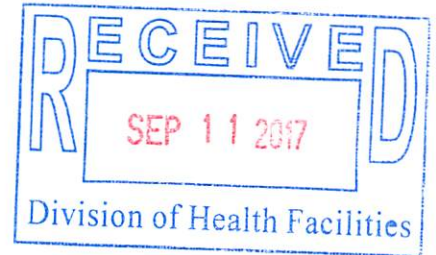




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MEMORANDUM

TO: Darleen Bartz, Health Resources Section Chief

FROM: Edward Erickson, Assistant Attorney General

RE: Opioid Antagonists and the Nurse Aide Registry

DATE: September 7, 2017

Thank you for asking whether individuals on the Nurse Aide Registry are deemed to be health care professionals for purposes of N.D.C.C. § 23-01-42, which is the new statute providing for increased availability and use of opioid antagonists in order to reduce deaths cause by opioid overdoses. In my opinion, individuals on the Nurse Aide Registry are not health care professionals as defined in this statute and may not act as such for the statute's purposes. However, these individuals may possess and administer opioid antagonists under this statute just as any other individuals may without regard to their registry status.

Newly enacted N.D.C.C. § 23-01-42 allows health care professionals to directly or by standing order prescribe, distribute, or dispense an opioid antagonist to individuals at risk of an opioid-related overdose or to a family member, friend, or other individual in a position to assist an individual at risk of an opioid-related overdose.¹ The term health care professional "may include a physician, physician assistant, advanced practice registered nurse, and pharmacist acting in the professional's scope of practice."² The words "may include" imply that the list of professionals is not exclusive, and that other, similar, licensed professionals may also be deemed a health care professional for these purposes.³

However, the licensed professional must be acting "within the scope of practice for that profession."⁴ Further, N.D.C.C. § 23-01-42 states specifically that "[t]his section does not expand the scope of practice of a health care professional."⁵ A review of the statutes, N.D.C.C. ch. 23-44, and the administrative rules, N.D.A.C. ch. 33-43-01,

¹ N.D.C.C. § 23-01-42(2).

² N.D.C.C. § 23-01-42(1)(a).

³ Resolution Trust Corp. v. Dickinson Econo-Storage, 474 N.W.2d 50 (ND 1991).

⁴ Id.

⁵ N.D.C.C. § 23-01-42(6).

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governing the Nurse Aide Registry do not show that any individual registered, including medication assistants, are thereby authorized to “prescribe, distribute, or dispense” medications. Medication assistants may only deliver or give medications.⁶ Thus, it is my opinion that an individual on the Nurse Aide Registry is not a health care professional as defined in N.D.C.C. § 23-01-42 and may not “prescribe, distribute, or dispense an opioid antagonist” as allowed by that statute.

However, N.D.C.C. § 23-01-42 allows any individual to undertake certain acts, including receiving or possessing an opioid antagonist and administering an opioid antagonist to another individual when appropriate.⁷ There is no prohibition in N.D.C.C. § 23-01-42 against such an individual also being on the Nurse Aide Registry, and also no prohibition in the laws governing the Nurse Aide Registry against registrants performing acts otherwise allowable to all members of the public. The only limitation is that this individual would be acting in his or her individual capacity and not as a registrant. N.D.C.C. § 23-01-42 also provides such individuals with immunity from civil or criminal liability when acting under this statute.⁸ Therefore, it is my further opinion that individuals registered on the Nurse Aide Registry may possess and administer opioid antagonists under N.D.C.C. § 23-01-42 just as any other individuals may without regard to their registry status.

⁶ N.D.A.C. §§ 33-43-01-01(12), 33-43-01-13(2).

⁷ N.D.C.C. § 23-01-42(3), (4).

⁸ N.D.C.C. § 23-01-42(6). This immunity does not apply if the individual's actions constitute recklessness, gross negligence, or intentional misconduct.