

June 20, 2012

The Honorable Dennis P. Will
Lorain County Prosecuting Attorney
225 Court Street, 3rd Floor
Elyria, Ohio 44035

SYLLABUS:

2012-021

A county coroner who acts as a supervising physician in a hospital emergency room, and who is responsible for supervising residents and medical students and for supervising patient care, is engaged in the "private practice of medicine" for purposes of determining the coroner's salary under R.C. 325.15.



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OPINION NO. 2012-021

The Honorable Dennis P. Will
Lorain County Prosecuting Attorney
225 Court Street, 3rd Floor
Elyria, Ohio 44035

Dear Prosecutor Will:

You have requested an opinion regarding R.C. 325.15, which sets forth the “classification and compensation schedule” for county coroners. This statute classifies county coroners, for salary purposes, according to the population of the county that the coroner serves. R.C. 325.15(A). The counties are divided into eight classes. *Id.* Salary figures are set forth for the county coroners of the various classes of counties. *Id.* Salaries are further differentiated for county coroners “with a private practice” and for coroners “without a private practice.” A “private practice” refers to the private practice of medicine. *See* R.C. 325.15(B). Salaries are first set forth for county coroners in each of the eight county classes who engage in the private practice of medicine. R.C. 325.15(A). Higher salary figures are then set forth for coroners in counties in classes 5 through 8 who do not engage in the private practice of medicine.¹ *Id.* It is our understanding that Lorain County, as calculated in the 2010 U.S. Census, is a class 6 county. Accordingly, the county coroner in Lorain County is entitled to a higher salary if the coroner does not engage in the private practice of medicine. *Id.*

You have informed us that the Lorain County Coroner acts as a “supervising physician” at a local hospital emergency room on “an occasional shift basis.” He is paid an hourly wage through the hospital for his services as a supervising physician in the hospital’s emergency room (“ER”). When acting as the emergency room’s supervising physician, the coroner’s “main responsibility is coordinating patient care and supervising residents and medical students who work in the ER.” We have been informed that he supervises patients’ care and “may need to occasionally sign off on official medical documents.” Further, as the emergency room supervising physician, he “offers guidance, and is there to help avoid errors from occurring.” You ask us to determine whether the county coroner, when acting as the supervising physician in a hospital emergency room, is engaged in the private practice of medicine for purposes of determining his salary under R.C. 325.15.

We first examine whether the county coroner is engaged in the “practice of medicine,” a term not defined in R.C. Chapter 325, when he acts as the supervising physician in a hospital emergency room. A county coroner must be a physician who has been licensed to practice as a physician in Ohio.

¹ Counties in classes 5 through 8 have populations of 175,001 or more. *See* R.C. 325.15(A).

R.C. 313.02; R.C. 4731.052(A)(3); R.C. 4731.053(A); *see also* 2002 Op. Att’y Gen. No. 2002-015. R.C. Chapter 4731 governs the licensure of physicians and the practice of medicine in Ohio.

Under R.C. 4731.34(A), a person is regarded as practicing medicine who:

- (1) Uses the words or letters, “Dr.,” “Doctor,” “M.D.,” “physician,” “D.O.,” “D.P.M.,” or any other title in connection with the person’s name in any way that represents the person as engaged in the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, in any of its branches;
- (2) Advertises, solicits, or represents in any way that the person is practicing medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, in any of its branches.

A county coroner who serves as an emergency room supervising physician satisfies both of these definitions. Use of the title “supervising *physician*” meets the criterion of R.C. 4731.34(A)(1) regarding the use of particular words, letters, or titles. Further, when acting as the supervising physician, the coroner has represented to the hospital that he will be engaged in the practice of medicine as specified in R.C. 4731.34(A)(1) and (2). His agreed upon responsibilities include supervising patient care, signing off on medical documents, and helping to “avoid errors from occurring.” He also supervises medical students and residents who examine and treat patients. By agreeing to undertake these duties, the emergency room supervising physician has represented to the hospital that he will be engaged in the practice of medicine. Accordingly, an emergency room supervising physician is regarded as practicing medicine as defined in R.C. 4731.34(A)(1) and (2).

