practice Act. Section 2826(a) defines nurse anesthetist to mean "a person who is a registered nurse, licensed by the board and who has met standards for certification from the board." Section 2830 provides that the Board of Registered Nursing (the board) "shall issue a certificate to practice nurse anesthesia to any person who qualifies under this article and is licensed pursuant to the provisions of this chapter." Section 2833.3 provides that nothing in the article "shall be construed to limit a certified nurse anesthetist's ability to practice nursing." Section 2833.5 provides:

> "Except as provided in Section 2725 and in this section, the practice of nurse anesthetist does not confer authority to practice medicine or surgery."

Section 2833.6 provides: "This chapter is not intended to address the scope of practice of, and nothing in this chapter shall be construed to restrict, expand, alter, or modify the existing scope of practice of, a nurse anesthetist." Thus article 7 simply provides for the certification of qualified registered nurses as "nurse anesthetists" and does not add to or subtract from the authority the nurse anesthetist has as a registered nurse. This leaves the scope of practice of the Certified Nurse Anesthetist the same as it was before certification. It means that the scope of practice of the nurse anesthetist is the same as the scope of practice authorized by his or her license as a registered nurse. Accordingly we are relegated to the Nursing Practice Act and the scope of the practice of nursing to determine whether a certified registered nurse anesthetist may administer regional anesthetics. The use of nurses to administer anesthetics has had a turbulent history in California law. We turn now to an outline of that history to better understand the recent revisions of section 2725 which defines the practice of nursing.

In the depths of the great depression one Dagmar Nelson was employed as a registered nurse in a Los Angeles hospital. She was assigned to the operating room with the duty of administering general anesthetics to patients undergoing surgery. William V. Chalmers-Francis, M.D., sought to enjoin this practice claiming that Dagmar's duties constituted the illegal practice of medicine in violation of the Medical Practice Act. Judgment denying the injunction was appealed to the California Supreme Court.

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[1] All section references are to the Business and Professions Code unless otherwise indicated.

At the time in question California statutes provided for the licensing of registered nurses but did not define or restrict their functions. The Supreme Court noted that the well-supported findings showed conclusively that everything Dagmar had done in the operating room was done under the immediate direction and supervision of the operating surgeon and his assistants. The court then stated that the evidence had established that administration of anesthetics by nurses under the immediate direction and supervision of the operating surgeon was the uniformly-accepted practice and procedure in operating rooms. The court stated twice in its opinion that such practice was not diagnosing or prescribing within the meaning of the Medical Practice Act.[2] The court then declared that "it is the legally established rule that they [the nurses engaged in such practices] are but carrying out the orders of the physicians to whose authority they are subject. The surgeon has the power, and therefore the duty, to direct the nurse and her actions during the operation." The court affirmed the judgment. (*Chalmers-Francis* v. *Nelson* (1936) 6 Cal.2d 402.)

In 1939 the Legislature enacted Business and Professions Code sections 2725 and 2726 to read as follows:

> "2725. The practice of nursing within the meaning of this chapter is the performing of professional services requiring technical skills and specific knowledge based on the principles of scientific medicine, such as are acquired by means of a prescribed course in an accredited school of nursing as defined herein, and practiced in conjunction with curative or preventive medicine as prescribed by a licensed physician and the application of such nursing procedures as involve understanding cause and effect in order to safeguard life and health of a patient and others.
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> "A professional nurse, within the meaning of this chapter, is a person who has met all the legal requirements for licensing as a registered nurse in the State and who for compensation or personal profit engages in nursing as the same is hereinabove defined.

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[2] Section 17 of the Medical Practice Act then provided in part:

"Sec. 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who shall diagnose, treat, operate for, or prescribe for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act . . ., shall be guilty of a misdemeanor. . . ." (Stats. 1933, ch. 499, p. 1276, § 2.)

"2726. This chapter confers no authority to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of any provision of law." (Stats. 1939, ch. 807, p. 2349, § 2.)

In 1961 the case of *Magit* v. *Board of Medical Examiners* (1961) 57 Cal.2d 74 was decided by the California Supreme Court. In that case Dr. Magit, a director and chief anesthesiologist in a Beverly Hills hospital employed three foreign physicians who were expert anesthetists but were not licensed to practice medicine in California. He employed them to administer anesthetics in the hospital pursuant to his authorization. The Board of Medical Examiners found that Dr. Magit aided and abetted the three physicians in the unlicensed practice of medicine and surgery in the hospital, that he was guilty of unprofessional conduct and revoked his license to practice medicine in California. Dr. Magit appealed.

