

**VOLUME NO. 36****Opinion No. 18**

**BOARD OF NURSES — Practice of nursing, paramedical specialists;  
MEDICINE — Montana Medical Practice Act, paramedical specialists;  
NURSES — Montana Nursing Practice Act, licensing provisions,  
paramedical specialists; Sections 66-505, 66-603, 66-905, 66-1012, 66-  
1221, 66-1222, 66-1227, 66-1228, 66-1231, 66-1232, 66-1243, 66-  
1305, 66-1403, 66-2502, R.C.M. 1947.**

**HELD: 1. A paramedical specialist may not engage in the practice of  
nursing without being licensed under the provisions of the  
Montana Nursing Practice Act.**

**2. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of section 66-1243, R.C.M. 1947.**

**3. Persons engaged in professions enumerated in section 66-1012(2)(c), (d), (e), (f), and (g), R.C.M. 1947, are exempt from the licensing provisions of the Montana Nursing Practice Act.**

August 28, 1975

Mrs. Gertrude Malone, R.N.  
 Executive Secretary  
 Montana Board of Nurses  
 LaLonde Building  
 Helena, Montana 59601

Dear Mrs. Malone:

You have requested my opinion on the following questions:

1. May a paramedical specialist as referred to in section 66-1012(2), R.C.M. 1947, practice nursing as defined by section 66-1222, R.C.M. 1947, without being licensed under the provisions of the Montana Nursing Practice Act?
2. If the answer to (1) above is "yes," then are the provisions of section 66-1243(3) and (4), R.C.M. 1947, applicable to a paramedical specialist?
3. If the answer to (1) above is "yes," are the occupations and professions enumerated in section 66-1012(2)(c), (d), (e), (f) and (g), R.C.M. 1947, also exempt from the licensing and penal provisions of the Montana Nursing Practice Act?

The Montana Medical Practice Act defines the practice of medicine at section 66-1012(1), R.C.M. 1947, as:

. . .the diagnosis, treatment, or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, method, devices, or instrumentalities.

All persons who engage in the practice of medicine are required to be licensed under the Act except those persons who perform specified acts enumerated in section 66-1012(2), R.C.M. 1947. Among the acts exempted are:

- (j) The rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses;. . .
- (1) The rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exception does not extend the scope of any such paramedical specialist;. . .
- (3) Licenses referred to in subsection (2) of this section, who are licensed to practice a limited field of healing arts, shall confine

themselves to the field for which they are licensed or registered and to the scope of their respective license, . . .

“Registered and other nurses” are exempt from the licensing provisions of the Medical Practice Act but are required to be licensed under provisions of the Montana Nursing Practice Act, section 66-1221, et seq., R.C.M. 1947. Prior to being licensed as either a registered or practical nurse, applicants must hold a diploma from an approved school of nursing (sections 66-1227 and 66-1231, R.C.M. 1947), and successfully complete a written examination or be licensed in another state or territory (sections 66-1228 and 66-1232, R.C.M. 1947).

The licensing provisions of the Montana Nursing Practice Act not only apply to “registered and other nurses”, but also to “any person practicing or offering to practice” professional or practical nursing. Section 66-1221, R.C.M. 1947.

Section 66-1222(3)(a), R.C.M. 1947, defines the practice of professional nursing as:

. . .the performance for compensation of **an act in the observation, care and counsel of the ill, injured, or infirm, or in the maintenance of health, or prevention of illness of others**, or in the supervision and teaching of other personnel, or the **administration of medications and treatments**, prescribed by a person licensed in this state to prescribe such medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science. (Emphasis supplied)

Section 66-1222(3)(b), R.C.M. 1947, defines the practice of practical nursing as:

. . .the performance for compensation in the **care of the ill, injured, or infirm, or acts selected by and performed under the direction of a registered professional nurse, or a person licensed** in this state to prescribe medications and treatments; and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing. (Emphasis supplied)

The purpose of the Montana Nursing Practice Act is to “safeguard life and health” by insuring within reasonable and practical limits that those persons practicing professional and practical nursing are competent and qualified. The licensing provisions and qualifications required of an applicant are the means of providing that “safeguard”.

The term “paramedical specialists” is not defined in either the Medical Practice Act or the Montana Nursing Practice Act. In fact, this particular specialty of the medical world is not defined anywhere in the Revised Codes of Montana, nor are there any provisions for licensing such a person or setting forth his qualifications to engage in the practice of a paramedical specialist. Just what duties, functions and capabilities such a specialist may perform or engage in are not clear.

However, whatever he does must be done under the "personal and responsible direction and supervision of a person licensed. . .to practice medicine". Does this language mean that a paramedical specialist may perform surgery as long as it is done under the "personal and responsible direction and supervision of a person licensed. . .to practice medicine"? I think not. Nor do I believe that such a paramedical specialist may engage in the practice of such specialized areas as dentistry, chiropody, optometry, osteopathy or nursing without having first demonstrated to some responsible agency or board his proficiency and qualifications in these areas.

An analogous situation is presented when one looks at the other exemptions contained in the Medical Practice Act. Section 66-1012(2), R.C.M. 1947, exempts persons engaged in the practice of dentistry, podiatry, optometry, osteopathy, chiropractic, and physical therapists. While these persons are exempt from the licensing provisions of the Medical Practice Act, it is significant to note that all of these practitioners are required to meet certain qualifications and to be licensed under separate statutes before practicing their respective professions or occupations.

Based on the foregoing and absent a separate licensing provision to insure that life and health will be safeguarded, it is clear that a paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act.

Since the answer to your first question is "no," the issues presented by your second and third questions are now moot. However, if a paramedical specialist should engage in the practice of nursing without being licensed under the provisions of the Medical Practice Act, the Montana Nursing Practice Act or some other act peculiar to that profession or occupation, then such a specialist would be subject to the penal provisions of section 66-1243 (3) and (4), R.C.M. 1947.

In your third question you referred to several acts which were exempt from the licensing provisions of the Medical Practice Act. As pointed out above, all persons who engage in these acts are licensed under a separate statute. (Dentists, section 66-905, R.C.M. 1947; chiropractors, section 66-505, R.C.M. 1947; podiatrists, section 66-603, R.C.M. 1947; optometrists, section 66-1305, R.C.M. 1947; osteopaths, section 66-1403, R.C.M. 1947; and physical therapists, section 66-2502, R.C.M. 1947.)

Since all of these professions and occupations are licensed under separate statutory provisions, they are also exempt from the licensing requirements of the Montana Nursing Practice Act, even though they may engage in or infringe upon the practice of nursing while performing their particular specialty.

**THEREFORE, IT IS MY OPINION:**

1. A paramedical specialist may not engage in the practice of professional or practical nursing without being licensed under the provisions of the Montana Nursing Practice Act.

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2. If a paramedical specialist does engage in the practice of professional or practical nursing without being licensed under the Montana Nursing Practice Act, he is subject to the penal provisions of section 66-1243, R.C.M. 1947.

3. Persons engaged in professions and occupations as enumerated in section 66-1012(2)(c), (d), (e), (f) and (g), R.C.M. 1947, are exempt from the licensing provisions of the Montana Nursing Practice Act.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General