

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
Legal Section
30 Van Ness Avenue, Suite 4400
San Francisco, CA 94102

1991.04.24



April 24, 1991

Jan Gabrielson Tansil
O'Brien, Watters, Davis, Malisch & Piasta
3510 Unocal Place, Suite 200
Santa Rosa, CA 95402-3759

Re: Request for Opinion Letter
Your File No. 2270-4130

Dear Mr. Tansil:

I am in receipt of your letter of April 19, 1991, wherein you point out that your original request for an opinion cited the provisions of IWC Order 15-86, Section 2(I). I apologize for any confusion my first response may have caused.

The language which you have underscored in your letter (i.e., "or by any third party employer recognized in the health-care industry") is less than clear. I have researched the amendment to Order 15 and find that the reason that the term "recognized in the health-care industry" was added to the originally proposed language was because the petition for review came before the Industrial Welfare Commission pursuant to the accelerated process available under Labor Code §1182.7. The accelerated review was only available if the requested change directly regulated the health care industry. Thus, the IWC must have intended that the employer be engaged in the Home Health Care industry. (See Statement as to the Basis for Amendment to Section 2, adopted January 17, 1986)

I am attaching a copy of Interpretive Bulletin 86-1 which briefly addresses the exemption adopted by the Commission. As you will note, Commissioner Aubry stated that "practical nurses are explicitly covered by Order 15 and may not be exempted as personal attendants even though many of their duties are the same. Any worker who regularly gives medication or takes temperatures or pulse or respiratory rate, regardless of the amount of time such duties take, falls within some classification of nurse, licensed or unlicensed." I make this observation only because you state in your letter of March 14th that "Respite Workers" may administer medications.

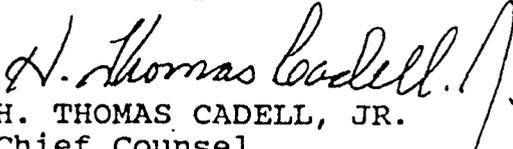
Much of the other work which you describe such as bathing and dressing the client or taking the person on an outing would obviously be described as personal attendant work.

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Each case must be addressed on an individual basis. We would not be able to offer an opinion as to your client's obligation based upon a description of the work such as you provide in your letter. However, the attached Interpretive Bulletin may be of some help to you in advising your client in this regard.

I'm sorry we cannot be of more assistance to you. Again, please accept my apologies for any inconvenience which my original letter may have caused in not addressing specifically the issue you raised. I certainly should have noticed that you were asking for information on a specific provision of the Order.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Vince Ortenzi, Sr. Deputy
✓ Lola Felix, Regional Mgr.
Simon Reyes, Asst. Labor Commissioner