The court first decided that administration of anesthetics constituted the practice of medicine and surgery under the Medical Practice Act. In this regard the court observed:

"Our statutes do not specifically provide that one who administers anesthetics must have a license to practice medicine or any of the other healing arts. Whether the administration of anesthetics by the three unlicensed persons was illegal and made Dr. Magit guilty of unprofessional conduct depends primarily upon whether it constituted the practice of 'any system or mode of treating the sick or afflicted' within the meaning of sections 2141 and 2392. If the administration of anesthetics does not come under these provisions, everyone would be free to administer them since there is no other statutory restriction which would apply. Those who administer anesthetics 'use drugs or what are known as medical preparations in or upon human beings' and, in administering spinal or epidural anesthetics, they 'penetrate the tissues of human beings' within the meaning of section 2137 of the code, which includes the quoted terms in setting forth the practice authorized by a physician's and surgeon's certificate. The application of anesthetics is obviously an integral part of the surgical treatment which it facilitates, and it falls directly within the language of sections 2141 and 2392. [[3]]

[3] Business and Professions Code sections 2141 and 2392 then provided:

Section 2141. "Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment,

"Moreover, the code speaks of anesthetics in a manner which indicates a legislative intent that their use be considered as coming within the practice of medicine. Section 2192 includes in the curriculum required of applicants for a physicians' and surgeon's certificate adequate instruction in 'surgery, including . . . [a]nesthesia,' and section 2139 provides that no chiropodist shall 'use an anesthetic other than local.' Section 2139, of course, is not intended to prohibit chiropodists from performing acts generally permitted to be done by everyone, and since it precludes a chiropodist from administering general, spinal, or epidural anesthetics, it clearly indicates that the right to give such anesthetics is restricted. (Cf. *State* v. *Catellier*, 63 Wyo. 123 [179 P.2d 203, 218] [construing Wyoming statute similar to § 2139].)

"In accord with the conclusion that anesthetization constitutes a mode of treating the sick is *People* v. *Nunn*, 65 Cal.App.2d 188, 190 [150 P.2d 479], which affirmed an osteopathic physician's conviction of conspiracy to cause a chiropractor to practice as a surgeon and to administer drugs. The opinion sets forth among the incriminating facts the administration of anesthetics by the chiropractor in the presence of the osteopath who knew that the chiropractor 'had no license to administer the anesthetic, apply the hypodermic needle or give any drug that comes within *materia medica*.' The desirability of restricting the right to administer anesthetics was recognized in *Painless Parker* v. *Board of Dental Examiners*, 216 Cal. 285, 295, where this court said: 'The right to administer anesthetics which produce local or general insensibility to pain, or drugs which may produce total or semi-unconsciousness, or otherwise affect the nervous system, should be withheld not only from all persons who are not highly skilled in the knowledge of and the use of said drugs, but also from persons who cannot produce evidence of good moral character."

The court in *Magit* next considered certain exceptions to the rule that unlicensed persons may not practice medicine. At page 62 the court observed:

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blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor."

Section 2392. "The employing, directly or indirectly, of any suspended, or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted or in the aiding or abetting of any unlicensed person to practice any system or mode of treating the sick or afflicted constitutes unprofessional conduct within the meaning of this chapter."

"Under some circumstances, persons not licensed to practice medicine in California may legally perform some medical acts, including the administration of anesthetics. For example, sections 2147-2147.6 of the Business and Professions Code permit certain persons engaged in medical study and teaching at approved hospitals to perform acts which constitute treatment of the sick, but no such exemption is applicable to the activities of Rios, Celori, and Ozbey at the Doctors Hospital, which concededly was not approved for the training of students or interns. Another example is found in *Chalmers-Francis* v. *Nelson* (1936) 6 Cal.2d 402, where it was held that a licensed registered nurse should not be restrained from administering general anesthetics in connection with operations under the immediate direction and supervision of the operating surgeon and his assistants.

"At the time of the *Chalmers-Francis* case the statutes provided for the licensing of nurses but did not define or restrict their functions. In the absence of a statutory definition the court looked to the existing custom and practice concerning the administration of anesthetics by nurses. It has generally been recognized that the functions of nurses and physicians overlap to some extent, and a licensed nurse, when acting under the direction and supervision of a licensed physician, is permitted to perform certain tasks which, without such direction and supervision, would constitute the illegal practice of medicine or surgery.[5/] [4] No custom concerning the giving of anesthetics by persons other than licensed nurses was considered in the opinion, and the court did not discuss whether the administration of anesthetics by nurses or others constituted the practice of medicine. The decision was thus based on the special status of a licensed nurse and has no application to others.

"Three years after the *Chalmers-Francis* decision, a number of provisions concerning nursing were added to the code, among which were sections 2725 and 2726. Section 2725 defines the practice of nursing and shows a legislative intent that a nurse may, under the direction of a licensed physician, perform services which require technical skill and medical

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[4] Footnote 5 in the *Magit* case reads:

"In Lesnik and Anderson, Nursing Practice and the Law (2d ed. 1955) pp. 277-279, it is said that nurses perform many functions that are medical acts, and, in the absence of statute, custom and usage generally will control the nature and scope of medical acts performed by them. Among the minimum requirements for a nurse's authority to perform such acts are that she proceed under the order and direction or supervision of a licensed physician and that she comprehend the cause and effect of the order."

