

PHARMACY: Household remedies and drugs which may be sold
in general stores.

September 17, 1943

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Mr. Ted D. Willard, Secretary
State Board of Pharmacy
Camdenton, Missouri

Dear Mr. Willard:

Under date of August 25, 1943, you wrote this
office requesting an opinion as follows:

"I am enclosing a copy of a letter
from the Independent Grocers' Alliance
Distributing Co., 309 West Jackson
Blvd., Chicago, Illinois, and, also,
a copy of the letter which I have
written them.

"I would appreciate your furnishing me
with an opinion as to the disposition
of their products as per their request."

Section 10005, R. S. Mo. 1939, of which you are
familiar, prohibits any person not licensed as a pharmacist
from conducting a pharmacy for the retailing of drugs, medi-
cines, chemicals or poisons. This section is in part as
follows:

"It shall be unlawful for any person
not licensed as a pharmacist within
the meaning of this chapter to con-
duct or manage any pharmacy, drug or
chemical store, apothecary shop or
other place of business for the re-
tailing, compounding or dispensing of
any drugs, medicines, chemicals or
poisons, or for the compounding of
physicians' prescriptions, or to keep

exposed for sale, at retail, any drugs, medicines, chemicals or poisons, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense or sell at retail any drug, chemical, poison or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this chapter. * * * * *

Provided, however, that nothing in this section shall be so construed as to apply to the sale of patent and proprietary medicines, and in any locality where there is no licensed pharmacist, the ordinary household remedies and such drugs or medicines as may be specified by the board of pharmacy shall be permitted to be sold by those engaged in the sale of general merchandise: Provided further,
 * * * * *

The portions of the section which are pertinent to your inquiry are set out above and are the exception clauses.

Accompanying your letter of request was a letter from the national headquarters of the Independent Grocers' Alliance Distributing Company, containing a list of products of this organization which it desires to have offered by retailers for sale in grocery stores and general merchandise stores in this State. The list is as follows:

- "Castor Oil (U.S.P. cold pressed),
Epsom Salt (U.S.P.), 1# sealed package to
retail for 15¢
- W. P. T. Cough Syrup (White Pine & Tar.)
Contains no opiate. 3-ounce bottle
retails for 25¢
- Mercurochrome, 1/4 ounce applicator bottle
to retail for 10¢
- Milk of Magnesia (U.S.P.), pint bottle to
retail for 28¢
- Extra Heavy Mineral Oil (U.S.P.) 345 to
360 Vis., pint bottle retails for 48¢

Mouth Wash (Liquor Antisepticus N.F.)
pint bottle to retail for 43¢
Witch Hazel (Dickinson's), pint bottle
to retail for 48¢
Soluble Saccharin ($\frac{1}{2}$ gr. amber bottles
100s). No nutritive value-only a
sweetening agent for beverages.
Retail for 25¢
Boric Acid Po. (U.S.P.) 1/4# sealed
package retails for 15¢
Isopropyl Alcohol Rubbing Compound
(70% Isopropyl Alcohol) Pint Pinch
Bottle retails for 33¢

"We also had U.S.P. Glycerine in 3-ounce
bottles which has been discontinued for
the duration, as is also Camphor Oil in
3-ounce bottles."

From the records of the Board of Pharmacy we learn that in accordance with the authority conferred by Section 10005, supra, the Board has compiled a list of certain drugs and medicines which it has authorized to be sold as household remedies and which may be sold in general merchandise stores in any locality where there is not a licensed pharmacist. Comparing the list of products submitted by the Independent Grocers' Alliance Distributing Company with the list designated by the State Board of Pharmacy, we find that the following products have been declared to be products which may be sold in general merchandise stores in any locality in which there is no pharmacist:

- (1) castor oil
- (2) epsom salt
- (3) boric acid
- (4) mineral oil
- (5) glycerine
- (6) camphorated oil
- (7) rubbing alcohol

We have further ascertained from the records of the State Board of Pharmacy that it has declared certain drugs and products are not proprietary or patent medicines and that they may be sold only under the supervision of a licensed pharmacist,

except such of these as may be included within the list of products designated for sale in general stores. Comparing the list submitted by the Independent Grocers' Alliance Distributing Company with the list of products declared not to be patent or proprietary medicines, we find that the following products which the Independent Grocers' Alliance Distributing Company wishes to offer for sale are included in this list:

