



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

March 18, 1975

Opinion No. 75-120

Mr. Joseph G. Shalinsky
Executive Secretary
Kansas State Board of Pharmacy
P. O. Box 6150, Argentine Station
Kansas City, Kansas 66106

Dear Mr. Shalinsky:

You ask whether a drug, which is included in Schedule III as defined by K.S.A. 65-4109(c)(9) but has not been defined as a prescription drug by the Food and Drug Administration, may be dispensed without a prescription in light of K.S.A. 65-4123(c). In particular, you ask about a drug called Parepectolin.

The requirement that certain drugs be dispensed only with a prescription is covered by K.S.A. 65-4123. The requirements are stated thus:

(a) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by the rules and regulations of the board, Schedule II drugs may be dispensed upon oral prescription of a practitioner reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 21 [65-4121]. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

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(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

[Emphasis supplied.]

Section (a) requires that all drugs included in Schedule II must be dispensed with a written prescription except in certain emergency situations as defined in section (b).

Section (c) is more ambiguous. It requires that a drug included in Schedules III and IV be dispensed only by prescription if it is a "prescription drug." At first, this appears to be a circular definition. However, an examination of the history of the legislation resolves the ambiguity.

K.S.A. 65-4123 is part of the Uniform Controlled Substances Act adopted in Kansas in 1972. The Act was originally promulgated by the National Conference of Uniform State Laws in 1970 and was intended to afford uniform regulation of those dealing in dangerous drugs throughout the United States. The Act provides for the registration and licensing of individuals and businesses who deal with certain narcotics which are listed on schedules and defined by the Act. It makes little or no attempt to deal with drugs as medicine. This left it to the states and federal government to accomplish through other legislation.

Therefore, the text of the Uniform Controlled Substances Act as promulgated in 1970 stated the requirements for dispensing with a prescription thus;

Except when dispensed directly by a practitioner other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under [appropriate State or Federal statute], shall not be dispensed . . .

Handbook of the National Conference
of Commissioners on Uniform State Law
and Proceedings of the Annual Confer-
ence Meeting in Its Seventy-Ninth Year,
(1970), p. 247.

[Emphasis supplied.]

Thus, the requirement for a prescription of a Schedule III drug is dependent on other state and federal laws.

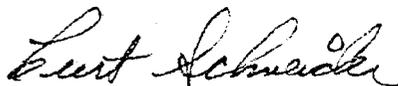
In Kansas, we have for the most part, left the regulation of medicines to the Federal Food and Drug Administration. That federal agency has the authority to require certain drugs to be dispensed

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only with a prescription and to require that such drugs be labeled with the inscription, "Caution: Federal law prohibits dispensing without prescription." The agency makes the necessary designations under the authority of 21 U.S.C. § 353. In the absence of such designations, Kansas has no alternate means of requiring a prescription other than that previously described. (K.S.A. 65-4123).

Therefore, a drug which has been appropriately included on either Schedule III or IV as defined in K.S.A. 65-4109, but has not been designated by the F.D.A. as a prescription drug, may be dispensed in Kansas without a prescription. The drug, Parapectolin, that you refer to in your letter appears to be a drug of that type.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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