



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS**

**PRICE DANIEL**

ATTORNEY GENERAL

**March 7, 1950**

**Hon. Walter Cousins, Jr., Secretary  
Texas Board of Pharmacy  
Dallas, Texas**

**Opinion No. V-1017.**

**Re: The authority of the  
Texas Board of Phar-  
macy to license gradu-  
ates of schools which  
do not maintain a stu-  
dent dispensary, in  
view of an alleged con-  
flict in the existing  
statutes.**

**Dear Sir:**

Reference is made to your recent request which reads in part as follows:

"Under Section 8, Art. 4542a, Title 71 in The Texas Pharmacy Law, it is stated that '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,' and under Art. 758a, paragraph 4 it further states that 'Any person not being licensed as a pharmacist who shall compound, mix, blend, dispense, prepare or sell at retail any drugs, medicines, poisons or pharmaceutical preparations upon a physician's prescription, or otherwise, and whoever, being the manager or owner of the drug store, pharmacy or factory, or other place of business, shall manufacture, or permit anyone not licensed as a pharmacist to compound, mix, blend, dispense any drugs, medicines, poisons or pharmaceutical preparations, on physician's prescription, contrary to any of the provisions of this Act, shall be subject to the penalties of this Act,' while Section 9 of the same Act provides that among other things a person to acquire a license to practice pharmacy 'shall have had

at least one (1) year of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist, all of which presents a conflict which has been embarrassing to this Board in some instances and we would appreciate having your suggestions as to how we might proceed pending legislative correction.

"The Board has allowed, for the experience requirement, work done at the student health dispensary at the University of Texas while they were of undergraduate status but some other institutions do not have such facilities and we are faced with either denying the right to take examinations to them if they have not had experience and at the same time making it impossible for them to obtain the experience. We are attaching hereto an inquiry in this category in order that you may see the dilemma in which we find ourselves."

The inquiry which you refer to provides:

"Is it possible that I could, upon graduation from the University of Colorado, go directly to Texas and obtain my necessary experience and then take the examination given by the State Board of Pharmacy of Texas without reciprocity?"

Section 8 of Article 4542a, V.C.S., provides in part:

"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 . . ."

The pertinent part of Article 758a, V.P.C., provides as follows:

"Any person not being licensed as a pharmacist who shall compound, mix, blend, dispense, prepare or sell at retail any drugs, medicines, poisons or pharmaceutical preparations upon a

physician's prescription, or otherwise, and whoever, being the manager or owner of the drug store, pharmacy or factory, or other place of business, shall manufacture, or permit anyone not licensed as a pharmacist to compound, mix, blend, dispense any drugs, medicines, poisons or pharmaceutical preparations, on physician's prescription, contrary to any of the provisions of this Act, shall be subject to the penalties of this Act. . .

"Any person, firm, corporation, partnership, or joint stock company violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, or be confined in jail for not less than one (1), nor more than six (6) months, or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

"It shall be unlawful for any member of the Board to permit any applicant to take the examination herein provided for, unless such applicant furnishes written proof to said Board that such applicant is qualified as herein provided in this Act to take such examination. Any member of the Pharmacy Board violating this Section shall be guilty of a misdemeanor and shall be punished as provided in the preceding paragraph."

Section 9 of Article 4542a provides in part:

"Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the Secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in the University of Texas, and that he has attended and graduated from a

reputable university, school or college of pharmacy which meets with the requirements of the Board, and shall have had at least one (1) year of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist. . ." (Emphasis added)

All of the above quoted Acts were amended in 1943 and are a part of Senate Bill 128, Acts 48th Leg., R.S. 1943, ch.395, p.710.

In Hidalgo County Drainage Dist. No.1 v. Davidson, 102 Tex. 539, 120 S.W. 849 (1909), it is stated at page 851:

"In determining the sense in which the language was used by the Legislature, we will look to the context and to the purpose of the Legislature in enacting the law."

Also, in Longoria v. State, 126 Tex.Crim. 362, (1934), 71 S.W.2d 268, we find the following:

"We further observe that in accordance with settled rules of interpretation of statutes, even when the language used is susceptible of two meanings, the courts are to give it that meaning which will conform to the scope of the act and carry out the purpose of the statute. Mr. Black, in his Hornbook on Interpretation of Laws, p.56, lays down the rule that, where the language used is ambiguous, or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope of the act and carry out the purpose of the statute."

And further, in Trimmer v. Carlton, 116 Tex. 572, 296 S.W. 1070 (1927), it is stated:

"We ought not to give any legislative act a construction which will throw the law 'into some degree of confusion,' if it can be ascertained that the Legislature had fairly expressed any other purpose."

We must therefore look to the Act as a whole in order to determine legislative intent. When this is done the only reasonable construction that could be

placed on the provision which deals with the one year of practical experience in a retail pharmacy before an applicant may take the examination is that any person who meets all the other requirements may get that practical experience in a retail pharmacy under the direct supervision of a registered pharmacist without violating the law. It was not the intent of the Legislature in enacting this law to create such an anomalous situation as to say to an applicant you must have one year of practical experience in a retail pharmacy before you may be permitted to take the examination and at the same time say to him if you attempt to get this required experience, you will be violating the law and subject to prosecution under the Act. In other words, this practical experience is simply an apprenticeship which must be served before an applicant may take the examination.

Therefore, with respect to your specific question, if an out-of-State applicant has the required college work and meets all other requirements, he would be authorized under the Act to get one year of practical experience in a retail pharmacy in this State under the direct supervision of a registered pharmacist without violating the law.

SUMMARY

An applicant who meets all other requirements is authorized to get the one year practical experience in a retail pharmacy in this State under the direct supervision of a registered pharmacist without violating the law. Sec. 9, Art. 4542a, V.C.S., Trimmer v. Carlton, 116 Tex. 573, 296 S.W. 1070 (1927).

Yours very truly,

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