knowledge. Section 2726 states that the chapter dealing with nursing does not confer any authority to practice medicine or surgery. These sections must be construed together, and when this is done it is clear that section 2726 does not mean that nurses are precluded from performing all acts which are medical or surgical in character but, rather, that they would be guilty of illegally practicing medicine or surgery only if their conduct in performing such acts did not come within the permissible scope of a nurse's functions as defined in section 2725. The definition of section 2725 is so broad that the administration of certain forms of anesthetics by a registered nurse, acting under the immediate direction and supervision of a licensed physician, may come within its scope. To what extent and under what conditions it authorizes nurses to perform such acts is not before us, and we need note only that any authority they may have in this field is derived from their special statutory position and does not affect the authority of others. Obviously, the *Chalmers-Francis* decision related only to the then existing practice and to the particular general anesthetics in use at that time, and it is not controlling with respect to any other anesthetic or any other method of producing anesthesia.

"In the absence of some statutory basis of an exception, such as those with respect to nurses and persons engaged in medical study or teaching, one who is not licensed to practice medicine or surgery cannot legally perform acts which are medical or surgical in character, and supervision does not relieve an unauthorized person from penal liability for the violation of statutes which, like section 2141 of the code, prohibit the unlicensed practice of medicine."

In 1972 this office issued an opinion published in 56 Ops.Cal.Atty.Gen. 1 concluding that a registered nurse could not lawfully administer spinal, epidural or regional anesthesia or analgesia and that in administering general anesthetics a registered nurse must be supervised by a licensed physician or dentist. The opinion was based on the language of the *Magit* case limiting the reach of the *Chalmers-Francis* case to general anesthesia.

The next significant development in the law defining the practice of nursing was the revision of sections 2725 and 2726 in 1974. That revision commenced with the introduction of AB 3124 by Assemblyman Gordon Duffy sponsored by the California Nurses Association. As introduced AB 3124 provided:

"2725. In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities.

"The practice of nursing within the meaning of this chapter means helping people cope with those difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof, and includes all of the following:

"(a) Any procedure which may be performed by a person licensed pursuant to chapter 6.5 (commencing with Section 2840). [Re licensed vocational nurses.]

"(b) The planning and performance of direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients, and the performance of disease prevention and restorative measures.

"(c) The planning and performance of direct and indirect patient care services, including, but not limited to, the administration of medication and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen prescribed by a physician, dentist or podiatrist.

"(d) The performance of basic medical care, testing, and prevention procedures, including but not limited to, skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

"(e) Observation of signs and symptoms of illness, reaction to treatment, general behavior, or general physical condition and (1) determination of whether such signs, symptoms, reactions, behavior or general appearance exhibit abnormal characteristics; and (2) implementation, based on observed abnormalities, of appropriate reporting, referral, emergency treatment, or standardized appropriate procedures or changes in treatment regimen."

Section 2 of the original bill would have repealed section 2726 which then read:

"2726. This chapter confers no authority to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of any provision of law."

The California Nurses Association submitted a "Supportive Statement for AB 3124" which included the following comments regarding its provisions as originally introduced. Comment on the first two paragraphs reads:

"This is a broad, general and comprehensive definition of nursing to be followed by a specific description of functions within that definition. The bill states that the definition of nursing includes '. . . *all* of the following.' The reasons for making the list of defined functions all inclusive are:

"1. To define what a person licensed under the law is able to do which would otherwise be in violation of the Medical Practice Act:

"2. To define explicitly what other people cannot do if they are not licensed as registered nurses; and

"3. To provide guidance to the licensing board in determining what should be included in an approved education program to assure that licensees are able to perform in the manner described."

The California Nurses Association comment on subdivisions (b), (c), (d) and (e) read:

(b) "This describes the traditional, unique, and long established nursing functions that do not depend on physician direction."

(c) "This defines the traditional and long established nursing functions that do depend on physician direction."

(d) "It is envisioned that under this provision nurses will function under protocols established within an agency or institution jointly by medical and nursing staff."

(e) "This paragraph describes current practice regarding nursing assessment, decision-making and intervention."

The California Nurses Association comment on the repeal of section 2726 reads:

"AB 3124 removes this restrictive language from the current Nurse Practice Act. As medicine and nursing have evolved and continue to evolve, nurses have moved and will continue to move into areas previously considered medical practice. Many tasks that physicians are asking and expecting nurses to do today are considered medical acts (i.e., defibrillation, removal of sutures, withdrawing arterial blood and testing for blood gases, starting IVs). As long as this language remains it creates questions as to what

nurses are authorized to do that is otherwise prohibited by the Medical Practice Act."

These comments of the California Nurses Association are significant in explaining the origin of certain language and its purpose when AB 3124 was first introduced. Our task now is to ascertain the intent and purpose of the Legislature with respect to the version which was finally enacted into law. More indicative of legislative intent is the Analysis of AB 3124 prepared by the staff of the Assembly Committee on Health. That analysis stated (inter alia):

"AB 3124 is essentially an attempt to change the description of nursing practice from a very general and rather ambiguous definition to a more detailed and specific description. The language of AB 3124 has been hammered out in discussions between the California Hospital Association, California Medical Association, California Nurses Association and other interested parties, including the respective license boards. With one exception (see Comments) the author's amendments to the bill reflect general agreement of the parties.

