

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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H. THOMAS CADELL, JR., *Chief Counsel*

October 21, 1997

Gwendolen S. Buck
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400 Camino El Estero
Monterey, CA 93940

Re: **Practical Nurse v. Personal Attendants**

Dear Ms. Buck:

This is intended to reply to your letter of October 3, 1997, wherein you ask this office to provide authority which distinguishes the nature and extent of the services or procedures employed by a practical nurse from those of a personal attendant.

The term "personal attendant" is defined in the wage order:

"Personal attendant" includes baby sitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.

The term "practical nurse" has long been used by the Division in conjunction with its enforcement of the IWC Orders and has a recognized meaning as a "vocational nurse". (See B&P Code § 2872.1) The qualifications of a vocational or practical nurse are provided in B&P Code §§ 2866 and 2873. This is a licensed occupation and the individual is allowed, under the direction of a physician and surgeon to perform all of the intrusive procedures listed in B&P Code §§ 2860.5 and 2860.7. The Legislature has recognized that some "nursing" may be handled by unlicensed individuals; indeed, B&P Code § 2727 allows "incidental care of the sick by domestic servants or by persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter. This would preclude use of intrusive procedures.

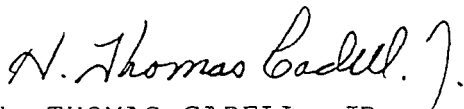
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A personal attendant, on the other hand, if employed to care for a child, is referred to as a "baby sitter". We believe that the use of the term "baby sitter" was intended to indicate the proposed scope of the work which the Commission thought was encompassed within the definition. Indeed, the IWC in the Statement of Basis for Order 15-86, stated that they had retained the language "when no significant amount of work other than the foregoing (i.e., "supervise, feed or dress") is required", so that the definition of personal attendant could not be construed to apply to other classifications of employees working in households. Had the Commission intended that the activities of the personal attendant were to include those of a nurse, they could have easily incorporated the word "nurse" into the definitional language.

Denominating an individual as a personal attendant has the effect, of course, of making that employee ineligible for the protections of the IWC Order. Order 5-89 exempts "personal attendants" employed by non-profit organizations from the 8-hour and 40-hour restrictions. Inasmuch as the IWC in the Statement of Basis for Order 5-89 also reached the conclusion that it would be inappropriate to add nurses to the exempt "professional" status since nurses needed the protections offered by the wage orders, it is hardly conceivable that they intended that nurses should be exempt as "personal attendants".

In conclusion, the Division would suggest that the distinction between the services or procedures performed by a practical (or vocational) nurse and those performed by a personal attendant is easily drawn: the personal attendant is employed only to supervise, feed and dress the individual and may not engage in those procedures which are exclusively limited to the nursing profession. The nurse is primarily employed to supervise the individual in regard to their health needs and is allowed to perform the services and procedures provided in their license.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Jose Millan, State Labor Commissioner
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner
Tom Grogan, Assistant Labor Commissioner