



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL,
ATTORNEY GENERAL

November 18, 1975

The Honorable J. H. Arnette, R. Ph.
Secretary
Texas State Board of Pharmacy
914 Littlefield Building
Austin, Texas 78701

Opinion No. H- 737

Re: Whether a person acting under the direction of a licensed practitioner of medicine, dentistry, or chiropody has the benefit of the exemption which article 4542a, V. T. C. S., grants to physicians, dentists and chiropodists.

Dear Mr. Arnette:

You have requested our opinion regarding whether a person acting under the direction of a licensed practitioner of medicine, dentistry or chiropody has the benefit of the exemption which article 4542a, V. T. C. S., grants to physicians, dentists and chiropodists. Section 8 of article 4542a provides, in pertinent part:

It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine, prepare, label sell, or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this State shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry, or chiropody, who is duly registered as such by his respective State Board of Examiners of this State, who shall supply his or her patients, as a physician, dentist, or chiropodist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop, or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act

shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiropodist, or veterinarian licensed by his respective Board of Examiners of this State, in order to supply the immediate needs of his patients. . . .

Attorney General Opinion WW-829(1960), answered your question in the negative, holding that an exempted practitioner may not authorize his nurse or aide to fill and dispense prescriptions for his patients. The Opinion noted that the granting of this authority to an exempted practitioner would permit him to create additional categories of exemption beyond those established by the Legislature.

In Attorney General Opinion WW-1403(1962), the Attorney General held that a licensed nurse might "carry out the duties of the nursing profession by dispensing or administering drugs or medicine as directed by a licensed doctor. . . ." The Opinion took note of the previous ruling, but apparently perceived no conflict. It based its conclusion on "the duty of the nurse. . . . to carry out the medical treatment prescribed by a doctor for his patient. "

In our opinion, Attorney General Opinion WW-829 controls your question. As the Attorney General there observed, another portion of section 8

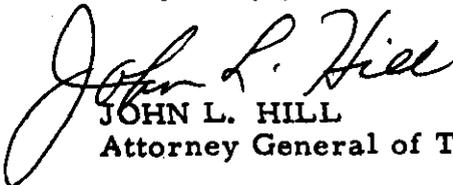
exempts certain senior pharmacy students operating under the direct supervision of a registered pharmacist. It would appear that if the legislature has intended that nurses or other aides should also be exempted, specific mention thereof would have been made.

Thus, it is our opinion that a person acting under the direction of a licensed practitioner of medicine, dentistry or chiropody does not have the benefit of the exemption which article 4542a grants to physicians, dentists and chiropodists. This is not to say that persons might not be able to perform similar acts authorized by other statutes. See e.g., art. 4518 relating to professional nursing.

SUMMARY

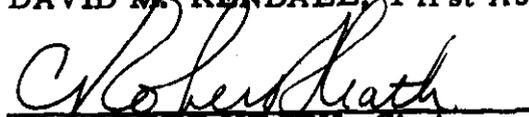
A person acting under the direction of a licensed practitioner of medicine, dentistry or chiropody does not have the benefit of the exemption which article 4542a, V. T. C. S., grants to physicians, dentists and chiropodists.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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