

Opinion No. 81, answered by letter.

January 18, 1962

FILED
81

Honorable Anthony D. Pickrell
5th District, Jackson County
5415 East 27th Street Terrace
Kansas City, Missouri

Dear Mr. Pickrell:

This is in response to your letter of January 16, 1962, requesting an opinion on several questions put to you concerning whether a registered pharmacist must be present when prescriptions are filled.

In a recent opinion, this office construed Section 338.240, RSMo 1959, as requiring the presence of a licensed pharmacist at any time that a prescription is compounded or sold. A copy of that opinion, issued at the request of Honorable George Allen under date of December 8, 1961, is attached herewith.

The letter that accompanied your request makes specific reference to the provisions found in Section 338.010, RSMo 1959, which apparently permit someone other than a registered pharmacist to compound prescriptions "as an aid to or under the direct supervision of" a licensed pharmacist.

We do not believe that it was the intent of Section 338.010 to create a separate status somewhere between layman and licensed pharmacist which would permit unlicensed "aids" to fill physicians' prescriptions. On the contrary, we believe that when Section 338.010 is read so as to harmonize with the obvious intent of Section 338.240 (4), it simply permits an unlicensed person, in the presence of a qualified pharmacist, to compound a prescription at the latter's direction and under his actual supervision.

Although there are no recent judicial pronouncements on this subject, we are bolstered in our view by an early decision of the St. Louis Court of Appeals which said, in construing a similar statute:

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"* * * In fact, the aid in filling a prescription of a physician, under supervision of the pharmacist, does not in fact, or in legal effect, make a sale of the drugs or liquors purchased. His act is the act of the pharmacist. He exercises no independent judgment of his own in compounding these prescriptions, but is the mere instrument or hand through which it is compounded by the pharmacist, and the pharmacist and not the aid is the responsible party in the transaction. * * *"

State v. Hammack (1902), 93 Mo. App. 521, 528.

Therefore, since both of your questions are premised on the absence of a licensed pharmacist at the time the prescription is filled, the answers would necessarily be in the negative. That is, a person not licensed as a pharmacist may compound prescriptions, but only in the presence and under the supervision of a licensed pharmacist.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

AJS:jh
Enc.