



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John C. Marburger
County Attorney
Fayette County
LaGrange, Texas

Dear Sir:

Opinion No. 0-7220

Re: Under the given facts would a licensed physician and pharmacist be legally authorized to practice medicine and also accept employment in a drug store?

Your request for an opinion has been received and carefully considered by this department. We quote your request, in part, as follows:

"A certain doctor who is a regularly licensed and registered physician of this State is also a licensed pharmacist of this State, and maintains an office in the rear of a drug store which has no licensed pharmacist. Under this fact situation, I would like to have your opinion on the following questions:

"1. Would this licensed physician and pharmacist be legally authorized to practice medicine and also accept employment in this drug store as a registered pharmacist?"

"2. Would this licensed physician and pharmacist be authorized to compound, mix and prepare drugs, medicines, etc., upon a physician's prescription in this licensed drug store from which he obtains such drugs, medicines, etc.?"

Section 8 of Article 4542a, Vernon's Annotated Civil Statutes, reads as follows:

"It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine,

prepare, label, sell or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this state shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry or chiropody, who is duly registered as such by his respective State Board of Examiners of this state, who shall supply his or her patients, as a physician, dentist or chiropodist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiropodist or veterinarian licensed by his respective Board of Examiners of this State, in order to supply the immediate needs of his patients; nor to prevent the sale by persons, firms, joint stock companies, partnerships or corporations, other than registered pharmacists, of patent or proprietary medicines, or remedies and medicaments generally in use and which are harmless if used according to instructions as contained upon the printed label; and insecticides and fungicides and chemicals used in the arts, when properly labeled; nor insecticides or fungicides that are mixed or compounded for purely agricultural purposes. As amended Acts 1943, 48th Leg., p. 710, ch. 395, sec. 6."

Art. 758a, Vernon's Annotated Penal Code, makes the violation of any of the provisions of Art. 4542a, a misdemeanor.

Art. 739, Vernon's Annotated Penal Code, reads as follows:

"It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of every County

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in which he may reside, and in each and every county in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, which, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another county, as well as in each and every county in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner, or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate."

Art. 742, Vernon's Annotated Penal Code, makes the unlawful practice of medicine a misdemeanor.

Sections 15 and 16 of Article 4542a, Vernon's Annotated Civil Statutes, read as follows:

"Sec. 15. In all stores in which a registered pharmacist is continuously employed and where the provisions of this Act have been fully complied with, there shall be displayed in a prominent place in or on the front of said store the word 'pharmacy.'

"Sec. 16. It shall be unlawful for any person to display in or on any store or place of business the word 'pharmacy', either in the English or any foreign language, unless there is continuously employed therein a registered pharmacist."

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As you state the person in question is a licensed and registered physician and a registered pharmacist, it is our opinion that in view of the foregoing statutes such person is legally authorized to practice medicine and accept employment as a pharmacist at the same time.

Trusting the foregoing answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

James H. Ware
James H. Ware
Assistant

APPROVED MAY 28, 1946

Carroll A. Spickard
Carroll A. Spickard
ATTORNEY GENERAL

JHW:zd

APPROVED
OPINION
COMMITTEE
BY *BWB*
CHAIRMAN