

Opinion No. 71-93

July 30, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Fred E. Mondragon Administrator Bernalillo County Medical Center
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

Yes, see analysis.

OPINION

{*137} ANALYSIS

In Opinion of the Attorney General No. 71-78, dated June 18, 1971, this office concluded that a prescription written by a resident or intern can not be filled by pharmacists outside the hospital in which the resident or intern is serving. Upon further consideration, we must now overrule this Opinion and conclude that any pharmacist may fill a prescription written by a resident or intern.

As stated in our earlier Opinion, 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 practitioner" means "a person engaged 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. In Opinion No. 71-78 it was determined that the definition requires a doctor of medicine to be licensed in this State in order to write prescriptions. While this conclusion is reasonable based upon a strict interpretation of the statutes involved, see Opinion No. 71-78, a more liberal construction of the language results in a contrary conclusion. Such a liberal construction is indicated when viewing the practical problems a strict interpretation produces.

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 {^{*}138} license to practice medicine . . ."

In view of the specific exception granted to the above three classes (students, interns and residents) in Section 67-5-10, **supra**, it is our opinion that Section 67-9-34(K) should be viewed as allowing prescriptions written by interns or residents to be filled outside the hospital in which they are serving.

By: Leila Andrews

Assistant Attorney General