"COMMENTS: 1. Unfortunately, even this attempt at spelling out the definition of nursing carries with it certain ambiguities. Perhaps this is unavoidable without a detailed, step-by-step listing of every technical procedure that nurses shall be allowed to perform. In any case, the following points may require clarification:

"a. The language on page 2, lines 17-21 [that part of the second paragraph preceding subdivision (a) in the original version of AB 3124 as quoted above], is very broad, and could include the rendering of well-meaning assistance to an ill person by any unlicensed person.

"b. The functions that are described on lines 25 through 39 [subdivisions (b) through (d) quoted above] are not well delineated. For example, on lines 28 and 29 [in subdivision (b)], 'disease prevention and restorative measures' appear similar to the notion of 'basic health care' on line 36 [in subdivision (d)].

"2. Subdivision (e) on page 2 of the bill is perhaps the most substantive feature of this bill, since it sets forth the basic circumstances under which a nurse would independently initiate procedures in rendering care to a patient, based upon the nurse's own judgment at the time. The specific clause upon which most discussion has focused is 'implementation,

based on observed abnormalities, of appropriate reporting, or referral, or standardized procedure, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.' This means that the independence of the nurse will be a direct function of what these 'standardized procedures' are. AB 3124 does not contain a definition of 'standardized procedures.'

"3. In its original form this bill deleted the current provision in the law which prohibits nurses from practicing medicine. The authors amendments restore this prohibition. Instead, the amendments clarify this prohibition to remove language which, if left in the law, would contradict the basic description of nursing as provided in this bill."

Amendments to AB 3124 deleted the first subdivision referring to licensed vocational nurses, restored section 2726 in abbreviated form and made other changes and additions to AB 3124 before its final enactment as chapter 355, Statutes of 1974. Furthermore another bill (AB 2879) was enacted in the same session as chapter 913, Statutes of 1974, which changed subdivision (c) and the definition of standardized procedures. The end product of the 1974 session of the Legislature amended sections 2725 and 2726 to read as follows:

"2725. In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems which provide for collaboration between physicians and registered nurses. Such organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

"The practice of nursing within the meaning of this chapter means those functions helping people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:

"(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

"(b) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen prescribed by a physician, dentist, or podiatrist.

"(c) The performance, according to standardized procedures, of basic health care, testing, and prevention procedures, including, but not limited to, skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

"(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics: and (2) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

"'Standardized procedures', as used in this section, means either of the following:

"(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

"(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Such policies and protocols shall be subject to any guidelines for standardized procedures which the Board of Medical Examiners and the Board of Nursing Education and Nurse Registration may jointly promulgate; and if promulgated shall be administered by the Board of Nursing Education and Nurse Registration.

"Nothing in this section shall be construed to require approval of standardized procedures by the Board of Medical Examiners or the Board of Nursing Education and Nurse Registration.

"2726. Except as otherwise provided herein, this chapter confers no authority to practice medicine or surgery."

In an unpublished opinion issued in 1976 (Opn. No. I.L. 76-186 formerly CV 76/77 I.L.) this office concluded that the revision of section 2725 in 1974 had not changed our prior opinion in 56 Ops.Cal.Atty.Gen. 1 that registered nurses were not authorized to administer spinal, regional or epidural anesthesia. In that opinion we stated:

"The declared legislative intent in amending section 2725 as expressed in the section itself was to recognize 'the existence of overlapping functions between physicians and registered nurses and to permit *additional* sharing of functions.' (Emphasis added.)

"The 'overlapping function' language appears to have been taken from *Magit* v. *Board of Medical Examiners*, *supra*, 57 Cal.2d at 83. It could thus be inferred that the legislative intent, in authorizing additional sharing of functions, was to permit registered nurses to administer those forms of anesthesia which *Chalmers* had not authorized them to administer. For reasons discussed below, such an inference is inappropriate.

"It is implicit in the revision of section 2726 that the Nursing Practice Act now authorizes nurses to perform some procedures previously confined to the practice of medicine or surgery. Furthermore section 2726 provided no authority to practice medicine or surgery, whereas section 2726 now bars the practice of medicine or surgery by nurses, *except* as provided in the Nursing Practice Act.

"Furthermore, section 2726 formerly prohibited a nurse from undertaking the prevention, treatment or cure of pain. No such limitation is contained in section 2726 as presently enacted. In fact, section 2725(b) specifically authorizes a nurse to administer medications necessary to implement a treatment and anesthesia constitutes a mode of surgical treatment.***10/*** [5]

[5] Footnote 10 reads:

"10. It also constitutes the practice of medicine. *Magit* v. *Board of Medical Examiners*, *supra*, 57 Cal.2d at 81."

"In light of the preamble to section 2725, and in light of section 2726, the provision in section 2725(b) that nurses may administer 'medication prescribed by a physician' might have supported the conclusion that nurses could administer spinal, regional and epidural anesthesia. ***11/*** [6] Subsequent developments, however, compel a different result."

