

Opinion No. 14-1277

July 16, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Dr. M. M. Thompson, Logan, New Mexico.

DRUGS.

As to the sale of cocaine and morphine by a druggist under a prescription from a physician.

OPINION

{*138} Your letter of the 10th instant was received here on Saturday last, but I have had no earlier opportunity to answer. You ask whether it would constitute any violation of law if a registered pharmacist should fill a prescription from a physician who was licensed in the Territory of New Mexico but not in the State, for cocaine or morphine. I do not see that it could make any difference as to the validity of a prescription and the propriety of filling it that the physician has never been re-licensed since the organization of the state government. I believe all such licenses continue, notwithstanding the change in the form of government.

{*139} You further ask whether a retired physician, who had a license to practice medicine, has any right lawfully to procure narcotic drugs for narcotic friends. Any licensed physician, who would make use of his standing as a practitioner to procure drugs of the kind indicated for improper use, would be guilty of such unprofessional conduct that I have no doubt that the state board would revoke his license if the matter were properly presented to it.

You further ask whether a druggist would violate the law by refusing to fill such a physician's prescription. This is a question which I never have had occasion to consider, but I am quite strongly of the opinion that a druggist who refuses to fill a prescription does not violate any law so that he could be punished, nor do I believe that he could be held liable in a civil action for damages. I have not time at present to make a complete examination of precedents, but I do find that in a Louisiana case where a physician sued a druggist for damages because of a refusal to fill a prescription, the court held that a mere refusal to fill prescriptions did not furnish any ground for the recovery of damages. In a number of states there are laws which forbid the sale of intoxicating liquors to any person who is already intoxicated, and there would be a positive requirement that a pharmacist should not sell such liquor to an intoxicated person even though it might have been prescribed by a physician. Even in the absence of such a statute, I believe the courts would hold it a justifiable act for a pharmacist to refuse to sell any liquor even on a prescription, to a drunken person. That I speak of merely as an

illustration, but similar reasons might apply to a refusal to fill such prescriptions as those mentioned in your letter.