- (1) boric acid
- (2) castor oil
- (3) epsom salt
- (4) mercurochrome
- (5) milk of magnesia
- (6) mineral oil
- (7) rubbing alcohol
- (8) glycerine
- (9) camphorated oil

Some of the last above mentioned products are included within the list of household remedies and drugs which may be sold in general merchandise stores in any locality in which there is no pharmacy and unless they are included within this list then they may be sold only under the supervision of a registered pharmacist.

This brings us to a discussion of the other exception, patent and proprietary medicines. The following definitions of "patent medicines" are cited for your guidance:

"Patent medicines are medicines prepared for immediate use by the public, put up in packages or bottles labeled with the name and accompanied with wrappers containing directions for their use and the conditions for which they are specifics. State v. Donaldson, 42 N. W. 781, 41 Minn. 74."

"Unlicensed retailer's advertisement of 'patent medicines' held not violative of statute making unlicensed retailer's advertisement for sale of 'drugs' or 'medicines' misdemeanor. Education Law, Sec. 1364, schedules A--C. Prohibition of

Education Law, Ec. 1355, as amended by Laws 1930, c. 835, Sec. 1, against unlicensed retailer's advertisement for sale of 'medicines,' did not apply to advertisement of 'patent medicines' authorized by section 1361 to be sold by such retailers, since generic term 'medicines' has meaning in public mind different from phrase 'patent medicines,' which is colloquial name for 'proprietary medicines' put up by manufacturers or compounders under trade-names. Furthermore, in buying 'patent medicines' public does not rely on presumed or actual skill of retailer, as is the case when other compounds or prescriptions are purchased. *People v. Bernstein*, 261 N. Y. S. 381, 237 App. Div. 270."

Words & Phrases, Vol. 31, p. 423.

And the following definitions of "proprietary medicines" are also cited:

"'Proprietary medicines,' within a statute, making it an offense to practice medicine without having secured a certificate from the state board of medical examiners, but providing that it shall not prevent the advertising and sale of patent and proprietary medicine, means medicines which some person or company, other than a person indicted for prescribing certain medicines without a license, manufactured, advertised, and sold. *State v. Kendig*, 110 N. W. 463, 465, 133 Iowa, 164.

"Prohibition of Education Law, Sec. 1355, as amended by Laws 1930, c. 835, Sec. 1, against unlicensed retailer's advertisement for sale of 'medicines,' did not apply to advertisement of 'patent medicines' authorized by section 1361 to be sold by such retailers, since generic term 'medicines' has meaning in public mind different from

phrase 'patent medicines,' which is colloquial name for 'proprietary medicines' put up by manufacturers or compounders under trade-names. Furthermore, in buying 'patent medicines' public does not rely on presumed or actual skill of retailer, as is the case when other compounds or prescriptions are purchased. *People v. Bernstein*, 261 N. Y. S. 381, 237 App. Div. 270."

Words & Phrases, Vol. 34, p. 603.

Again referring to the list of products furnished by the Independent Grocers' Alliance Distributing Company, we find:

"W.P.T. Cough Syrup (White Pine & Tar)" and
"Mouth Wash (Liquor Antisepticus N.F.)",

which would seem to be within the definitions of "patent" and "proprietary medicines."

This leaves only two items on the list submitted by the Independent Grocers' Alliance Distributing Company which have not been discussed:

Witch Hazel and
Soluble Saccharin.

They are not in the list of household remedies and drugs which the State Board of Pharmacy has designated is suitable for sale in general stores in any locality where there is no pharmacy and in the mind of the writer do not fall within the definitions of "patent" and "Proprietary medicines" and therefore could not be sold except under the supervision of a registered pharmacist.

In discussing the products mentioned herein, they have been considered only in the light of the Missouri laws relative to the practice of pharmacy and there has been no attempt to pass upon their eligibility to be sold under the Pure Food

Mr. Ted D. Willard

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and Drug Acts of this State and the Federal Government.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
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