

NARCOTIC DRUGS:
HOUSE BILL 185:
DIVISION OF HEALTH:

Division of Health should issue a license for the sale of narcotic drugs by wholesale to such applicants as give satisfactory proof of the matters set forth in paragraphs 1 and 2 of Section 195.040, RSMo. 1949; Division of Health is not justified in withholding such a license until such applicant furnishes proof that he is a licensed pharmacist or has a licensed pharmacist in his employ.



September 21, 1953

Honorable James R. Amos, M.D.
Director, Division of Health
Department of Public Health and Welfare
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"We would like to have an official opinion concerning the requirements and duties of the Division of Health, Bureau of Food and Drugs, in regard to issuing Narcotic License to wholesale dealers who are handling and distributing narcotics.

"For background information concerning this matter, we are attaching a letter dated October 1, 1952, from Mr. T. J. Walker, Treasury Department, Bureau of Narcotics, calling our attention to the fact that the 66th General Assembly passed House Bill No. 185, which is a revision of Chapter 338 of the Revised Statutes of Missouri-1949, known as the State Pharmacy Law. This change in the Pharmacy Laws was to become effective August 1, 1952.

"We are also sending a copy of House Bill 185, which is the Amended Pharmacy Law. You will note that Mr. Walker points out that Section 338.010 provides that wholesale dealers must be licensed as a pharmacist or employ a licensed pharmacist before they are legally entitled to engage in the drug business in the State of Missouri.

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"We are also attaching a copy of a letter dated October 3, 1952, which Mr. John H. McCutchen, Director, Bureau of Food and Drugs, sent to Mr. Walker in reply to his original letter. You will note that we have called to the attention of Mr. Walker the fact that since no change had occurred in the Narcotic Law that we felt this change in the Pharmacy Law did not effect the issuing of Narcotic License.

"We are attaching a copy of a letter dated October 18, 1952 from Mr. Walker, Bureau of Narcotics. I would like to call your attention to the third paragraph in this letter and to the fifth paragraph in this letter.

"We are also including a letter from the Mallinckrodt Chemical Works, dated July 22, 1953, and you will note that they contest the legality of our requiring that a wholesale dealer have a registered pharmacist as a member of the firm or an employee of the firm.

"In order to clarify this matter it will be appreciated if you will review the Narcotic Laws which are found in Chapter 195 of the Missouri Revised Statutes-1949, and the Amended Pharmacy Laws, and advise us if we shall require that wholesale drug firms or wholesale dealers comply with the Revised Pharmacy Law; that is, have a registered pharmacist as a member of the firm or as an employee of the firm before we should issue them a State Narcotic License."

The issue appears to be whether the Division of Health should issue a license to a person to sell narcotics at wholesale absent a showing by the person applying for such license that he is a licensed pharmacist or that he has in his employ a licensed pharmacist.

This issue appears to have arisen because of the passage by the 66th General Assembly of Missouri of House Bill 185, which repeals and re-enacts certain sections of Chapter 338, RSMo. 1949, which chapter is entitled "Pharmacists."

Among the sections repealed by House Bill 185 is Section 338.010, which is re-enacted in Section 338.010, of House Bill 185.

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We note however, that upon the issue which is the subject of your inquiry, which issue is stated above, the repealed Section 338.010, supra, and the reenacted Section 338.010 of House Bill 185 are identical.

"* * *Provided, however, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine or dentistry in the compounding or dispensing of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist. * * *"

Thus, so far as the particular matter of your inquiry is concerned, House Bill 185 makes no change in a law of many years standing. We point out this matter for the purpose of showing that in this particular, which is the matter of your inquiry, House Bill 185 makes no change in the law.

We now direct attention to Chapter 195, RSMo 1949, which is entitled "Narcotic Drug Act."

Section 195.190, supra, states:

"It is hereby made the duty of the division of health, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs."

By the above section it is made the duty of the Division of Health to enforce the provision of Chapter 195. It should be noted that the Division of Health, so far as narcotics are concerned, is not charged with the enforcement of any other law pertaining to narcotics, and this includes the Pharmacy Law as set forth in Chapter 338, supra. We further note that there is no mention made in Chapter 195, supra, of any requirement that a person engaged in the sale of narcotic drugs at wholesale either be a licensed pharmacist or have a licensed pharmacist in his employ. Therefore, since the Division of health is, so far as narcotic drugs are concerned, charged only with the enforcement of the provisions of Chapter 195, supra, and since Chapter 195 makes no mention of the fact that a person who sells narcotic drugs at wholesale must be a licensed pharmacist or must employ a

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licensed pharmacist, the Division of Health is not charged with the enforcement of such a law.

We now call attention to Section 195.030, RSMo. 1949, which states:

"No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the division of health."

We now direct attention to paragraphs 1 and 2 of Section 195.040, RSMo. 1949, which set forth the things that an applicant for a license to sell narcotic drugs at wholesale must do before the Division of Health shall issue him a license. These things are:

"License issued by division of health--
revocation-appeal

"1. No license shall be issued under Section 195.030 unless and until the applicant therefor has furnished proof satisfactory to the division of health:

"(1) That the applicant is of good moral character or, if the applicant be an association or corporation that the managing officers are of good moral character.

"(2) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

"2. No license shall be granted to any person who has within five years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The division of health may suspend or revoke any license for cause."

We now direct attention to paragraph 3 of the above section, which paragraph reads:

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"3. If the division of health shall refuse any person, persons, or corporation, a license under this chapter, or shall revoke a license already issued under this chapter, the person, persons, or corporation shall have the right to appeal to the circuit court of the county in this state in which said appellant resides, or if the appellant be a corporation, then to the circuit court of the county in this state in which said corporation has its principal office."

It is our belief that if a person applies to the Division of Health for a license to sell narcotic drugs at wholesale, and furnishes to the Division of Health satisfactory proof of the matters set forth in paragraphs 1 and 2 of Section 195.040, supra, that the Division of Health should issue the license. It is our further opinion that if the Division of Health refuses to do so it can be forced to do so under paragraph 3, supra.

If a person selling narcotic drugs at wholesale fails to abide by all of the laws pertaining to such sale, he may be prosecuted for the violation of whatever law or laws he violates, but that fact as we see it, has no bearing upon the duty imposed upon the Division of Health to issue such a license upon compliance by an applicant with the provisions of paragraphs 1 and 2 of Section 195.040, supra.

CONCLUSION

It is the opinion of this department that the Division of Health should issue a license for the sale of narcotic drugs by wholesale to such applicants as give satisfactory proof of the matters set forth in paragraphs 1 and 2 of Section 195.040, RSMo. 1949; and that the Division of Health is not justified in withholding such a license until such applicant furnishes proof that he is a licensed pharmacist or has a licensed pharmacist in his employ.

This opinion, which I hereby approve, was written by my assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General