A person also is regarded as practicing medicine who:

- (a) Examines or diagnoses for compensation of any kind, direct or indirect;
- (b) Prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

R.C. 4731.34(A)(3)(a)-(b). When acting as the emergency room supervising physician, the county coroner supervises the patient care provided by medical students and residents. In this supervisory role, it is reasonable to infer that the supervising physician “advises” or “recommends” a drug or medicine, appliance, mold or cast, application, operation or treatment when he is consulted about a patient’s care by a medical resident or intern or when he otherwise reviews or oversees the patient care provided by a medical resident or intern. Further, the medical students and interns are engaged in the activities set forth in R.C. 4731.34(A)(3). That is, they examine or diagnose patients and prescribe, advise, recommend, administer, or dispense, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease. Because the supervising physician is responsible for overseeing the actions of the medical students and residents and for supervising the care received by emergency room patients, the actions taken by the medical students and residents are, in essence, imputed to the supervising physician. Accordingly, an emergency room supervising physician who is responsible for supervising

patient care and for supervising the medical care provided by medical students and residents is engaged in the practice of medicine as set forth in R.C. 4731.34(A)(3)(a)-(b).

Significantly, the contrary conclusion is not supportable as a matter of fact or law. When construing statutes, it is presumed that the General Assembly intends just and reasonable results. *See State ex rel. Brecksville Educ. Ass'n, OEA/NEA v. State Emp. Relations Bd.*, 74 Ohio St. 3d 665, 671, 660 N.E.2d 1199 (1996). A physician responsible for supervising the patient care provided by medical students and residents is employed in that capacity based on his medical knowledge and expertise. He indirectly ensures, through his supervision, that patients receive adequate and appropriate medical care. It is unreasonable to conclude that if the supervising physician does not provide direct patient care, he is not engaged in the practice of medicine. Moreover, if we were to conclude that an emergency room supervising physician is not engaged in the practice of medicine, then a person who is not licensed as a physician under R.C. Chapter 4731 could serve as an emergency room supervisor. Such a result surely is not desired or intended by the definitions set forth in R.C. 4731.34. Rather, it is reasonable to conclude that an emergency room supervising physician who supervises patient care and who supervises medical students and residents is engaged in the practice of medicine as defined in R.C. 4731.34.

This conclusion is further supported by an opinion of the Ohio Supreme Court that concluded that a physician-patient relationship exists between a supervising physician and a hospital patient even though the physician does not directly treat the patient, and that such a physician may be subject to liability for medical malpractice. *Lownsbury v. VanBuren*, 94 Ohio St. 3d 231, 762 N.E.2d 354 (2002). In a medical malpractice action, the court held that “a physician-patient relationship can be established between a physician who contracts, agrees, undertakes, or otherwise assumes the obligation to provide resident supervision at a teaching hospital and a hospital patient with whom the physician had no direct or indirect contact.” *Id.* at 241. In *Lownsbury*, the plaintiffs asserted claims of medical negligence against several defendants, including an on-call physician who was responsible for supervising the residents who actually provided the patient care that gave rise to the claims. *Id.* at 232. The on-call physician never saw, evaluated, or treated the patient nor did the residents consult the on-call physician about the patient. *Id.* at 234. Rather, the doctor served as the on-premises attending and supervising physician at the hospital. *Id.* at 233. The court rejected the on-call physician’s argument that a physician-patient relationship cannot exist between an on-call physician and a hospital patient unless the physician was in direct contact with the patient or actively involved in the patient’s care. *Id.* at 241.

Quoting a Michigan court opinion, the court reasoned: “‘Even though the surgical procedure was actually performed by a resident, defendants [the supervising physicians] were under a duty to see that it was performed properly. It is their skill and training as specialists which fits them for that task, and their advanced learning which enables them to judge the competency of the resident’s performance.... We reject defendants’ argument that supervision of a patient’s care does not constitute practice of medicine.’” *Id.* at 238 (emphasis added) (quoting *McCullough v. Hutzel Hosp.*, 88 Mich. App. 235, 276 N.W.2d 569 (App. Ct. 1979)). The court further explained that it is the supervising physician’s “level of skill and competence that ensures adequate patient care.” *Id.*

It is reasonable to conclude that if a physician-patient relationship exists between a supervising physician and a patient examined and treated by a resident and a supervising physician may be subject to liability based on the care given to a patient by a resident, the supervising physician is engaged in the practice of medicine. “[B]y virtue of his supervision of a trainee, a physician with staff privileges at a teaching hospital is practicing medicine by lending his expertise and may be found liable for negligent supervision of a trainee, even where his negligence comes in the form of not seeing a patient to evaluate the trainee’s performance.” *Sullins v. Univ. Hosps. of Cleveland*, Cuyahoga App. No. 80444, 2003-Ohio-398, at ¶20. The courts’ decisions in *Lownsbury* and *Sullins* further support the conclusion that a county coroner who serves as a supervising physician in a hospital emergency room is engaged in the “practice of medicine” as defined in R.C. 4731.34.