Our conclusion was based upon the passage of the Nurse Anesthetist Act (Assembly Bill 942) in 1975 and its veto by the Governor. We pointed to section 2831.2 of the proposed Act which read:

"'*In addition* to nursing activities authorized pursuant to Section 2725 . . . a nurse anesthetist may administer an anesthetic agent or agents, may terminate anesthesia, and may report and record a patient's condition under anesthesia.' ***14/*** [7] (Emphasis added.)"

We reasoned that:

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[6] Footnote 11 reads:

"11. Section 2725(c) also provides that nurses may perform 'according to standardized procedures, of basic health care, testing, and prevention procedures, . . .' such as skin tests, immunization techniques and blood withdrawals. Section 2725(d) authorizes nurses to observe 'signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, . . .' and to implement standardized procedures or changes in treatment 'based on observed abnormalities. . . .' These subsections clearly authorized functions involving far less skill and risk than the administration of regional, spinal or epidural anesthesia.

Section 2725 also provides that the Legislature intended to provide 'clear legal authority for functions and procedures which have common acceptance and usage.' It is common nationally for certified nurse anesthetists to administer all forms of anesthesia (see AANA Fact Book, American Association of Nurse Anesthetists, April 1974), but this office has been informed by the California Association of Nurse Anesthetists that it is not commonly accepted procedure throughout California. Certainly, it would be an anomaly to permit the administration of regional, spinal and epidural anesthesia by nurse anesthetists in some areas or facilities of this State, but to consider it the illegal practice of medicine elsewhere."

[7] Footnote 14 reads:

"14. Section 2831.5 of the Bill also provided that after July 1, 1976, no nurse other than a Board-certified nurse anesthetist could administer anesthesia. Rather than implying that nurses could previously administer all forms of anesthesia, section 2831.5 is simply consistent with an intent that after July 1, 1976, *Chalmers*, *supra*, would effectively be overruled."

> "This language clearly indicates that the Legislature itself did not believe that section 2725 authorized the administration of all forms of anesthesia by nurses or nurse anesthetists, regardless of any interpretation to which sections 2725 and 2726 might otherwise reasonably be susceptible."

Chapter 1161, Statutes of 1978, amended the last two sentences of section 2725 to change the names of regulatory agencies. The "Board of Medical Examiners" was changed to the "Division of Allied Health Professions of the Board of Medical Quality Assurance" and the "Board of Nursing Education and Nurse Registration" was changed to "Board of Registered Nursing." No other changes were made by the 1978 amendment.

The latest amendments to section 2725 were enacted by chapter 406, Statutes of 1980. The words "including basic health care" were inserted in the basic definition of the practice of nursing. Subdivision (b) was amended to change the words "prescribed by a physician" to "ordered by and within the scope of licensure of a physician" and clinical psychologists were added to the professions listed therein. Subdivision (c) was amended by deleting the words "according to standardized procedures, of basic health care, testing, and prevention procedures, including but not limited to" skin tests, etc. Section 2725 now reads:

> "In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems which provide for collaboration between physicians and registered nurses. Such organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services."
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> "The practice of nursing within the meaning of this chapter means those functions including basic health care, which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problem or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all the following:

"(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

"(b) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

"(c) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

"(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (2) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures."

"'Standardized procedures', as used in this section, means either of the following:

"(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses;

"(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Such policies and protocols shall be subject to any guidelines for standardized procedures which the Division of Allied Health Professions of the Board of Medical Quality Assurance and the Board of Registered Nursing may jointly promulgate; and if promulgated shall be administered by the Board of Registered Nursing.

> "Nothing in this section shall be construed to require approval of standardized procedures by the Division of Allied Health Professions of the Board of Medical Quality Assurance or the Board of Registered Nursing."

The second paragraph of section 2725 provides a basic definition of the practice of nursing with examples of services included in the definition. The basic definition includes within the practice of nursing any function which meets a three pronged test:

(1) The function must help people cope with the difficulties of daily living.

(2) The function must be associated with their actual or potential health or illness problems or the treatment thereof.

(3) The function must require a substantial amount of scientific knowledge or technical skill.

The basic definition is very broad. The functions of any health care professional clearly meet the three pronged test in section 2725. Diagnosing the most obscure illness or performing the most delicate surgery would satisfy this basic definition of the practice of nursing. Does this mean that the Legislature intended to authorize registered nurses to perform all the functions being performed by all health care professionals, including physicians, surgeons, dentists, podiatrists, psychologists, chiropractors and pharmacists? We think not.

In the first place such an intent would fly in the face of section 2726 enacted as part of the same statute which enacted the basic definition. Section 2726 declared that "this chapter [the Nursing Practice Act] confers no authority to practice medicine or surgery" "[e]xcept as otherwise provided herein." It is difficult to reconcile section 2726 with the broad scope of the basic definition of the practice of nursing contained in section 2725. Had the Legislature intended to authorize registered nurses to perform all the functions of other health professionals as the three pronged test suggests there would have been no reason to enact section 2726.

