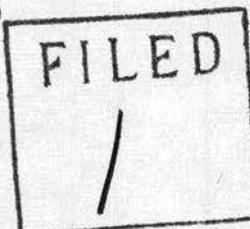


NARCOTICS:  
FOOD AND DRUG:

(1) A drug store or apothecary shop dispensing narcotics must have a registered pharmacist therein before the owner or employer may be granted a state narcotic license. (2) A state narcotic license is not required to buy and sell drugs which contain narcotics in amounts equal to or smaller than those stipulated in Section 9839 of the 1939 Revised Statutes of Missouri.

October 13, 1949

Honorable C. F. Adams, M.D.  
Acting Director, Division of Health  
Jefferson City, Missouri



10/21/49

Dear Sir:

This is in reply to your request for an official opinion of this office which request reads as follows:

"1. Is it necessary to be a registered pharmacist or have a pharmacist in your employ before you are eligible to obtain a state narcotic license?

"2. Is it necessary to obtain a state narcotic license before it is permissible to buy and sell drugs which contain narcotics in amounts equal to or smaller than those stipulated in Section 9839 of the State Narcotic Laws? We have reference to paregoric or Godfrey's cordial, which according to the Pharmacopoeia of the United States, XIII Revision, contains less than two grains of opium per one fluid ounce."

In regard to your first question, we understand from your telephone conversation since receiving your letter, that you have reference to persons or corporations dispensing or selling narcotic drugs in drug stores or apothecary shops at retail to the general public, and therefore we will not consider that there are other professional people and certain businesses that may be granted a state narcotic license.

Section 9832 defines an apothecary as follows:

"'Apothecary' means a licensed pharmacist as defined by the laws of this state, and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state."

This would include a drug store or any other place of business selling and dispensing narcotic drugs. This definition plainly indicates that narcotic drugs must be compounded or dispensed by a licensed pharmacist.

Section 10023, Mo. R. S. 1939, provides:

"It shall not be lawful for any druggist or other person to retail or sell or give away any cocaine, hydrochlorate or other salts of or any compound of cocaine, or preparation containing cocaine, or any salt of or any compound thereof, or opium, morphine, codeine or heroin, excepting upon the written prescription of a licensed physician or licensed dentist, or licensed veterinary surgeon, licensed under the laws of the state, which prescription shall only be filled once: Provided, that the provisions of this section shall not apply to sales in the usual quantities at wholesale by any manufacturer or wholesale dealer when such manufacturer or wholesale dealer shall have affixed to the box, bottle or package containing such cocaine, hydrochlorate or other salt or compound of cocaine or preparation containing cocaine, or opium, morphine, codeine or heroin, a label specifically setting forth the proportion of cocaine, opium, morphine, codeine and heroin contained in any preparation: Provided, that the provisions of this section shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies, which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salts or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts: Provided, that such remedies and preparations are sold, distributed given away, dispensed, or possessed, as medicines and not for the purpose of evading the intentions and provisions of this chapter."

This section plainly indicates that narcotic drugs cannot be dispensed or sold except on the written prescription of the professional people named in the statute. A prescription cannot be filled by anyone except a licensed pharmacist or a licensed physician. Section 10005 provides it shall be unlawful for any person not licensed

as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retail, compounding or dispensing of any drugs, medicines, chemicals, poisons or for the compounding of physician's prescriptions, or, to keep exposed for sale at retail any drugs, etc.

A druggist who is not a pharmacist must keep constantly in his employ a registered pharmacist to fill prescriptions and dispense narcotic drugs. State v. Jordan, 87 Mo. App. 420; State v. Shanks, 71 S.W. 1065, 98 Mo. App. 138. A doctor who dispensed cocaine from his drug store without a prescription and who was also a registered pharmacist was found guilty of dispensing said cocaine without a prescription, although he subsequently wrote a prescription as a physician, for said narcotic drug in the case of State v. Willis, 128 Mo. App. 214, 106 S.W. 584. The object of the Uniform Narcotic Drug Act, Sections 9832 to 9854, R. S. Mo. 1939, is to regulate and control traffic in the use of substances or preparations that are extremely injurious to moral qualities and physical structures of human beings, and one of the purposes of the Act is to make uniform among the separate states the law relating to narcotic drugs and to parallel and supplement Federal narcotic laws, State v. Martin (1940) 192 So. 679, 193 La. 1036. People v. Gennaro, (1941) 26 N.Y.S.(2d) 336, 261 App. Div. 533.

We understand that a federal narcotic license will not be granted to any apothecary shop or drug store that does not have a registered pharmacist working therein at all times.

In response to your second question, it is our opinion that the exemptions set forth in Section 9839, R. S. Mo. 1939, are clear and that it is not necessary to have a state narcotic license to buy and sell drugs which contain narcotics in amounts equal to or smaller than those stipulated in Section 9839, supra. This section provides in the first subsection thereof as follows:

"(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (a) not more than two grains of opium, (b) not more than one-quarter of a grain of morphine or of any of its salts, (c) not more than one grain of codeine or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts."

Therefore, if paregoric or Godfrey's cordial contains less than two grains of opium per one fluid ounce then a person would not have

to obtain a state narcotic license to sell the same or any other patent medicine qualified under the exemptions set forth in said Section 9839, but at all times subject to the conditions set forth in said section as to amount of said drugs or patent medicines that may be sold within a forty-eight hour period, and subject to the conditions stated in said section that the preparation shall have medicinal qualities other than those of the narcotic drug and that the same must be sold in good faith as a medicine.

There are no Missouri appellate court decisions in this state upon the questions you have propounded to us.

CONCLUSION

It is the opinion of this office that it is necessary for one to be a registered pharmacist or have a registered pharmacist in his employ in a drug store or apothecary shop before he may be granted a state narcotic license and before he may sell and dispense narcotic drugs.

It is also the opinion of this office that it is not necessary to obtain and have a state narcotic license to buy and sell drugs or patent medicines which contain narcotics in amounts equal or smaller than those stipulated in Section 9839 of the Revised Statutes of Missouri, 1939.

APPROVED:

J. E. TAYLOR  
Attorney General

*[Signature]*  
SJM:mw

Respectfully submitted, .

*[Signature]*  
STEPHEN J. MILLETT  
Assistant Attorney General