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OPINION LETTER NO. 61-92

Carl M. Koupal, Jr., Director
Department of Economic Development
Truman State Office Building, Room 680
Jefferson City, Missouri 65101

Dear Mr. Koupal:

This opinion letter is in response to your questions asking:

1. Would the following job titles qualify as "any title or description" pursuant to section 334.740, RSMo, thus requiring registration?

- A. Licensed Respiratory Care Practitioner
- B. Certified Respiratory Care Practitioner
- C. Licensed Respiratory Therapist
- D. Certified Respiratory Therapist
- E. Certified Respiratory Technician
- F. Licensed Respiratory Technician
- G. Respiratory Therapist
- H. Respiratory Technician
- I. Cardiopulmonary Therapist
- J. Cardiorespiratory Therapist
- K. Inhalation Therapist
- L. RT
- M. Occupational Therapy Aide
- N. Occupational Therapy Assistant
- O. Occupational Therapist
- P. Certified Occupational Therapy Assistant
- Q. OT
- R. OTR

2. Does a job description which utilizes any title in question 1 (A-R) qualify as ". . . hold himself out to the public by any title or description. . . "?

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3. Does an advertisement which utilizes any title in question 1 (A-R) qualify as ". . . hold himself out to the public by any title or description. . ."?

4. If an individual is credentialed [by the National Board for Respiratory Care] as a CRTT [Certified Respiratory Therapy Technician] or RRT [Registered Respiratory Therapist], would that person be required to register with the department based on these credentials?

5. If an individual represents himself/herself as a CRTT or RRT and provides respiratory therapy services, as defined in section 334.735.9, RSMo, would that person be required to register with the department?

6. If an individual teaches or instructs students on providing respiratory therapy services or occupational therapy services, is the teacher or instructor required to register?

Along with your questions, you state:

In registering respiratory care practitioners and occupational therapists pursuant to sections 334.735 - 334.748, RSMo, the department must designate a certifying entity (see section 334.737.4, RSMo), and the applicant must provide proof of certification or registration by the certifying entities designated by the department (see section 334.738, RSMo).

Throughout this opinion request and for the sake of clarity, the following assumptions are made: 1) the certifying entity has been designated and; 2) the applicant has been credentialed by the certifying entity.

The certifying entity for respiratory care practitioners is the National Board for Respiratory Care, which provides the credentialing of the Certified Respiratory

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Therapy Technician (CRTT); Registered Respiratory Therapist (RRT); and the Certified Pulmonary Function Technologist (CPFT). These designations, CRTT, RRT and CPFT are federally registered service marks of the National Board for Respiratory Care.

Sections 334.735 to 334.748, RSMo Supp. 1991, relating to the registration of occupational therapists, physician assistants and respiratory care practitioners were enacted as Conference Committee Substitute for House Substitute for Senate Bill No. 217, 85th General Assembly, First Regular Session (1989).

Section 334.740, RSMo Supp. 1991, provides:

334.740. Title of registered profession--used only by registered persons--service may be performed without registration--when--violation, penalty.--1. No person shall hold himself out to the public by any title or description including the words registered occupational therapist, registered physician assistant, or registered respiratory care practitioner unless he is duly registered under the provisions of sections 334.735 to 334.748, if for that profession a certifying entity has been recognized by the department.

2. Nothing in sections 334.735 to 334.748 shall be construed as prohibiting any individual whether registered pursuant to sections 334.735 to 334.748 or not from providing the services of occupational therapist, physician assistant, or respiratory care practitioner.

3. Nothing in sections 334.735 to 334.748 shall be construed as prohibiting credentialed assistants from providing services under the supervision of the same health care professional who is registered in accordance with sections 334.735 to 334.748.

4. Any person found guilty of violating any provision of subsections 1 to

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3 of this section is guilty of an infraction and upon conviction thereof shall be punished as provided by law. For purposes of this subsection, the maximum fine for a violation hereunder shall be one thousand dollars.

Section 334.735, RSMo Supp. 1991, provides the following definitions:

334.735. Definitions.--As used in sections 334.735 to 334.748, the following terms mean:

* * *

(6) "Occupational therapist", one engaged in the use of purposeful activity with individuals who are limited in their ability to function by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences or the aging process in order to maximize independence, prevent disability and maintain health. The practice encompasses evaluation, treatment and consultation. Specific occupational therapy services include: teaching daily living skills; developing perceptual motor skills and sensory integrative functioning; developing vocational and prevocational capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment; specifically designed manual, creative, prevocational activities and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adaptive environments for the handicapped. The services may be provided individually, in groups, or through social systems;

* * *

(9) "Respiratory care practitioner", one engaged in the therapeutic and diagnostic use of medical gases,

