

Opinion No. 71-78

June 18, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Fred E. Mondragon Administrator Bernalillo County Medical Center 2211 Lomas Blvd., N.E. Albuquerque, N.M. 87106

QUESTIONS

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Can a prescription written by a resident or intern be filled by pharmacists outside the hospital in which resident or intern is serving?

CONCLUSION

No, see analysis.

OPINION

{*114} ANALYSIS

The "Pharmacy Act" (Sections 67-9-33 to 67-9-59, N.M.S.A., 1953 Comp. (1969 P.S.)) includes among its provisions the definition of "prescription," Section 67-9-34(R), **supra**, as "an order given individually for the person for whom prescribed, either directly from a **licensed practioner** to the pharmacist or indirectly" (Emphasis added.) Subsection "K" states that "licensed practioner" means "a person engaged {*115} in a profession licensed by the State who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition, and includes doctors of medicine"

Whether this definition requires a doctor of medicine to be licensed in this State in order to write prescriptions is the question at issue here.

Some definitions necessary for this discussion include that of "intern" and resident. "Intern" is "a graduate student of medicine, registered with the board (Board of Medical Examiners) and upon whom a degree of doctor of medicine or bachelor of medicine has been conferred by a school approved by the board" Section 67-5-10, N.M.S.A., 1953 Comp. (1969 P.S.). "Resident" is defined in the same section as "a graduate of a medical school approved by the board who has been appointed . . . to the position of 'resident' or 'assistant resident' for the purpose of post graduate medical training." However, neither interns nor residents are required under the provisions of Sections 67-5-1 through -23 to obtain a license.

Section 67-5-10, **supra**, also defines the "practice of medicine" and provides "exceptions" from the act. The practice of medicine includes offering or undertaking "to prescribe, give or administer any drug or medicine for the use of any other person." However, this provision states that "nothing herein shall prevent" a student in a medical school "from treating . . . the sick or afflicted as part of his course of study." And, "no intern shall be required . . . to obtain a license for the purpose of pursuing his internship." Finally, "any person serving an approved residency, . . . may do so for an aggregate period not to exceed four (4) years without a license to practice medicine. . . ."

While it seems clear that the Legislature intends that there be no impediment on an intern or resident while he pursues his course of study, in our opinion this exception pertains only to the practice of medicine for the purpose of pursuing an internship or residency. Thus, prescriptions written by interns and residents, to be filled under supervised conditions (within the hospital in which the resident or intern is serving) are allowed, while those prescriptions to be filled outside the hospital in which the resident or intern is serving are not within the exception. See **Randle v. California State Board of Pharmacy**, 49 Cal. Rptr. 485, 240 Cal. App. 2d 254 (1966). Any extension of this exception should be made by the Legislature rather than this office.

By: Leila Andrews

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