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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr., Director
Department of Public Safety
Camp Mabry
Austin, Texas

Morris Co.

Dear Sir:

Opinion No. 0-2596

Re: Can a pharmacist in this State who has been registered as retail dealer of narcotic drugs fill a prescription for narcotics written by a physician lawfully practicing in another State, providing the prescribing physician and prescription conform to Federal Narcotic Laws?

We have received your letter of recent date wherein you request the opinion of this department upon the above stated question.

Section 2 of Article 725b of the Penal Code reads:

"It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug."

Section 2A of said Article 725b provides:

"It shall not be unlawful to manufacture, possess, have, control, sell, prescribe, administer, dispense, or compound any narcotic drug where same is authorized under the terms of this Act."

Section 6(1) of Article 725b provides, in part:

"An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician,...."

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Section 7(1) of said Article 725b provides:

"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."

Section 1 of Article 725b reads in part as follows:

"Section 1. The following words and phrases, as used in this Act, shall have the following meanings, unless the context otherwise requires:

".....

"(2) 'Physician' means a person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.

".....

"(7) 'Apothecary' means a licensed pharmacist as defined by the laws of this State and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist;
....."

Article 4498a, Vernon's Civil Statutes, provides in part:

"Sec. 1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of medicine in this State as defined in Article 4510, Revised Statutes of 1925, or who shall hereafter be licensed for such practice by the Texas State Board of Medical Examiners, to be registered

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as such practitioners with the Texas State Board of Medical Examiners, on or before the 1st day of January A. D. 1932, and thereafter to register in like manner annually, on or before the 1st day of January of each succeeding year...."

Article 4504, Vernon's Civil Statutes, exempts from license and registration certain physicians, specifically enumerated. Article 4504 reads, in part:

"....The provisions of this Chapter do not apply to....; nor to commissioned or contract surgeons of the United States Army, Navy, or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other states called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining, or treating patients...."

In the absence of special legislative authority, Texas does not recognize the licensing and registering of physicians under the laws of another State. The only physicians who are permitted to practice medicine in this State without first obtaining a license and registering under the laws of this State are those physicians specifically exempt from such registration, as provided by Article 4504, supra. Therefore, the physician referred to in Section 6(1) of Article 725b, supra, could only mean a physician who is licensed in and who practices medicine in the State of Texas, or one who is specifically exempt from such license and registration under Article 4504, supra.

Under the foregoing authorities, therefore, you are respectfully advised that it is the opinion of this department that your question should be answered in the negative, unless

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such physician falls within the exemption set forth in Article 4504, supra.

Trusting that this satisfactorily answers your question, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *D. Burle Daviss*

D. Burle Daviss
Assistant

DED:AW

APPROVED SEP 10, 1940

George B. Mason

ATTORNEY GENERAL OF TEXAS

