

Opinion No. 61-52

June 23, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Pat Hollis, Secretary, Board of Pharmacy, 217 East Palace Avenue, Santa Fe, New Mexico

QUESTION

QUESTION

May someone other than a registered pharmacist compound, dispense and fill physicians' prescriptions in a hospital or clinic pharmacy?

CONCLUSION

Only in the limited instances explained in the analysis.

OPINION

ANALYSIS

As we understand it, the factual background prompting your inquiry is as follows: In two instances, medicines are being compounded and dispensed in hospital pharmacies by persons other than registered pharmacists -- in one case by a practical nurse, in the other by a laboratory technician. We assume that in each case the hospital dispensary is used for the exclusive accommodation of the hospital patients and that the prescriptions of doctors other than those in the clinic or hospital are not filled. You state that it has been contended by one of the clinics that such a hospital pharmacy does not have to be licensed by the Board of Pharmacy since it is "under the supervision of the doctors and is used only as a place to carry out the doctors' orders, which are placed on prescription blanks not as prescriptions, but as orders."

Concluding that this contention is untenable, we are of the opinion that such a hospital or clinic pharmacy must be licensed and registered in accordance with Section 67-9-18, N.M.S.A., 1953 Comp., and that except in the limited situations hereinafter mentioned, these "orders" or prescriptions must be filled by a registered pharmacist. Section 67-9-1, N.M.S.A., 1953 Comp., and Section 67-9-27, N.M.S.A., 1953 Comp. (PS); Attorney General Opinion No. 60-126.

The only statutory exception is that a pharmacy interne may compound, dispense and sell drugs and medicines in the presence of and under the immediate personal supervision of a licensed pharmacist in good standing. Section 67-9-30, N.M.S.A., 1953

Comp. (PS). Any other person who practices or attempts to practice pharmacy without a certificate of registration as a pharmacist is subject to prosecution therefor. Section 67-9-27, N.M.S.A., 1953 Comp. (PS). See also Section 67-9-1, supra.

Section 67-9-15, N.M.S.A., 1953 Comp., does permit licensed physicians, dentists and veterinarians to personally administer drugs and medicines carried or kept for emergencies. Actually, however, the relevant statutes do not expressly grant to physicians the general right to compound and dispense drugs for medical uses. While our courts would probably follow the general rule that permits physicians to compound and dispense medicines for their own patients (17A Am. Jur., Drugs and Druggists, § 13; **State v. Hovorka**, 100 Minn. 249, 110 N.W. 870), it is within the sole discretion of the legislature to extend this right to persons who are under the immediate supervision of a physician. And no such provision has been enacted.

It must be remembered that the business of compounding and dispensing drugs and medicines is intimately connected with and has a vital relationship to the health, safety and welfare of the public. **State v. Collins**, 61 N.M., 184, 297 P. 2d 325. It is quite obvious that a person receiving compounded medicines from **any** pharmacy is relying on the skill of the pharmacist as well as the physician. A pharmacist is expected to know the properties of the drugs which he handles and their effect upon those who will use them. **Lutz v. Houck**, 263 N.Y. 116, 188 N.E. 274. The compounding and dispensing of drugs being inherently dangerous when practiced by someone who is not adequately trained in pharmacology is the very reason for the large degree of control vested in the Board of Pharmacy. See Hayt and Hayt, **Legal Guide for American Hospitals**, p. 380, et seq.

One further point needs to be mentioned. We see no significance in the fact that the medicines are compounded on an "order" of the physician rather than on a prescription. In our view this is a distinction without a difference. In either case the requisite drugs or materials must be combined in the proportion set forth by the physician. A mistake is no less dangerous simply because the physician's instruction is designated as an order rather than a prescription.

In summary, we conclude as follows:

1. A hospital or clinic pharmacy or dispensary must be licensed and registered by the Board of Pharmacy.
2. A pharmacy interne may compound, dispense and sell drugs, medicines or poisons only in the presence of and under the immediate personal supervision of a registered pharmacist in good standing. Any other person who practices or attempts to practice pharmacy is subject to prosecution.
3. While physicians may personally compound, dispense and fill prescriptions for their own patients, persons under their supervision who are not registered pharmacists may not do so.