

50 Linda Willard

DEPARTMENT OF JUSTICE
STATE OF NEBRASKA
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DATE: August 21, 1989

SUBJECT: Whether a Licensed Veterinarian Needs a Pharmacy or a Pharmacy Permit in Certain Circumstances

REQUESTED BY: Gregg F. Wright, M.D. M.Ed.
Director of Health

WRITTEN BY: Robert M. Spire, Attorney General;
Marilyn B. Hutchinson, Assistant Attorney General

You have asked whether a licensed veterinarian needs a pharmacy license or a pharmacy permit in the following circumstances:

1. Does a licensed veterinarian need a pharmacy license to sell drugs, based on the prescription of another licensed veterinarian? We have concluded he or she does not, as discussed below.

Under Neb.Rev.Stat. §71-1,147 (Reissue 1986), no person may "compound and dispense drugs and medications and fill the prescription of a medical practitioner" except a licensed pharmacist, a pharmacy intern, a registered nurse in stated circumstances or supportive pharmacy personnel in a hospital in stated circumstances.

As defined in Neb.Rev.Stat. §71-1,142(7) (Supp. 1988), "dispense" means the preparation and delivery of a prescription drug pursuant to the lawful order of a medical practitioner. As defined in Neb.Rev.Stat. §71-1,142(14) a "medical practitioner" is one who can write prescriptions intended for the treatment or prevention of disease or body function in humans.

Under Neb.Rev.Stat. §71-1,154(1)-(3) (Supp. 1988), licensed veterinarians may only treat and prescribe for animals other than humans. Thus a licensed veterinarian who fills and delivers a prescription for such an animal does not need a license to practice pharmacy in order to do so, even though such veterinarian is not on the list in Neb.Rev.Stat. §71-1,147 of persons who may fill prescriptions of medical practitioners. That exception for licensed veterinarians is expressly stated in Neb.Rev.Stat §71-1,143(5) (Reissue 1986).

2. Does a licensed veterinarian need a pharmacy permit in order to sell drugs based on a prescription of another licensed veterinarian or to advertise as an animal pharmacy the establishment, place or location where he or she does so? We have

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concluded that a pharmacy permit is needed, as discussed below.

Under Neb.Rev.Stat. §71-1,147.01 (Reissue 1986), no person shall engage in, conduct, or carry on a pharmacy or engage in the practice of pharmacy in this state unless the Department of Health has issued a permit to conduct such pharmacy on the recommendation of the board.

Neb.Rev.Stat. §71-1,143(2) exempts from this requirement a licensed veterinarian "who regularly engages in dispensing such drugs or medicinal substances to his or her patients for which such patients are charged either separately or together with charges for other professional services."

A "pharmacy" is defined in Neb.Rev.Stat. §71-1,142(12) (Supp. 1988) to mean:

"(a) any establishment, place or location, which is advertised as a pharmacy, drug store, apothecary, or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143, and (b) any establishment, place, or location which is used as a pick-up point, or drop point, including kiosks, for prescriptions to be filled or where prescription medication is made ready for delivery to the patient;"

The "practice of pharmacy" is defined in Neb.Rev.Stat. §71-1,142(1)(f) (Supp. 1988) to include:

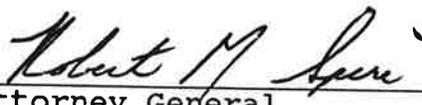
"the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy."

Thus, when the drugs sold are based on the prescription of another licensed veterinarian both the advertising of the establishment as a pharmacy and using such establishment as a pick-up point or drop point for prescriptions to be filled and made ready for delivery to the patient are activities which require a pharmacy permit.

Sincerely yours,

ROBERT M. SPIRE
Attorney General

APPROVED BY:



Attorney General


Marilyn B. Hutchinson
Assistant Attorney General