

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 04-128

Regulation of Medical Clinics

QUESTION

What authority does the Tennessee Board of Medical Examiners have, if any, to regulate the operation of medical clinics and their relationships with individual physicians and patients?

OPINION

The Tennessee Medical Practice Act (Tenn. Code Ann. §§ 63-6-101, *et seq.*) contains no express language authorizing the Board of Medical Examiners to regulate the facilities at which physicians practice. However, unless provided otherwise by law or Board regulation, individual physician practice requirements and standards apply to a physician's practice of medicine in any setting, including a medical clinic.

ANALYSIS

The request asks, in general terms, about the Board of Medical Examiners' authority to regulate the operation of medical clinics and their relationships with individual physicians and patients. The request does not specify any particular areas of interest or concern. Therefore, our response is also necessarily general.

An administrative agency such as the Board of Medical Examiners ("Board") possesses no inherent or common law powers. As a statutory creation, it can exercise only those powers conferred expressly or impliedly upon it by statute. Any action of the agency which is not authorized by statute is a nullity. *General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Bd.*, 560 S.W.2d 910, 913-914 (Tenn. App. 1976).

The Tennessee Medical Practice Act (Tenn. Code Ann. §§ 63-6-101, *et seq.*)¹ contains no express language authorizing the Board to regulate the facilities at which physicians practice. This contrasts with several other health care practitioner practice acts which do contain such authorization. For example, the Dental Practice Act requires that any dental facility in which a licensed dentist administers general anesthesia, deep sedation or conscious sedation must obtain a permit from the Board of Dentistry and must meet that Board's regulatory standards. Tenn. Code Ann. § 63-5-108(g)(2003 Supp.). The Board of Dentistry is authorized to obtain evaluations, including on-site evaluations, of such facilities, equipment and personnel. Tenn. Code Ann. § 63-5-105(6)(2003 Supp.). The Veterinary Practice Act requires that any person who owns or operates any veterinary facility where veterinary medicine is practiced, including mobile clinics, must obtain a premises permit from the Board of Veterinary Medical Examiners. Tenn. Code Ann. § 63-12-139(a). In order to obtain a premises permit, the premises must meet minimum standards established by board rules and regulations as to sanitary conditions and physical plant. Tenn. Code Ann. § 63-12-139(c). The Board of Veterinary Medical Examiners is empowered to inspect all veterinary facilities to determine sanitary conditions, physical equipment, methods of operation, keeping of records, etc. Tenn. Code Ann. § 63-12-129(a)(2).

The fact, however, that the Board of Medical Examiners lacks such specific statutory directives does not end the inquiry entirely. In the Medical Practice Act, the Legislature has vested the Board with both express and implied authority to regulate the practice of individual physicians. The Board is expressly authorized, for example, to adopt rules and regulations regulating the advertising of practitioners who are under its jurisdiction; to set guidelines for the treatment of patients under the "Intractable Pain Treatment Act," Tenn. Code Ann. §§ 63-6-1101, *et seq.* (2003 Supp.); and to adopt rules and regulations which establish minimum educational standards and criteria for persons operating x-ray equipment in physicians' offices.² Additionally, because the Legislature has authorized the Board to discipline physicians upon a number of broad statutory grounds pertaining to the practice of medicine,³ it has vested the Board with necessarily-implied

¹Tenn. Code Ann. §§ 68-11-201, *et seq.* place authority for regulation of many of the facilities at which physicians practice with the Board for Licensing Health Care Facilities. Included, for example, are hospitals, nursing homes and ambulatory surgical treatment centers. Tenn. Code Ann. §§ 68-11-201 (2003 Supp.), 68-11-209. "Medical clinics" are not listed at Tenn. Code Ann. § 68-11-201 as a category of health care facility regulated by the Board for Licensing Health Care Facilities.

²The Legislature has also conveyed powers to the Board of Medical Examiners in other statutes. For example, Tenn. Code Ann. §§ 53-11-301 and 53-11-303 authorize the Board, as a professional licensing board governing persons who may legally dispense controlled substances, to promulgate rules relating to physicians' dispensing of controlled substances within Tennessee. Tenn. Code Ann. §§ 48-101-610(b)(2003 Supp.) and 48-248-401(b) (2003 Supp.) authorize the Board to promulgate rules, as ethically necessary, which restrict or condition the authority of medical professional corporations and medical professional limited liability companies to issue shares to and have as members persons who are not licensed to practice medicine.

³These statutory grounds include "unprofessional, dishonorable or unethical conduct" and "gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice." Tenn. Code Ann. §§ 63-6-214(b)(1), (4) (2003 Supp.).

authority to define and establish such medical practice standards, consistent with governing statutes. *See Methodist Healthcare-Jackson Hosp. v. Jackson-Madison County General Hosp. Dist.*, 129 S.W.3d 57, 70 (Tenn. App. 2003)(noting that an administrative agency's interpretation of its own enabling statute is entitled to weight and deference). Unless provided otherwise by law or Board regulation, these practice requirements and standards apply to a physician's practice of medicine in any setting, including a medical clinic.

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