We next examine whether a county coroner who acts as an emergency room supervising physician is engaged in the “private” practice of medicine for purposes of R.C. 325.15. Left undefined by statute, “private” must be “read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. “Private” is defined by *Black’s Law Dictionary* 1195 (6th ed. 1990), in relevant part, as “[n]ot official; not clothed with office.” Similarly, *Merriam-Webster’s Collegiate Dictionary* 988 (11th ed. 2005) defines “private” as “(2)(a)(1): not holding public office or employment ... (2) not related to one’s official position.” These definitions lead us to conclude that “private practice of medicine,” as used in R.C. 325.15, refers to any practice of medicine engaged in by a county coroner that is not included in his official duties as county coroner.

The duties and powers of a county coroner are set forth in R.C. Chapter 313. As a creature of statute, a county coroner may exercise only the authority explicitly granted to him by statute or as may be necessarily implied in order to accomplish the exercise of an express power. 1998 Op. Att’y Gen. No. 98-031, at 2-171. A primary duty of a county coroner is to determine the cause of death of any person who has died in the manner described in R.C. 313.12. *See* R.C. 313.19. R.C. 313.12(A) requires the coroner to be notified:

[w]hen any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances.

In order to determine the cause of death, a coroner has authority to take charge over a dead body, perform autopsies, gather information at the death scene, and interview and subpoena witnesses. R.C. 313.11; R.C. 313.121-.131; R.C. 313.17. A coroner also must determine the cause of death and fill in the cause of death on the death certificate in any case coming under his jurisdiction. R.C. 313.09; R.C. 313.15; R.C. 313.19. In counties in which a county morgue is established, the coroner is the “official custodian” of the morgue and is required, in the case of an unidentified body, to identify the body or remains. R.C. 313.07-.08. To assist with his statutory duties, a county coroner may appoint deputy coroners, pathologists, an official stenographer, and various other persons and may set their compensation. R.C. 313.05-.06. *See also* 1988 Op. Att’y Gen. No. 88-035.

We do not believe that the medical work performed by the county coroner as described in your request is included as part of the coroner's official statutory duties. When acting as an emergency room supervising physician, the county coroner supervises the work of residents and medical students engaged in rendering care and treatment to hospital emergency room patients. This supervisory activity is not included among the duties of a county coroner set forth in R.C. Chapter 313. Because a county coroner who serves as a supervising physician in a hospital emergency room is performing duties that are not a part of his official duties under R.C. Chapter 313, the coroner is engaged in the "private" practice of medicine for purposes of R.C. 325.15.

For these reasons, we conclude that a county coroner who acts as a supervising physician in a hospital emergency room, and who is responsible for supervising residents and medical students and for supervising patient care, is engaged in the "private practice of medicine" for purposes of determining the coroner's salary under R.C. 325.15.

You suggest that the county coroner's services for the hospital resemble consultant services that have been allowed in other instances, such as for county engineers, without affecting the amount of compensation received by a county officeholder. In 1985 Op. Att'y Gen. No. 85-100 (syllabus, paragraph 1), the Attorney General concluded that a county engineer who works as a teacher of engineering or surveying is not engaged in the private practice of engineering for purposes of R.C. 325.14. R.C. 325.14 establishes the annual compensation received by county engineers in a manner similar to the salary structure set forth for county coroners in R.C. 325.15. Like R.C. 325.15, R.C. 325.14 classifies the counties based on population and establishes different salary levels for county engineers "with a private practice" of engineering and county engineers "without a private practice" of engineering.

