

**OPINION NO. 80-001**

**Syllabus:**

1. Pursuant to R.C. 4729.54, a license for the terminal distribution of dangerous drugs authorizes the licensee to engage in the sale or other distribution of dangerous drugs at only one establishment or place.
2. When dangerous drugs are purchased by a person who operates a large central facility and then redistributes the drugs to smaller satellite facilities for sale to retail consumers, each of the smaller satellite facilities must be the subject of a separate license which has been issued to a terminal distributor of dangerous drugs and which names the satellite facility as the establishment or place at which the terminal distributor may engage in the sale or other distribution of dangerous drugs.
3. A person licensed as a terminal distributor of dangerous drugs who operates a large central facility need not register as a wholesale distributor of dangerous drugs so long as any sales from the central facility which come within the definition of wholesale sales appearing in R.C. 4729.02(K) are made only to satellite establishments or places, each of which is the subject of a separate license for the terminal distribution of dangerous drugs that has been issued to such terminal distributor and that is in effect at the time of sale.

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**To: Franklin Z. Wickham, Executive Director, State Board of Pharmacy, Columbus, Ohio**

**By: William J. Brown, Attorney General, January 14, 1980**

I have before me your request on behalf of the State Board of Pharmacy for my opinion which poses the following questions:

1. In the institutional or campus-like setting where dangerous drugs are purchased by a large central facility that is licensed as a terminal distributor of dangerous drugs and then redistributed to smaller satellite facilities that may or may not be under common ownership, are the smaller facilities required to register as licensed terminal distributors of dangerous drugs?
2. In the same situation, are the larger facilities that are already licensed terminal distributors of dangerous drugs also required to register as wholesale distributors of dangerous drugs?
3. If it is decided that the large facility must obtain registration as a wholesale distributor of dangerous drugs, the next question posed is: must the large facility maintain dual registration as both a wholesale and terminal distributor of dangerous drugs to engage in both types of distribution—"wholesale sale" and "retail sale"?

Your questions center upon the issue of whether the transfers described in your letter are "sales" of dangerous drugs which subject the parties involved to the licensure requirements of R.C. Chapter 4729. It is significant to note at the outset that the term "sale" as used in R.C. Chapter 4729 need not include a monetary exchange. The term is broadly defined by R.C. 4729.02(J) to include "delivery, transfer, barter, exchange, or gift, or offer therefor." R.C. 4729.02(K) defines a "wholesale sale" as any sale in which the purpose of the purchaser is to resell the items involved. R.C. 4729.02(L) defines a "retail sale" as any sale other than a wholesale sale. R.C. 4729.02(D) defines the term "dangerous drug" for purposes of R.C. Chapter 4729.

In the situation you describe, dangerous drugs are delivered to a large central facility for transfer to a satellite facility where they are sold to retail consumers (i.e., patients). Under the definitions of the various types of sale set forth above, a "sale" occurs both upon initial delivery to the large central facility and upon subsequent transfer to a separate satellite facility. Your first and second questions center upon the issue of exactly which type of sale has occurred, since the type of license necessary to effectuate a transfer of dangerous drugs is dictated, by statute, by the nature of the transfer.

R.C. 4729.51(C) provides, in part: "No person, except a licensed terminal distributor of dangerous drugs or a practitioner shall purchase for the purpose of resale, possess for sale, or sell, at retail, dangerous drugs."

R.C. 4729.02(Q) defines a terminal distributor of dangerous drugs as:

[A] person other than a practitioner who is engaged in the sale of dangerous drugs at retail, or any person other than a wholesale distributor or a pharmacist who has in his possession, custody, or control dangerous drugs for any purpose other than for his own use and consumption, and includes pharmacies, hospitals, nursing homes, and laboratories, and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or medical practitioner.

R.C. 4729.54 and R.C. 4729.55 set forth requirements governing registration as a terminal distributor of dangerous drugs.

R.C. 4729.54, which sets forth a number of requirements for registration as a licensed terminal distributor, in pertinent part provides:

Each such license and the application therefore shall describe not more than one establishment or place where the licensee or applicant may engage in the sale or other distribution of dangerous drugs for purposes other than for his own use or consumption. No such license shall authorize or permit the terminal distributor of dangerous drugs named therein to engage in the sale or other distribution of dangerous drugs at retail or to maintain possession, custody, or control of dangerous drugs for any purpose other than for his own use or consumption at any establishment or place other than that described in such license. (Emphasis added.)

Under these provisions, it is an individual or entity, rather than a location, that is licensed as a terminal distributor. See R.C. 4729.02(S) (defining "person"). Each license that is issued is, however, limited to one establishment or place where the licensee may engage in the distribution of dangerous drugs. Hence, a license which names only the large central facility does not operate to permit terminal distribution of dangerous drugs at any of the smaller satellite facilities.

The provisions of R.C. 4729.51(C) prohibit all persons from distributing dangerous drugs to consumers unless such persons either are practitioners authorized by law to so dispense or are licensed as terminal distributors. Applying

these statutory provisions to the situation outlined in your letter, I am of the opinion that the smaller satellite facilities you describe which deliver, transfer or exchange dangerous drugs to or with the retail consumer thereof or which maintain possession, custody or control of dangerous drugs may not operate unless each such facility is the subject of a separate license which has been issued to a licensed terminal distributor under R.C. 4729.54 and R.C. 4729.55 and which describes such satellite facility as the establishment or place where the licensee may engage in the sale or other distribution of dangerous drugs.

