

1614.

PRESCRIPTION FOR A DRUG MAY NOT BE RECEIVED AT A STORE WHERE THERE IS NO LEGALLY REGISTERED PHARMACIST IN CHARGE.

*SYLLABUS:*

*A prescription for a drug, etc., may not be received at a store where there is no legally registered pharmacist in charge and taken to some other pharmacy to be filled and returned for delivery and payment at such branch store.*

*The same rule would apply to a prescription for an exempt narcotic drug or for intoxicating liquors.*

COLUMBUS, OHIO, July 14, 1924.

HON. M. N. FORD, *Secretary State Board of Pharmacy, Columbus, Ohio.*

Dear Sir:—

I am in receipt of your communication as follows:

“May a prescription for a drug, chemical, compound or poison, issued by a legally qualified physician, dentist or veterinary surgeon, be received at a branch store or other store where there is no legally registered pharmacist and may such prescription be telephoned or taken by messenger to the main store, having a legally registered pharmacist in charge, or some other pharmacy legally operated, and be filled and returned for delivery and payment at the branch store or other store where there is no legally registered pharmacist and the original prescription kept on file at the main store or the legally operated pharmacy?

“Would the same apply to a prescription for an exempt narcotic drug or for intoxicating liquor?”

Section 12705, General Code of Ohio, provides:

“Whoever, not being a legally registered pharmacist, manages or conducts a retail drug store unless he has in his employ in full and actual charge of the pharmaceutical department of such store, a pharmacist legally registered under the laws of this state, and, whoever, being a legally registered pharmacist shall manage or conduct a retail drug store without being personally in full and actual charge of such store, or unless he has in his employ in full and actual charge of the pharmaceutical department of such store a pharmacist legally registered under the laws of this state, shall be fined not less than fifty dollars nor more than two hundred dollars. Each violation of this section shall constitute a separate offense. A retail drug store, within the meaning of this section, shall be any room, rooms or place of business wherein drugs, poisons, chemicals or pharmaceutical preparations shall be offered or displayed for sale at retail, or upon which as a sign the words ‘pharmacy’, ‘drugs’, ‘drug store’, ‘pharmacist’, ‘pharmaceutical chemist’, ‘apothecary’, or any of these words, or their equivalent in any language, are or is displayed.”

Section 12705 makes it unlawful to manage or conduct a retail drug store without having a licensed pharmacist in charge of the pharmaceutical department.

Section 12706, General Code, provides:

"Whoever, not being a legally registered pharmacist, or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist, compounds, dispenses or sells a drug, chemical, poison or pharmaceutical preparation, shall be fined not less than fifty dollars nor more than two hundred dollars. Each day's violation of this section shall constitute a separate offense."

This section makes it unlawful for persons other than legally registered pharmacists or assistant pharmacists to compound, dispense or sell a drug, chemical, poison or pharmaceutical preparation.

In answering the question presented, it is necessary to determine from the facts set out in your communication if a drug store is being conducted or maintained or drugs being compounded, dispensed or sold contrary to law.

It is apparent from your communication that drugs are not being compounded at these branch stores.

Funk & Wagnal's Standard Dictionary defines "dispensing" as "To dispense; to deal out or divide in portions." From this definition it is apparent that drugs are not being dispensed from the branch store.

Section 12705, General Code, is violated if drugs are offered or displayed for sale, and section 12706 is violated if drugs are sold contrary to the above section. Your question will turn on whether the sale or offering for sale is actually made at a branch store or the store where the prescription is filled.

In the case of the *Village of Bellefontaine vs. Vassaux*, 55 O. S., 323, it was held: .

"The general rule is that title to goods intended to be transported passes from the vendor to the purchaser upon delivery by the former to a common carrier consigned to the purchaser, whether paid for or not. But if the vendor consigns the goods nominally to the purchaser, but actually in care of his own storekeeper, who is to retain them in control and give possession to the purchaser only on payment of the purchase price, then the delivery to the common carrier is not, in law, delivery to the purchaser.

"Under such circumstances, the shipment being in effect to the vendor himself, the delivery, when it occurs, would be at the storehouse of the vendor; and the transaction would not be a completed sale at the point of shipment."

Reasoning from the rule laid down in the above case, it would seem that if a prescription is consigned to the branch store and the person in charge of such store is to part with possession only on payment of the purchase price, the sale is made at such branch store.

You are therefore advised that a prescription for a drug, etc., may not be received at a store where there is no legally registered pharmacist in charge and taken to some other pharmacy for delivery and payment at such branch store.

In answer to your second question it is my opinion that the same rule would apply to a prescription for an exempt narcotic drug or for intoxicating liquors.

Respectfully,

C. C. CRABBE,

*Attorney General.*