

**OPINION
70-266**

September 21, 1970 (OPINION)

Mr. Al Doerr

Secretary

State Board of Pharmacy

Bismarck, ND

RE: Pharmacists - Prescriptions - Ownership

Dear Mr. Doerr:

This is in reply to your letter of September 11, 1970, relative to ownership of prescriptions. You state the following facts and questions:

Of late this office has been approached on the question of the ownership of a prescription (the physician's order).

Once a doctor has written a prescription or an order and hands it to his patient has he lost all control of that order? In turn the patient hands this prescription to a pharmacist in a particular pharmacy, has he or she lost the rights to that prescription? And, on the other hand does the prescription become the sole owner of the pharmacist? Finally, is it legal for any pharmacist to furnish copies of the original prescription to any other person either in writing or orally?"

Your questions would appear to be answered in part by the provisions of section 43-15-31 of the North Dakota Century Code which section reads as follows:

PHYSICIANS' PRESCRIPTIONS TO BE FILED AND PRESERVED. Every registered pharmacist in the state shall file, or cause to be filed, any physician's prescription, or a copy thereof, which has been compounded or dispensed in his pharmacy or drug store. The prescription or a copy of the prescription shall be preserved for at least two years after it has been filled. The pharmacist may furnish a copy of any prescription to the party presenting it on the request of such party only."

In view of the provisions of this section the question of who has technical ownership of the piece of paper on which the directions to the pharmacist are written by the physician would appear to be of little significance. The pharmacist must, as a matter of law, retain the prescription or a copy thereof. The decision as to whether the original or a copy of the prescription is to be retained apparently rests with the pharmacist. Once the original or copy is filed the statute is explicit in that a copy of same can be furnished only upon the request of the party presenting it to the pharmacist except upon court order. In addition the original or copy of the prescription on file could not be furnished but only a copy of that which the

pharmacist has filed.

Insofar as the control by the doctor is concerned, we assume your question refers to ownership after the prescription has been presented to the pharmacist and filled. Prior to that time the question would not appear to concern the pharmacist. Thus it is conceivable that a doctor might attempt to recall a prescription after he has issued it and before it has been filled. In such instance it would appear necessary for the doctor to actually regain possession of the prescription for in any instance the pharmacist is entitled to rely upon the written prescription and if the doctor has recalled the prescription without regaining actual possession of same the pharmacist would have no knowledge of such action. The question of whether the doctor is entitled to recall the prescription from the patient does not concern the pharmacist. However once the prescription has been filled the pharmacist cannot return same to the doctor since the pharmacist is required to retain the prescription in his files.

We have not considered herein any federal or state statutes which might concern specific drugs or medicines and might prescribe a particular method of filing and retaining prescriptions for specific drugs or medicines.

HELGI JOHANNESON

Attorney General