In the second place an intent to grant registered nurses the authority to perform all the functions of other health professionals would be inconsistent with the Legislature's purpose and intent expressed in the first paragraph of section 2725. The intent to permit additional sharing of functions between physicians and registered nurses within organized health care systems implies that there are and will continue to be some functions which will not be shared by the two professions.

Finally, the concept of the "standardized procedures" developed through collaboration of administrators, physicians and nurses in organized health care systems to which certain functions of registered nurses must conform denotes a form of control over such functions which is at odds with the notion that the authority of physicians and nurses are equivalent.

If the practice of nursing is not as all encompassing as the three pronged test of the basic definition suggests, what then limits such practice? The answer is found in the examples which accompany the basic definition.

At the end of the basic definition in section 2725 the words "and includes all the following:" appear, followed by subdivisions (a) through (d). The term "includes" is ordinarily a word of enlargement and not of limitation and the statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions. (*Paramount Gen. Hosp. Co.* v. *National Medical Enterprises, Inc.* (1974) 42 Cal.App.3d 496, 501.) Whether the word "includes" used in a statute is used as a word of enlargement or limitation depends on the intention of the Legislature. (*Coast Oyster Co.* v. *Perluss* (1963) 218 Cal.App.2d 492, 501.) We have found nothing in section 2725 or the Nursing Practice Act to suggest that the Legislature intended the word "includes" at the end of the basic definition in section 2725 to be a word of limitation, limiting the basic definition to those things mentioned in subdivisions (a) through (d). We conclude therefore that it was used in its ordinary sense as a word of enlargement. (*Paramount Gen. Hosp. Co.* v. *National Medical Enterprises, Inc.*, *supra*.)

> "To ascertain the meaning of the statute, the phrases used therein must be construed in connection with the phrases with which they are associated, and particular expressions qualify those which are general (maxim of *ejusdem generis*, as codified, sec. 3534, Civ. Code; . . .)" (*In re Marquez* (1935) 3 Cal.2d 625, 629.)

This rule of construction has been stated and explained as follows:

> "Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following a general, the doctrine is equally applicable, restricting application of the general term to things that are similar to those enumerated.
>
> "The doctrine of ejusdem generis is an attempt to reconcile an incompatibility between specific and general words in view of other rules of

construction that all words in a statute are given effect, if possible; that parts of a statute are to be construed together; and that the legislature is presumed not to have used superfluous words. If the general words are given their full and natural meaning, that is, the meaning they would receive in the abstract, they would include the objects designated by the specific words, making the latter superfluous. If, on the other hand, the series of specific words is given its full and natural meaning, the general words are redundant in part. The rule accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.

"The resolution of this conflict by ascribing to the series its natural meaning and by restricting the meaning of the general words to things ejusdem generis [meaning literally, "of the same kind"] with the series is justified on the ground that had the legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words, but would have used only one compendious expression." (Southerland, Statutory Construction, 4th ed, § 47.17.)

The maxim of *ejusdem generis* must be applied with caution. It is only a rule of construction to aid in the ascertainment of legislative intention and will not be applied to defeat that intention. (*People* v. *Silver* (1940) 16 Cal.2d 714, 721.) It is applicable only where the persons and things specifically enumerated have common characteristics. (*Miller* v. *McKinnon* (1942) 20 Cal.2d 83, 94.) Like all rules of construction it applies only when there is some ambiguity in the statute which creates a need for construction.

Section 2725 appears to be a good candidate for application of the *ejusdem generis* maxim. The conflicts between the breadth of the basic definition and other provisions of the same section as well as with section 2726 which have been pointed out create an ambiguity which must be resolved by interpretation. The practices specified in subdivisions (a), (b), (c) and (d) of section 2725 share the common characteristics of providing health care services to patients and potential patients of an intermediate nature. This is consistent with the Legislature's expressed intention of "recognizing the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems." Applying the maxim we construe the basic definition of the practice of nursing in section 2725 to include only those functions which are like those specifically enumerated in subdivisions (a), (b), (c) and (d).

Thus the fact that the administration of a regional anesthetic by a registered nurse meets the three pronged test of the basic definition of nursing, it does not follow that section 2725 authorizes a registered nurse to administer regional anesthetics. We must examine the functions described in subdivisions (a) through (d) to determine whether the function in question, here, the administration of regional anesthetics, is either included in subdivisions (a) through (d) or if not, whether it is like any of those functions and thus by either route comes within the statutory definition of the practice of nursing.

Before turning to an examination of subdivisions (a), (b), (c) and (d) of section 2725 to determine whether any of them authorize nurses to administer regional anesthesia we pause to explain our understanding of the meaning of the terms anesthesia and regional anesthesia and the manner in which the same are administered.

> "Anesthesia is defined as a loss of all modalities of sensation. Anesthesiology, the practice of anesthesia, may be defined as the art and science of relieving pain and anxiety while at the same time maintaining the vital activities of the body during surgery. Surgical anesthesia requires a loss of sensation with mental and muscular relaxation sufficient to permit surgical procedures to be performed." (Attorney's Textbook of Medicine, 3rd ed., by Roscoe N. Gray, M.D., vol. 3, § 58.00.)

