

1979 WL 43247 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 29, 1979

*1 Mr. John C. Wilkie, Jr.
South Carolina State Board of Pharmaceutical Examiners
1026 Sumter Street
Columbia, South Carolina 29211

Dear Mr. Wilkie:

You have asked this Office whether or not a pharmacy not owned by a hospital, which leases premises from the hospital in which it is located, can dispense drugs directly to inpatients at the hospital pursuant to doctors' order sheets or whether individual prescriptions would be required for each individual inpatient, as normal procedure with any other retail pharmacy requires.

At the outset, it should be noted that a non-owned pharmacy operating in a hospital should be licensed by the State Board of Pharmaceutical Examiners. [Section 40-43-430, of the Code of Laws for South Carolina, 1976](#), as amended, provides, in pertinent part, that: 'Nothing in Sections 40-43-360 to 40-43-460 [which deal exclusively with pharmacy permit requirements, renewals, revocations and penalties] shall be construed as preventing any hospital . . . from dispensing drugs to inpatients in the regular course of operation of such hospital.' In other words, [Section 40-43-430](#) exempts from the requirement of a pharmacy permit hospitals which dispense drugs to in-patients in the regular course of operation. However, hospitals and their pharmacy departments are subject to Sections 40-43-360 through 40-43-460 to the extent that they dispense drugs to outpatients or employees. A pharmacy permit must be obtained by a hospital-owned pharmacy for such purposes.

When the hospital and the pharmacy are separately owned and the pharmacy leases space from the hospital in which it operates, a new situation arises. Here, the exemption in [Section 40-43-430](#) for hospitals would not apply to this type pharmacy and a pharmacy permit is required, irrespective of whether the dispensing is to inpatients or outpatients.

The second portion of your question deals with whether a non-owned hospital pharmacy may dispense drugs to inpatients pursuant to chart orders. It is the opinion of this Office that it may. The term 'prescription' does not appear to be defined in the Act regulating the practice of pharmacy. The term is, however, utilized in various sections of the Act including [Section 40-43-150, of the Code](#), which provides, in part, that: 'It shall be unlawful for any person to sell, give away, barter, exchange, distribute or possess in the State, except on a prescription of a duly licensed physician, medical or osteopathic, podiatrist, dentist or veterinarian; . . . [several listed drugs].'

While the term 'prescription' is not defined in the Act, a chart order appears to fit within the definition of prescription propounded by the State Board of Pharmaceutical Examiners pursuant to their statutory authority under [Sections 40-43-20 and 40-43-30 of the Code](#). [Regulation 99-2](#) defines prescription as follows:

A written order for drugs or medicines or combinations or mixtures thereof, signed by a duly licensed physician, dentist, veterinarian, or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or other animals, and includes orders for drugs or medicines, or combinations or mixtures thereof transmitted to pharmacists through word of mouth, telephone or telegraph or other means of communication by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of diseases in man or other animals. Such prescriptions received by word of mouth, telephone,

telegraph or other means of communication shall be recorded in writing by the pharmacist, and the record so made shall constitute the original prescription to be filled by the pharmacist.

*2 The construction of a statute by the agents in charge with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. [Faile v. S. C. Employment Security Comm.](#), 267 S.C. 536, 230 S.E.2d 219 (1976). It is clear that the term 'prescription' as defined by the State Board of Pharmaceutical Examiners would include a chart order. Moreover, a doctor's order sheet or chart order should logically be classified as a prescription for purposes of the Act regulating the practice of pharmacy. Were it not classified as a prescription, then the distribution of drugs in a hospital pursuant to a doctor's order sheet could be an unlawful act under Section 40-43-150. While the term 'prescription' has never been defined by our courts, including a doctor's order sheet within that definition is consistent with decisions reached in other jurisdictions. See, e.g., [Northern Virginia Doctors' Hospital Corp. v. Dept. of Taxation, Sales & Use Tax Division](#), 213 Va. 504, 193 S.E.2d 680 (1973).

It is, therefore, the opinion of this Office that the term 'prescription', as used in Chapter 43, of Title 40, of the [Code of Laws of South Carolina, 1976](#), includes an order for drugs on a doctor's order sheet in a hospital. Moreover, an independently owned pharmacy, having no ownership connection with the hospital, must obtain a pharmacy permit, irrespective of the fact that it dispenses exclusively to inpatients in a hospital.

Finally, it is also the opinion of this Office that that nothing in Section 40-43-150 would preclude this type of pharmacy from dispensing drugs to inpatients pursuant to a doctor's order sheet.

Yours very truly,

M. Richbourg Roberson
Assistant Attorney General

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