The 1985 opinion addressed a situation in which a county engineer wanted to teach a class at a technical college. 1985 Op. Att'y Gen. No. 85-100, at 2-422. The opinion examined the definition of "the practice of engineering" set forth in R.C. 4733.01, which lists certain types of professional services that are included within the practice of engineering (*i.e.*, consultation, investigation, evaluation, planning, and design). *Id.* at 2-422 to 2-423. Teaching, noted the opinion, was not one of the types of services included within the definition. *Id.* at 2-423. Analogizing the definition of the practice of engineering found in R.C. 4733.01 to the definition of the practice of psychology found in R.C. 4732.01, the 1985 opinion reasoned that teaching did not constitute the practice of engineering, in part, because teaching does not involve the application of knowledge to a specific project. *Id.* at 2-423 to 2-424.

[T]eaching does not involve responsibility for any aspect of the execution of a particular project. The distinction between teaching and rendering professional services was recognized by the General Assembly in R.C. 4732.01(B), which states, in part: "For purposes of this chapter, teaching or research shall not be regarded as the practice of psychology, even when dealing with psychological subject matter, provided it does not otherwise involve the professional practice of psychology in which patient or client welfare is directly affected." I believe that a similar distinction

between teaching and the provision of professional services in connection with a particular undertaking is implicit in R.C. 4733.01.

Id. (citations omitted).

The situation considered in the 1985 opinion is distinguishable from the situation you have presented for consideration. Unlike the county engineer who teaches at a technical college and who does not have responsibility for any specific project, a county coroner who acts as a supervising physician at a hospital emergency room is responsible for the welfare of patients who are treated in the emergency room. *See Lownsbury*, 94 Ohio St. 3d at 238. Accordingly, the reasoning and conclusions in 1985 Op. Att’y Gen. No. 85-100 do not support the conclusion that a county coroner who acts in this supervisory capacity is merely a consultant.

The distinction between a consultant and a physician engaged in the practice of medicine also was noted in 1983 Op. Att’y Gen. No. 83-013. That opinion concerned services performed by medical consultants who contracted with the Bureau of Disability Determination of the Rehabilitation Services Commission (“Bureau”). 1983 Op. Att’y Gen. No. 83-013, at 2-56. The consultants assisted claims examiners of the Bureau in evaluating medical information submitted by individuals filing claims for disability. *Id.* The question presented was whether these consultants were entitled to representation by the Attorney General under R.C. 109.361 if a consultant was sued for actions arising out of his contract with the Bureau. *Id.* at 2-55. To answer this question, the opinion examined whether the consultants met the definition of “officer or employee” set forth in R.C. 109.36(A), which includes a “person who ... is rendering medical ... psychiatric, or psychological services” pursuant to a personal services contract with a department, agency, or institution of the state. *Id.*

The opinion noted that the consultants did not see patients and did not provide medical or psychological treatment. *Id.* at 2-56. Rather, they provided advice in their area of expertise and acted as liaisons. *Id.* Accordingly, the opinion concluded that the consultant did not provide medical, psychiatric, or psychological services.

[I]ndividuals ... who merely give technical advice and consultation based on medical reports, *without having contact with or responsibility for the diagnoses or treatment of any person*, are not “rendering medical, ... psychiatric, or psychological services” within the meaning of R.C. 109.36(A). The services rendered by such individuals may appropriately be described as consulting services (which may relate to medical, psychiatric, or psychological subject matter), rather than as medical, psychiatric, or psychological services.

Id. at 2-57 (emphasis added). This opinion further supports the conclusion that a county coroner who serves as a supervising physician in a hospital emergency room is more than a consultant. As a supervising physician, the county coroner working in the hospital emergency room has a duty to see that patients receive proper medical care and treatment and is responsible for the diagnoses or treatment of patients provided by hospital residents. *See Lownsbury*, 94 Ohio St. 3d at 238. Medical consultants, on the other hand, do not have responsibility for the diagnoses or treatment of patients. 1983 Op. Att’y Gen. No. 83-013, at 2-57. Accordingly, a county coroner serving as a supervising

physician at a hospital emergency room does not act simply as a consultant, and the 1983 opinion does not alter that conclusion.

Based on the foregoing, it is my opinion, and you are hereby advised that a county coroner who acts as a supervising physician in a hospital emergency room, and who is responsible for supervising residents and medical students and for supervising patient care, is engaged in the "private practice of medicine" for purposes of determining the coroner's salary under R.C. 325.15.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General