We assume the question refers to the administration of drugs by a nurse anesthetist to produce anesthesia in a patient undergoing surgery. We are therefore not concerned with the administration of drugs in contexts other than as incidental to a surgical procedure. As the court observed in *Magit*, *supra*, at page 81, "[t]he application of anesthetics is obviously an integral part of the surgical treatment which it facilitates."

In footnote 2 of 56 Ops.Cal.Atty.Gen. 1, 4 we set forth the various kinds of anesthesia and their definitions as follows:

> "'If the drug blocking the conduction is applied directly to the operating field (e.g., a drop of cocaine in the eye) it is called *topical anesthesia*; if injected into the operating area, *local anesthesia*. Injection around the nerves leading from the operating field is called *nerve block*. If the drug is placed in proximity to nerves close to where they enter the coverings of the spinal cord, it is called *epidural anesthesia* and if it is injected into the space within the sheath enveloping the spinal cord, it is *spinal anesthesia*.
>
> "'If the brain itself is influenced by drugs, so that a painful stimulus is not felt as such, the state is called *analgesia*. If the drug produces

unconsciousness as well, it is *general anesthesia*.' (Lawyers' Medical Cyclopedia, sec. 25.3, p. 568.)

"'The term *regional anesthesia* signifies that only a portion of the body is made anesthetic. The term *conduction anesthesia* is also used to describe this type of anesthesia because the conduction of nerve impulses to and from a particular portion of the body is stopped. Included under this method are topical and local anesthesia, nerve-blocking anesthesia, and spinal anesthesia.' (Lawyers' Medical Cyclopedia, sec. 25.26, p. 607.)"

Thus we consider the term regional anesthesia to refer to those forms which make only a portion of the body anesthetic including local, spinal, and epidural anesthesia.

We turn now to an examination of subdivisions (a), (b), (c) and (d) of section 2725 for specific functions of nurses, which, together with all functions of a like nature comprise the lawful practice of nursing. Each subdivision is examined for its relevance to the administration of anesthetics by nurses.

Subdivision (a) provides:

"(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures."

This language, incorporated in the original AB 3124 in 1974 was intended by its sponsor, the California Nurses Association, to describe "the traditional, unique and long established nursing functions that do not depend on physician direction." The Legislature appears to have acquiesced in that description since no change was made in the language. So understood, subdivision (a) would not encompass the administration of anesthetics.

Subdivision (b) of section 2725 provides:

"(b) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure, of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code."

We have previously recognized that a drug used upon a human being to produce anesthesia to facilitate surgery or other medical procedures was a "medication and therapeutic agent"

within the meaning of subdivision (b). (64 Ops.Cal.Atty.Gen. 240, 250 and fn. 5 (1981); 65 Ops.Cal.Atty.Gen. 427, 432-433 (1982).) Subdivision (b) provides express authority for a registered nurse to administer an anesthetic when it is ordered by a physician, dentist, podiatrist or clinical psychologist acting within the scope of his or her license. As we pointed out in 64 Ops.Cal.Atty.Gen. 240, 252 the authority granted by subdivision (b) is limited to orders by the doctor made on an individualized patient basis and is based upon the doctor's judgment as to the treatment necessary for a particular patient. Once the doctor has evaluated the patient's condition there is nothing in the statute which would limit the orders which the doctor might give a nurse as to the kind of medications and therapeutic agents to use to implement a course of treatment. Nothing in subdivision (b) suggests any statutory basis for concluding that registered nurses may lawfully administer general anesthetics but not regional anesthetics. That distinction which originated in the *Magit* case dicta limiting the *Chalmers-Francis* case to its facts was effectively eliminated by the enactment of subdivision (b). We conclude that a registered nurse may lawfully administer an anesthetic, general or regional, under the authority of subdivision (b) of section 2725 when a physician, dentist or podiatrist,[8] acting within the scope of his or her license, orders such nurse to administer the same to a particular patient. In reaching this conclusion we note that the revision of section 2725 in 1974 effectively overrules our 1972 opinion published in 56 Ops.Cal.Atty.Gen. 1. With respect to our 1976 unpublished opinion (No. I.L. 76-188), we believe the reliance placed therein upon the actions taken with respect to a bill which never became the law to negate the express authority found in section 2725(b) was mistaken and for that reason the conclusion reached in that opinion is disapproved.

Subdivision (c) of section 2725 provides:

> "(c) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries."

None of these functions would appear to involve the administration of anesthetics.

Subdivision (d) of section 2725 provides:

> "(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (2) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment

[8] Clinical psychologists are omitted because prescribing drugs is not within their scope of practice. (See § 2904.) Their inclusion in section 2725(b) relates to other patient care services.

regimen in accordance with standardized procedures, or the initiation of emergency procedures."

