



STATE OF KANSAS

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February 21, 1985

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ATTORNEY GENERAL OPINION NO. 85- 22

Lynn E. Ebel
Attorney for the Kansas
State Board of Pharmacy
6602 Halsey Street
Shawnee, Kansas 66216

Re: Public Health -- Healing Arts -- Restrictions on
Prescribing Controlled Substances

Public Health -- Uniform Controlled Substances
Act -- Registration Requirements

Synopsis: K.S.A. 1984 Supp. 65-2837a provides that persons licensed to practice medicine and surgery must follow prescribed procedures in the issuance of prescriptions for certain controlled substances. By virtue of being licensed by the state board of healing arts, practitioners are exempted from the registration requirements of K.S.A. 1984 Supp. 65-4116, which must otherwise be met before controlled substances may be prescribed. An out-of-state practitioner must therefore either be licensed by the state board or meet the registration requirements. If this is done, a pharmacist may fill a prescription for controlled substances described in K.S.A. 1984 Supp. 65-2837a for an out-of-state practitioner, using the same procedures as for a practitioner licensed in Kansas. Cited herein: K.S.A. 1984 Supp. 65-2837a, 65-4116, K.S.A. 65-4117, 65-4118, K.A.R. 68-20-18.

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Dear Ms. Ebel:

You have requested our opinion concerning whether a pharmacist may fill any prescriptions for amphetamines or sympathomimetic amines (as designated in schedules II, III or IV of the Uniform Controlled Substances Act) which are issued by a person licensed to practice medicine and surgery in another state. After examining the Kansas Healing Arts Act, K.S.A. 65-2801 et seq., the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq., and the statutes and regulations concerning pharmacists at K.S.A. 65-1625 et seq., and K.A.R. 68-20-1 et seq., we conclude that while Kansas pharmacists may fill prescriptions for controlled substances issued by out-of-state practitioners, the procedures and limitations set forth in K.S.A. 1984 Supp. 65-2837a must be followed in the same manner as if the prescriptions were issued by Kansas practitioners.

K.A.R. 68-20-18 states that a prescription for a controlled substance may be issued only by a practitioner who is legally authorized, in Kansas or any other competent jurisdiction, to prescribe such substances, and either registered or exempt from registration under K.S.A. 1984 Supp. 65-4116(d). That subsection in turn allows the board of pharmacy to waive the registration requirement when such waiver would be consistent with the public health and safety. The statute also provides that anyone licensed by the state board of healing arts is deemed to be in compliance with the registration requirements of the Uniform Controlled Substances Act. K.S.A. 1984 Supp. 65-4116(c)(5). Accordingly, an individual out-of-state practitioner would be exempt from registration only if licensed under the board of healing arts in this state.

Thus, any practitioner, whether in-state or out-of-state, must either be licensed under the Kansas Board of Healing Arts or registered under the Uniform Controlled Substances Act (UCSA) to be able to issue prescriptions for controlled substances in Kansas. All practitioners licensed under the board of healing arts are subject to the statutes set forth in that act, including K.S.A. 1984 Supp. 65-2837a. All practitioners registered under the UCSA are subject to the statutes set forth in that act.

The registration statutes in the UCSA provide that registrants are subject to all state laws dealing with controlled substances. K.S.A. 65-4117(a) provides as follows:

"The board shall register an applicant to manufacture, dispense or distribute controlled substances included in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113 unless

it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

. . .

"(2) compliance with applicable state and local law; . . .

. . .

"(7) any other factors relevant to and consistent with the public health and safety."

That statute goes on to say that:

"(c) practitioners shall be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to prescribe or to conduct research under the laws of this state." (Emphasis added.)

K.S.A. 65-4118 covers revocation and suspension of registration. It provides that:

"(a) A registration under K.S.A. 65-4117 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

. . .

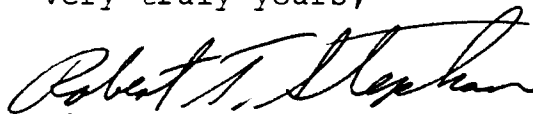
"(3) has violated any rule or regulation of the board controlling the manufacture, distribution or dispensing of the controlled substances contained in the schedules promulgated in the rules and regulations of the board."

In that K.A.R. 68-20-1 et seq., are regulations controlling the manufacture, distribution or dispensing of controlled substances, practitioners registered under the UCSA are therefore required to abide by the limits and procedures contained therein as well as those found in the act itself.

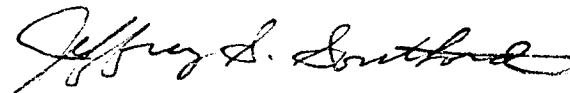
In our opinion, the obvious and overriding purpose behind the UCSA and K.S.A. 1984 Supp. 65-2837a of the Kansas Healing Arts Act is to limit the availability of controlled substances in this state. The public health and safety is protected by these acts. To allow an out-of-state practitioner to prescribe controlled substances without following the procedures required in this state would be to allow the laws to be circumvented, thus impairing public health and safety. Furthermore, since both in-state and out-of-state practitioners issuing prescriptions for controlled substances in are subject to the requirements of K.S.A. 1984 Supp. 65-2837a, Kansas pharmacists are required to see that the prescriptions they fill for practitioners are prepared in the manner prescribed by that statute and K.A.R. 68-20-18(c) (1).

In conclusion, K.S.A. 1984 Supp. 65-2837a provides that persons licensed to practice medicine and surgery must follow prescribed procedures in the issuance of prescriptions for certain controlled substances. By virtue of being licensed by the state board of healing arts, practitioners are exempted from the registration requirements of K.S.A. 1984 Supp. 65-4116, which must otherwise be met before controlled substances may be prescribed. An out-of-state practitioner must therefore either be licensed by the state board or meet the registration requirements. If this is done, a pharmacist may fill a prescription for controlled substances described in K.S.A. 1984 Supp. 65-2837a for an out-of-state practitioner, using the same procedures as for a practitioner licensed in Kansas.

Very truly yours,



ROBERT T. STEPHAN
OFFICE OF THE ATTORNEY GENERAL



Jeffrey S. Southard
Deputy Attorney General