Turning now to your second question, I am of the opinion that the statutory provisions discussed above leave some doubt as to whether a licensed terminal distributor of dangerous drugs who distributes these substances to satellite facilities for later distribution must be licensed as a wholesale distributor of dangerous drugs.

Under the terms of R.C. 4729.02(O), a wholesale distributor of dangerous drugs is defined as "a person engaged in the sale of dangerous drugs at wholesale." The term "wholesale" is defined in R.C. 4729.02(K) as "any sale in which the purpose of the purchase is to resell the article purchased or received by the purchaser." While these provisions alone would seem to require licensing as wholesalers of the larger facilities described in your questions (in that they distribute drugs to those who will redistribute them), other portions of the Revised Code suggest a contrary conclusion.

R.C. 4729.51 describes those persons who may sell, purchase, distribute or deliver dangerous drugs. That section provides in broad terms that only registered wholesalers may engage in wholesale transfers of dangerous drugs, with two exceptions.

The first exception is set forth in R.C. 4729.51(A) and, in pertinent part, reads as follows:

[N]othing in this division shall prevent a licensed terminal distributor of dangerous drugs having more than one establishment or place from transferring or delivering dangerous drugs from one such establishment or place for which a license has been issued to such terminal distributor to another such establishment or place for which a license has been issued to such terminal distributor so long as the license issued for each such establishment or place is in effect at the time of such transfer or delivery.

Similarly, R.C. 4729.51(D) specifies that "[n]o licensed terminal distributor of dangerous drugs shall purchase for the purpose of resale dangerous drugs from any person other than a registered wholesale distributor of dangerous drugs," and qualifies this statement with a proviso identical in language to the one in R.C. 4729.51(A) set forth above. Thus, I am of the opinion that a licensed terminal distributor of dangerous drugs may distribute drugs to retail satellite facilities, without being licensed as a wholesaler, so long as the licensed terminal distributor provides drugs only to satellite establishments or places, each of which is named in a separate license which has been issued to such terminal distributor and which is in effect at the time of distribution. The "common ownership" of which you speak is not determinative. The relevant question is whether the same person is named as terminal distributor in each of the licenses.

There is some concern expressed in your request as to whether the two provisos discussed above are in conflict with R.C. 4729.51(E) and portions of R.C. 4729.54. The latter section, which is set forth in pertinent part above, provides that each terminal distributor's license shall authorize only one place where a licensed terminal distributor may distribute dangerous drugs. The former, which is nearly identical, reads as follows:

No licensed terminal distributor of dangerous drugs shall engage in the sale or other distribution of dangerous drugs at retail or maintain

in his possession, custody, or control dangerous drugs for any purpose other than for his own use or consumption at any establishment or place other than that described in the license issued by the board of pharmacy to such terminal distributor.

At first blush, R.C. 4729.54 and R.C. 4729.51(E) appear to render nugatory the provisos contained in R.C. 4729.51(A) and (D) in that they prohibit the very acts the provisos allow. However, where statutory provisions appear ambiguous, they are to be harmonized so as to give full meaning to both. State ex rel. Adsmund v. Board of Education, 135 Ohio St. 383, 21 N.E. 2d 94 (1939). Therefore, the language found in R.C. 4729.54 and R.C. 4729.51(E) must be construed so as to render the other sections operative. This may be accomplished by affording the provisions of R.C. 4729.54 and R.C. 4729.51(E) their plain meaning and effect. It then becomes apparent that these provisions serve only to confine the distribution of dangerous drugs by a licensed terminal distributor to the one place denominated in the license for such distributor and in no way restrict the distribution by the distributor from that place to other establishments or places to the extent authorized by R.C. 4729.51(A). As there is nothing else in R.C. Chapter 4729 to justify limiting the specific language contained in the provisos found in R.C. 4729.51(A) and (D), I am of the opinion that a licensed terminal distributor having more than one establishment or place may transfer drugs from one such establishment or place to other such establishments or places and is not required to be licensed as a wholesaler, provided that each of the facilities to which he transfers drugs is the subject of a separate license issued to such terminal distributor.

My conclusion in respect to the issues raised by your second question renders consideration of your third question unnecessary.

In specific answer to your questions, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 4729.54, a license for the terminal distribution of dangerous drugs authorizes the licensee to engage in the sale or other distribution of dangerous drugs at only one establishment or place.
2. When dangerous drugs are purchased by a person who operates a large central facility and then redistributes the drugs to smaller satellite facilities for sale to retail consumers, each of the smaller satellite facilities must be the subject of a separate license which has been issued to a terminal distributor of dangerous drugs and which names the satellite facility as the establishment or place at which the terminal distributor may engage in the sale or other distribution of dangerous drugs.
3. A person licensed as a terminal distributor of dangerous drugs who operates a large central facility need not register as a wholesale distributor of dangerous drugs so long as any sales from the central facility which come within the definition of wholesale sales appearing in R.C. 4729.02(K) are made only to satellite establishments or places, each of which is the subject of a separate license for the terminal distribution of dangerous drugs that has been issued to such terminal distributor and that is in effect at the time of sale.