

Opinion No. 38-1882

February 10, 1938

BY: FRANK H. PATTON, Attorney General

TO: Department of Internal Revenue Division of Narcotics Denver, Colorado

{*212} Mr. C. A. Wagner, Superintendent of Tucumcari General Hospital, Tucumcari, New Mexico, has just consulted me in regard to his difficulty in obtaining a federal narcotic license for the use of drugs in his hospital.

Mr. Wagner is termed the Lay Superintendent of the hospital and is not a registered physician. I understand the Bureau of Internal Revenue Department is anxious to obtain an interpretation of the State Narcotic Act of New Mexico in order to determine if the proper license or stamp shall be issued to Mr. Wagner.

Our statute, which is Chapter 145 of the Session Laws of 1935, provides that it shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized or provided by this Act. The Act then sets forth a series of definitions, one of which is physician, which means a person duly registered and authorized by law to practice medicine in this State, and any other person authorized by law to treat sick, injured human beings in this State and to use narcotic drugs in connection with such treatment.

We have heretofore held that under this definition a registered nurse employed in a hospital had the right to administer drugs under the supervision and direction of a physician.

The word hospital means an institution for the care and treatment of the sick and injured, approved by the State Board of Public Welfare as proper to be intrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

The State Board of Public Welfare is authorized, empowered and directed to make rules and regulations consistent with the provisions of the law and to provide such fees for licenses as it may deem proper to promote the enforcement of the Act.

The Act, in its entirety, is silent as to just what persons may be licensed, but in Section 5 of the Act we find that no license shall be issued until the applicant has furnished proof satisfactory to the State Board of Public Welfare that he is of good moral character, or if the applicant be an association or corporation, that the managing officers are of good moral character and that the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

In another provision, Section 11 of the Act, I find that a physician or a dentist in good faith and in the course of his professional practice only may prescribe, administer and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

In Subdivision 3 of said Section 11 I find these words -- "no person in charge of a hospital or of a laboratory, or in the employ of this State . . . who obtains narcotic drugs under the provisions of this section, or otherwise, shall dispense or otherwise use such drugs within this State except within the scope of {*213} his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this Act."

Apparently, it was not the intention of our state legislature to restrict the issuance of narcotic drug licenses for use in hospitals to registered physicians, it being well known that there are many hospitals owned by private individuals, associations, or corporations, and under the management and control of Lay Superintendents.

The primary intention of the Act is to control the possession and dispensing and administering of narcotic drugs, and in view of the provisions of the statute which I have above quoted, and to which I have made reference, it is my belief that the Tucumcari General Hospital would, under our law, be entitled to a narcotic drug license or stamp, as I believe it is termed, and I believe that under our law the Department of Internal Revenue would be justified in issuing such stamp either to Mr. Wagner, or to the General Hospital at Tucumcari, New Mexico.

I will be pleased to receive your comments upon this matter at your earliest convenience as Mr. Wagner is at the present time placed in a very embarrassing position; that of being the superintendent of a hospital which cannot obtain narcotic drugs for use therein, and, of course, unless narcotic drugs can be dispensed in a hospital then a great deal is taken from the value of such institution.

Thanking you, I am,