

**OPINION**  
**56-86**

October 11, 1956 (OPINION)

DRUGS

RE: Who May Dispense

This is in reply to your letter requesting an opinion of this office in regard to the dispensing of drugs by physicians, in the regular course of their medical practice.

Your first question is stated as:

Can lay personnel, nurses or doctors' wives dispense drugs from a physician's office for his patients from the original stock bottles of drugs not hitherto relabeled distinctly for a specific patient by either a physician or a pharmacist (a) with the doctor present in his office? (b) with the doctor not present in his office? (c) with the doctor present in his office but in a room adjacent to the drug dispensing room?"

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

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, assistant 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."

You will note that this section does not in terms except from its operation nonphysicians, or nonpharmacists, acting under the supervision of a licensed physician. The only other applicable exception contained in said Chapter 43-15 is subsection 1 of section 43-1502 which provides:

The provisions of this chapter shall not apply to the following:

1. A duly licensed practitioner of medicine supplying his own patients with such remedies as he may desire."

No decision of the Supreme Court of this state considers in detail the question of how far a doctor may go in the use of lay personnel in the course of supply his own patients with such remedies as he may desire. It is the opinion of this office that the fact of the doctor's presence in the office or in an adjoining room would not be determinative of whether or not the act of supply such remedy is exempted under this provision of the statute. It is our opinion from the context and history of Chapter 43-15 as a whole that it was not the intention of the legislature to allow compounding, dispensing or

selling of drugs by lay personnel whether in doctors' offices or not and whether under the supervision of physicians, pharmacists or not. It is therefore our conclusion that the action exempted by subsection 1 of 43-1502 is the personal action of the physician himself.

Your second question is stated as: "In the dispensing procedure, what information must be on the container passed to the patient when the physician himself actually dispenses (a) dangerous drugs such as barbiturates (b) prescription legend drugs? (c) other classes of drugs?

The state statutory requirements as to labeling of drugs when the physician himself actually dispenses are as follows:

Subdivision b of subsection 1 of section 19-1903 of the 1953 Supplement to the North Dakota Revised Code of 1943 provides:

The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure to act are hereby declared unlawful:

1. The delivery of any barbiturate, except as provided in section 5 of this act (19-1905) unless:
  - b. Such barbiturate is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, 'if such drug is prescribed for an animal a statement showing the species of the animal.  
\* \* \*"

Barbiturate is defined by subsection 1 of section 19-1902 of the 1953 Supplement as "\* \* \* the salts and derivatives of barbituric acid, also known as malonyl urea having hypnotic or somnifacient action, or compounds of any preparations or mixtures thereof; \* \* \*" There is no specific requirement of labeling "dangerous drugs such as barbiturates."

We find no state statutory regulation requiring that a physician dispensing prescription legend drugs or other classes of drugs affix any specified information to the container thereof. We would suggest that as to the application of the pertinent federal regulations or rules of the State Laboratories Department, that you contact the pertinent agency.

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Attorney General