The wording of subdivision (d) is little changed from subdivision (e) in the original version of AB 3124 in 1974 except that a definition of standardized procedures has been added to the section. The California Nurses Association commented that this subdivision "describes current practice regarding nursing assessment, decision-making, and intervention." The Analysis of AB 3124 by the Assembly Health Committee observed that this subdivision "is perhaps the most substantive feature of this bill, since it sets forth the basic circumstances under which a nurse would independently initiate procedures in rendering care to a patient, based upon the nurse's own judgment at the time." The committee analysis further observed that "the independence of the nurse will be a direct function of what these 'standardized procedures' are" and pointed out the need to define the term.

How does subdivision (d) of section 2725 relate to the administration of anesthetics by a nurse anesthetist to facilitate surgery by a physician? It would appear anomalous for the nurse anesthetist to administer an anesthetic in accordance with a "standardized procedure" as defined, rather than in accordance with the orders of the physician who is performing the surgery. This would mean that the manner in which the anesthetic is administered by the nurse anesthetist would be governed by the "policies and protocols" developed through collaboration among administrators and health professionals, including physicians and nurses by an organized health care system. We doubt that the Legislature intended to remove the control over an integral part of the surgical procedure from the physician responsible for the surgery and place it in the hands of a nurse acting in accordance with a standardized procedure. Standardized procedures were meant to govern the nurse's actions in situations when the physician responsible for the patient's care is absent and they do not apply when the responsible physician is present and orders a different procedure. This does not mean that the physician responsible for the patient's surgery may not direct the nurse anesthetist by means of some written instructions. It does mean that the physician responsible for the surgery retains control over the actions of the nurses involved in the surgery, including the nurse anesthetist, in spite of any standardized procedures which may have been developed. This is necessary to permit the physician to react to conditions which develop in the patient's best interest, which conditions may not have been foreseen at the time the standardized procedures for nurses were developed.

We are bolstered in this interpretation of subdivision (d) of section 2725 by another rule of statutory construction. As recently stated by our Supreme Court:

> "When used in a statute words must be construed together in context, keeping in mind the nature and obvious purpose of the statute where they appear, and the various parts of a statutory enactment must be harmonized

by considering the particular clause or section in the context of the statutory framework as a whole." (*People* v. *Black* (1982) 32 Cal.3d 1, 5.)

In 64 Ops.Cal.Atty.Gen. 240, 250-251, we observed:

"Subdivision (d) authorizes nurses to perform procedures according to 'standardized procedures,' but is silent as to whether those procedures might entail the administering, furnishing or prescribing of drugs. Subsection (b), in contrast addresses that matter. It provides that the practice of nursing includes the function of the 'administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention or rehabilitative regimen ordered by a physician. . . . (§ 2725, subd. (b).) Thus, whatever the outer limits of the *general* authorization for nurses to perform health care functions according to 'standardized procedures' pursuant to subdivision (d) might be, they are circumscribed by the *specific* limitations contained in subdivision (b) by which a treatment regimen may only be undertaken *as ordered by a physician*. (Citations.) No mention is made for a registered nurse to otherwise administer medications, even under 'standardized procedures' and the authority to perform functions pursuant to the latter does not expressly extend to the 'administration of medications and therapeutic agents.' Indeed, the 5 year old authority in subdivision (c) for nurses to perform 'basic health care, testing and prevention procedures' according to 'standardized procedures' was deleted in 1980.

"We are convinced that the 'standardized procedures' mechanism does not accommodate the requirements set forth in subdivision (b). We perceive its specific mention that nurses may administer medications 'necessary to implement a regimen ordered by a physician' to be indicative of a legislative intent that (1) a course of treatment involving medications be based on a *physician's* judgment in each individual case and (2) that that treatment be *only as ordered by the physician*. A physician must ascertain the relevant facts about a patient to enable him to make a diagnosis and provide a course of treatment, and this must be done on an individualized patient basis. (Cf. § 2242, formerly § 2399.5; Health & Saf. Code § 11210.) A physician cannot delegate to a nurse his authority to diagnose and to direct a course of treatment that he deems appropriate although he may utilize the services of others to help him ascertain the facts and to carry out his ordered treatment. (Cf. 45 Ops.Cal.Atty.Gen. 116, 117 (1965).) In the performance of functions under 'standardized procedures' however, it is the registered nurse and not the physician who makes the assessment of the patient's condition, discerns abnormalities and then takes action according to a protocol established by a

> 'standardized procedure.' Although the establishment of a protocol takes place through collaboration with physicians, we do not consider that participation to be tantamount to their 'ordering' a course of treatment involving medication within the meaning of subdivision (b). There is certainly no express or implied indication that a protocol should serve as such and its general nature is at odds with the notion of an order for medication, i.e., a prescription, expressed elsewhere in the Codes, involving as it does direction for medication given on an *individualized* patient basis."

We conclude that a registered nurse and thus a Certified Registered Nurse Anesthetist may lawfully administer a regional anesthetic when ordered by and within the scope of licensure of a physician, dentist or podiatrist but not pursuant to a "standardized procedure" as defined in section 2725.

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