

**OPINION
69-267**

April 23, 1969 (OPINION)

The Honorable Vernon E. Wagner

State Representative, Thirty-second District

RE: Pharmacists - Licenses - Exemptions for Federal Employees

This is in reply to your letter of April 18, 1969, relative to a letter you received from the United States Public Health Service. That letter, as quoted by you, reads as follows:

The Aberdeen Area of the United States Public Health Service, Indian Health Service, provides health services to approximately 60,000 American Indians in a seven-state area through a system of 11 hospitals, 5 health centers, and numerous health stations and school health centers. Most of the Indian people in this area are provided direct health care services by Commissioned Officers of the United States Public Health Service.

Very few of our medical and pharmacy officers are licensed in states in which they are on temporary duty as they are fulfilling their military obligations. All of them are, however, licensed in some state.

Usually our own pharmacies can provide the medications required to adequately treat the Indian people we serve. There are occasions, however, where some of our medical officers might like to prescribe drugs for Indian patients to be filled in civilian pharmacies. My question is - can pharmacists in your state honor the prescriptions written for Indians by a physician who is not licensed to practice medicine in your state? Can our pharmacy officers, who are not licensed in your state, fill prescriptions written for Indians by civilian physicians who are licensed to practice in your state?"

You request our opinion on the questions presented.

Physicians and surgeons in North Dakota are licensed under the provisions of chapter 43-17 of the North Dakota Century Code, as amended. Section 43-17-02(8) of the North Dakota Century Code provides as follows:

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

* * *

8. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if

called in consultation with a person licensed to practice medicine in this state;

* * *."

Pharmacists are licensed in this state under the provisions of chapter 43-15 of the North Dakota Century Code, as amended: This chapter prohibits the dispensing of drugs except upon prescription. Section 43-15-01(4) of the North Dakota Century Code provides:

"In this chapter, unless the context or subject matter otherwise requires:

* * *

4. 'Prescription' means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram or other means of communication by a duly licensed physician, dentist, veterinarian or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded or dispensed by a pharmacist;

* * *."

While the term "licensed by law" would ordinarily be construed to mean a person licensed by law to prescribe drugs in North Dakota, Commissioned medical officers of the armed forces of the United States, the United States Public Health Service and medical officers of the Veterans Administration of the United States are exempt from the physicians and surgeons licensing requirements in this State. Therefore we believe pharmacists licensed to practice in North Dakota may honor the prescriptions written for Indians by a physician who is not licensed to practice medicine in this State but who is a Commissioned medical officer of the armed forces of the United States, the United States Public Health Service and medical officers of the Veterans Administration of the United States.

While the pharmacy law contains no specific exemptions with regard to pharmacists employed by the United States Public Health Service and the armed forces of the United States, it is generally accepted that the state licensing laws do not apply to these individuals when acting in their professional capacity in behalf of the United States. We assume, therefore, the question of whether pharmacy officers employed by the United States Department of Health can fill prescriptions written for Indians by civilian physicians who are licensed to practice in North Dakota would be governed by the regulations of the United States Public Health Service. We do not believe the laws of North Dakota would prohibit same.

HELGI JOHANNESON

Attorney General