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administering apparatus, humidification and aerosols, administering of drugs and medications to the cardiorespiratory systems under protocols established by the supervising physician, ventilatory assistance and ventilatory control, postural drainage, percussion, vibration, and breathing exercises, cardiopulmonary rehabilitation, cardiopulmonary resuscitation and maintenance of natural airways, as well as the insertion and maintenance of artificial airways. The practice of respiratory care shall also include specific testing techniques employed in respiratory therapy to assist in diagnosis, monitoring, treatment and research; including, but not limited to measurements of ventilatory volumes, pressures and flows, specimen collection of blood and other materials, pulmonary function, testing and hemodynamic and other related physiological monitoring of the cardiopulmonary systems. The practice of respiratory care is not limited to the hospital setting;

* * *

Legislative intent should be determined from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). Section 334.740.2, RSMo Supp. 1991, provides that the legislature did not intend registration under Sections 334.735 to 334.748, RSMo Supp. 1991, to be a prerequisite for one to provide the services of an occupational therapist, physician assistant or respiratory care practitioner. However, Section 334.740.1, RSMo Supp. 1991, does prohibit a person not registered under the provisions of Sections 334.735 to 334.748, RSMo Supp. 1991, from using "any title or description including the words registered occupational therapist . . . or registered respiratory care practitioner . . ." [Emphasis added.] Therefore, any person using a title or job description stating he or she is a "registered occupational therapist" or a "registered respiratory care practitioner" would be required to register.

None of the titles listed in your first question use the word "registered." Based on the plain meaning of the language of Section 334.740.1, RSMo Supp. 1991, we conclude registration

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is not required¹ of a person using the titles listed in your first question.

Because of our answer to your first question, we conclude in answer to your second and third questions that job descriptions or advertisements using the titles listed in your first question would not require registration under Section 334.740, RSMo Supp. 1991.

Your next question asks whether an individual credentialed by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist is required to register with the Department of Economic Development.

Section 334.738, RSMo Supp. 1991, provides in part:

334.738. Certification, application, form, fee, not refundable--requirements certificate issued, when--destroyed certificate replacement, fee.--1. Each person desiring a certificate of registration under sections 334.735 to 334.748 shall make application to the department upon such forms and in such manner as may be prescribed by the department and shall pay the required application fee as set by the department. The application fee shall cover the cost of issuing the certificate and shall not be refundable. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the same, subject to the penalties of making a false declaration or affidavit. Such application shall include proof of

¹In many other statutes, the legislature has provided a more expansive list of titles for professions that cannot be used unless the individual is licensed or registered with the State. See Section 326.021, RSMo 1986; 333.021.2, RSMo 1986; 334.610, RSMo Supp. 1991; 335.076, RSMo 1986; 337.505, RSMo Supp. 1991; 338.260, RSMo Supp. 1991; and 345.075, RSMo 1986.

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certification or registration by a certifying entity, date the certification or registration process was completed with the certifying entity, the name of the certifying entity, any identification numbers and any other information necessary for the department to verify the certification or registration.

2. The department, upon approval of the application from an applicant, shall issue a certificate of registration to such applicant. [Emphasis added.]

* * *

A "certifying entity" is defined as "the nongovernmental agency or association which certifies or registers individuals who have completed academic and training requirements." Section 334.735(4), RSMo Supp. 1991. In your statement of facts accompanying your question, you indicate that the National Board for Respiratory Care is the certifying entity for respiratory care practitioners.

Section 334.738.1, RSMo Supp. 1991, requires a person desiring a certificate of registration from the Department of Economic Development to submit proof of certification by a certifying entity. In the case of one wanting a certificate of registration in the field of respiratory therapy, certification by the National Board for Respiratory Care would be a prerequisite. However, the fact that a person is credentialed by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist would not automatically require registration with the Department of Economic Development.

Your fifth question asks whether an individual representing himself as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist and providing respiratory therapy services as defined in Section 334.735(9), RSMo Supp. 1991, would be required to register with the Department of Economic Development. We conclude registration would not be required of a person using the title "Certified Respiratory Therapy Technician" for the reasons set out in answer to your first question. A person using the title "Registered Respiratory Therapist" might convey the impression that he or she is registered pursuant to Sections 334.735 to 334.748, RSMo Supp. 1991. While a person merely having this credential bestowed by the National Board for Respiratory Care need not

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register with the Department, once he holds himself out to the public as a "Registered Respiratory Therapist" registration pursuant to Section 334.740, RSMo Supp. 1991, is required.

Your final question asks whether an individual teaching or instructing students on providing respiratory therapy services or occupational therapy services is required to register with the Department of Economic Development. We find no provisions requiring registration of a teacher or instructor. If such person is not using a title or description for which Section 334.740, RSMo Supp. 1991, requires registration as discussed above, registration is not required.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General