

**OPINION
48-147**

September 28, 1948 (OPINION)

OCCUPATIONS AND PROFESSIONS

RE: Pharmacists - Drugs Sold at Retail Stores

Mr. Dan Hall of this city has left with this office the correspondence you sent to him with reference to drugs which may be sold by retail stores not employing a registered pharmacist.

Section 43-1514 of the North Dakota Revised Code of 1943 provides that:

DRUGS, POISONS, MEDICINES, CHEMICALS; WHO MAY SELL. No drug, poison, medicine, or chemical, except patent or proprietary preparations, shall be manufactured, compounded, sold, or dispensed in this state for medicinal use by any person other than a registered pharmacist, assistance registered pharmacist, or regularly licensed physician, nor shall any person except a registered pharmacist, assistant registered pharmacist, or a regularly licensed physician, dispense or compound a prescription of a medical practitioner except as provided in this chapter."

Section 43-1533 provides as follows:

LICENSE TO SELL EMERGENCY MEDICINES. Any person of good moral character over twenty-one years of age, who conducts a retail business at a place more than five miles from a drug store employing a registered pharmacist, may procure from the board, upon application and payment to said board of a fee of three dollars annually, a license which shall permit such retailer to keep for sale, and to sell in original packages, the simple household remedies and such other emergency medicines and poisons as from time to time may be approved for such sale by the board. Such license shall be for a period of one year commencing on July first and ending on June thirtieth following the date of the application. It shall apply to the location for which it is issued and shall be posted in a conspicuous place at such location. Upon satisfactory proof to the board of any violation of any law of the state by the licensee in or upon the premises licensed, the board shall revoke the license. The board, from time to time, may add to or eliminate from the approved list of simple household remedies, emergency medicines, and poisons saleable under the license. Notice of the alterations shall be given by publication in such manner as the board deems proper."

Section 43-1514 quoted herein makes an exception as to patent or proprietary preparations. That, however, is a general term and must be read in the light of the entire section. If such patent or proprietary preparation contains ingredients, which in the judgment of the Board of Pharmacy would be dangerous to the public or should not be used except on the prescription of a licensed physician, then

it is my opinion that under Section 43-1533 the Board of Pharmacy would have the authority under its power to prohibit the sale of such preparations except by a registered pharmacist.

It should be observed that Section 43-1533 is applicable only to a retail business conducted at a place more than five miles from a drugstore employing a registered pharmacist.

Section 43-1532 enumerates those who may engage in drug business and reads as follows:

WHO MAY ENGAGE IN DRUG BUSINESS. Every store, dispensary, pharmacy, laboratory, or office, selling, dispensing, or compounding drugs, medicines., or chemicals, or compounding or dispensing prescriptions of medical practitioners in the state, and every business carried on under a name which contains the words, 'drugs,' 'drug store,' or 'pharmacy' or which is described or referred to in such terms by advertisements, circulars, posters, signs, or otherwise, shall be in charge of a registered pharmacist, or, during his temporary absence, of a registered assistant pharmacist. Any person violating the provisions of this section is guilty of a misdemeanor."

It must be borne in mind that all of the statutes pertaining to the subject of drugs, poisons, medicines and chemicals must be read and construed together. If Section 43-15214, supra, is read without consideration to other statutes, it might appear that patent or proprietary preparations could be sold indiscriminately by dealers or stores that do not employ registered pharmacists or assistant registered pharmacists. The manufacturers of any so-called drugs or medicines could label them proprietary preparations regardless of their ingredients and sell them to the public without any restrictions.

I do not believe that this is the intent of the law. Section 43-1514 must be read together with sections 43-1532 and 43 1533 quoted herein. These sections were enacted as a part of Chapter 182 of the Session Laws of 1907 and therefore, must be read and construed together.

Section 43-1533 is an amendment of Section 499 of the Compiled Laws of 1913. It provides, among other things, that the board may, from time to time, add to or eliminate from the approved list of household remedies, emergency medicines and poisons saleable under the license granted to retailers whose places of business are more than five miles from a drugstore employing a registered pharmacist. When these statutes were enacted the Legislature undoubtedly recognized the fact that the indiscriminate sale of drugs by persons who have had no training in pharmacy is fraught with danger to the public, and, therefore, the board was vested with discretion to limit the indiscriminate sale of such drugs.

It is my opinion, therefore, that it is within the powers of the Board of Pharmacy to limit the sale by unlicensed dealers of such preparations or proprietary medicines as in its judgment is necessary for public safety.

P. O. SATHRE

Attorney General