

Opinion No. 54-6021

September 30, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: F. A. Vigil, Secretary New Mexico Board of Pharmacy 2714 Santa Cruz, SE
Albuquerque, New Mexico

{*483} In your letter of September 14, 1954, you request the opinion of this office with regard to the procedure to be followed by the State Drug Inspector in cases in which persons have purchased dangerous narcotics, i.e. terpin hydrate, codeine or paregoric, and have given druggists selling such narcotics fictitious addresses.

§ 71-661, N.M.S.A., 1941, provides:

"It shall be unlawful for any person, firm, partnership, association or corporation to obtain or attempt to obtain any barbituric acid and/or any of its derivatives, chloral hydrate or paraldehyde, or any dangerous {*484} drug, or procure or attempt to procure the administration of any of the aforementioned drugs:

- a. By fraud, deceit, misrepresentation or subterfuge; or
- b. By the forgery or alteration of a prescription or of any written order; or
- c. By the concealment of a material fact; or
- d. By the use of a false name or the giving of false name or the giving of a false address."

"Any person violating any of the provisions of this Act (§§ 71-658 -- 71-668) shall be guilty of a misdemeanor and upon conviction they shall be fined not exceeding five hundred dollars (\$ 500.00) for the first offense, and for each subsequent offense not exceeding five hundred dollars (\$ 500.00), or imprisoned not exceeding six (6) months, or both, in the discretion of the court."

The two sections above quoted were originally adopted by the Legislature as Sections 4 and 6, respectively, of Chapter 173 of the Laws of 1951.

It is our opinion that the sole method of enforcement of the foregoing section by the State Drug Inspector would be by the institution of a criminal prosecution against any person violating the said section. Such a prosecution could be instituted by any district attorney upon the presentation to him by the Drug Inspector of facts tending to indicate such a violation.

It should be noted that no means of enforcement of the foregoing statutes by the Board of Pharmacy itself are provided for by Chapter 173 of the Laws of 1951. In that respect, Chapter 173 differs from Chapter 153 of the Laws of 1951, wherein it is provided, in sections 7 and 8 (§ 71-645, N.M.S.A., 1941) that the Board of Pharmacy may hear a presentation of the views of a person alleged to have committed an offense under Chapter 153, either by itself or by its designated agent, and that the Board of Pharmacy may elect to waive the institution of criminal proceedings under that Act, in favor of "a suitable written notice or warning."

It is our opinion, in the absence of other statutory provisions for enforcement, that Sections 71-661 and 71-663 may be enforced in no other manner than through the instigation of criminal proceedings.

The institution of proceedings against a person who gives a fictitious address in connection with the procurement of dangerous drugs would not preclude the additional remedy of proceedings against such a person under §§ 71-734 -- 71-835, N.M.S.A., 1941. which statutes provide for the compulsory examination of suspected drug addicts, and for the commission of drug addicts to the New Mexico Insane Asylum, in a situation in which the person making the misrepresentation in connection with the procurement of dangerous drugs was also a suspected drug addict. It is our opinion that the State Drug Inspector would be a competent person to make the type of complaint, calling for the examination of a suspected addict, contemplated by § 71-734.

Trusting that the foregoing will answer your questions satisfactorily, I am

By: Henry Kiker, Jr.

Assist. Attorney General