

OPINION NO. 78-062**Syllabus:**

The term "practitioner" as defined in R.C. 3719.01(BB) and R.C. 4729.02(H) includes persons exempt under R.C. 4731.36 from the provisions of R.C. Chapter 4731. An Ohio pharmacist may, therefore, fill an order for drugs issued by a person enumerated within R.C. 4731.36.

**To: Franklin Z. Wickham, Executive Director, State Board of Pharmacy,
Columbus, Ohio**
By: William J. Brown, Attorney General, December 20, 1978

I have before me your request for my opinion as to whether an Ohio pharmacist may legally fill a prescription written by a practitioner who falls within the exemptions set forth in R.C. 4731.36.

Your request necessitates an analysis of the definitions of several terms used in R.C. Chapter 4729, which regulates the pharmacy profession, and R.C. Chapter 3719, which regulates the possession and sale of dangerous drugs and controlled substances. The term "prescription" is defined, for the purposes of R.C. Chapter 3719, in R.C. 3719.01(CC) as follows:

"Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practices and in accordance with the regulations promulgated by the Director of the United States drug enforcement administration, pursuant to the federal drug abuse control laws.

For the purposes of R.C. Chapter 4729, a prescription "means an order for drugs or combinations or mixtures thereof, written or signed by a practitioner or transmitted by a practitioner to a pharmacist by word of mouth, telephone, telegraph, or other means of communication and recorded in writing by the pharmacist." R.C. 4729.02(G) While the definitions of prescription vary, the significant common feature is that a prescription must be issued by a practitioner.

For the purposes of R.C. Chapter 3719, practitioner "means a person who is licensed pursuant to Chapter 4715 [dentists], 4731 [physicians and limited practitioners], or 4741 [veterinarians] of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs." R.C. 3719.01(BB). The definition of practitioner set forth in R.C. 4729.04(4) does not differ in any material respect from that set forth in R.C. 3719.01(BB).

A careful reading of these definitional provisions requires one to conclude that in order for an order for drugs to meet the definition of a prescription under Ohio law the order must be issued by a person licensed pursuant to R.C. Chapters 4715, 4731 or 4741, and authorized by law to write prescriptions for drugs. The issue presented by your question, therefore, is whether those persons exempted from the licensing requirements of R.C. Chapter 4731, by R.C. 4731.36, are nevertheless "licensed" for purposes of the statutory definition of "practitioner". R.C. 4731.36 provides in pertinent part as follows:

[R.C. 4731.01 to 4731.47, inclusive] shall not apply to a commissioned medical officer of the United States army, navy, or marine hospital service in the discharge of his professional duties, or to a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anaesthetics, or a physician or surgeon residing in another state or territory who is a legal practitioner of medicine or surgery therein, when in consultation with a regular practitioner of this state; nor shall such sections apply to a physician or surgeon residing on the border of a neighboring state and authorized under the laws thereof to practice medicine and surgery therein, whose practice extends within the limits of this state; provided equal rights and privileges are accorded by such neighboring state to the physicians and surgeons residing on the border of this state contiguous to such neighboring state.

Since the persons enumerated in R.C. 4731.36 are exempt from the provisions of R.C. Chapter 4731, such persons may practice medicine or surgery within this state without a certificate from the state medical board. Since the practice of medicine, which is defined in R.C. 4731.34, includes prescribing drugs, it is reasonable to conclude that these persons are authorized to prescribe drugs in Ohio. As indicated previously, however, whether an order for drugs constitutes a prescription under Ohio law depends in part upon a two-fold test of the authority of the person issuing the order. The person issuing the order must be both authorized by law to write prescriptions and licensed pursuant to R.C. Chapters 4715, 4731 or 4741.

The intent of the General Assembly in enacting this latter requirement is not clear since the term "licensed" is subject to differing interpretations. The term "license" generally means the permission granted by some competent authority to do some act which would otherwise be illegal. *State ex rel Zugravu v. O'Brien*, 130 Ohio St. 23 (1935); *Shady Acres Nursing Home, Inc. v. Canary*, 29 Ohio App.2d 47 (Franklin County 1973). The same term may, however, be used in a more specific sense in which it refers to the certificate or the document which represents the permission granted. See, *Aldrich v. City of Syracuse*, 236 N.Y.S. 614, 134 Misc. 698 (1925). This distinction is significant to the issue you present. If the requirement that a person be licensed pursuant to R.C. Chapter 4731 is interpreted in accordance with the general meaning of the term "license," the persons enumerated in R.C. 4731.36 meet the definition of "practitioner" since they are permitted to practice medicine and surgery within this state. If, however, the more specific interpretation is applicable, then, such persons do not fall within the definition since they lack a proper certificate.

Pursuant to R.C. 1.47, it is presumed that in enacting a statute, the General

Assembly intended a just and reasonable result. Since, by exempting the persons enumerated in R.C. 4731.36 from the provisions of R.C. Chapter 4731, the General Assembly has given them permission to prescribe drugs in this state, it is not reasonable to conclude that the General Assembly intended that their orders for drugs would not constitute prescriptions under Ohio law. For this reason, it is my opinion that the phrase "licensed" as used in the statutory definition of a "practitioner" set forth in R.C. 3719.01(BB) and R.C. 4729.02(H), encompasses all persons who are permitted to practice medicine or surgery under the laws of this state.

Two qualifications must be noted, however. First, the intent of the General Assembly in using the term licensed may vary depending upon the context. My analysis of this term has significance only for those statutes expressly noted. Second, the sale of drugs by a pharmacist is also regulated by federal law. See *eg.*, "Federal Food, Drug and Cosmetic Act," 52 Stat. 1040, (1938), 21 U.S.C. §301, as amended. My opinion as to the validity of a prescription under Ohio law does not relieve a pharmacist of his duty to comply with an obligation, restriction or regulation imposed by federal law.

In specific answer to your question, it is my opinion and you are so advised that the term "practitioner" as defined in R.C. 3719.01(BB) and R.C. 4729.02(H) includes persons exempt under R.C. 4731.36 from the provisions of R.C. Chapter 4731. An Ohio pharmacist may, therefore, fill an order for drugs issued by a person enumerated within R.C. 4731.36.