

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

The Commissioner of Education would, therefore, have to initially submit the portion of his Department's biennial budget which deals with the computed general purpose aid under section 3732 on a tentative basis. Any changes in the general purpose aid computation which might be required by adjustments made in the biennial State Valuations by the Municipal Valuation Appeals Board, pursuant to Title 36, M.R.S.A. §§ 208 and 292, would then have to be brought to the attention of the Joint Legislative Committee on Appropriations and Financial Affairs after the State Tax Assessor has certified and filed the valuations pursuant to section 381 of Title 36.

CRAIG H. NELSON
Assistant Attorney General

April 7, 1972
Commission of Pharmacy

Richard O. Campbell, Secretary

Pharmacy – Hospitals

SYLLABUS:

A hospital does not need an apothecary business license in order to dispense drugs to its bona fide outpatients. A hospital employee is not per se an outpatient of that hospital. Non-licensed personnel of a hospital pharmacy may not dispense drugs.

FACTS:

Stated in the questions.

QUESTIONS:

1. Does Maine Law require licensure for an institution to dispense Legend and/or Controlled Drugs to outpatients?
2. Are employees of this institution considered by Maine Law as the equivalent of outpatients in regards to dispensing of these substances (g.v.)?
3. Can non-licensed pharmacy personnel dispense to these employees, or must they be dispensed by a duly licensed Pharmacist?

ANSWERS:

1. No.
2. No. But see "Reasons."
3. No; Yes.

REASONS:

Your first question is construed to be: whether or not a hospital must obtain an apothecary business license in order to dispense drugs to its bona fide outpatients. The answer to that question is negative for the following reasons. 32 M.R.S.A. § 2801 provides:

"No person shall within the limits of this State conduct the business of an

apothecary or any part thereof . . . unless the same is placed and kept under the personal control and supervision of a registered apothecary . . .

“This section shall not apply to physicians, hospitals and sanatoriums who supply medicines to their bona fide patients, . . .”

It is clear that a hospital needs no apothecary business license to dispense drugs to its “patients.” The critical question is: what is a “patient” within the meaning of 32 M.R.S.A. § 2801? Chapter 41 of Title 32 provides no definition of that term. In the absence of a statutory definition of that term, we must construe the word “patient” in accordance with “the common meaning of the language.” 1 M.R.S.A. § 72, subsection 3. *Webster’s New International Dictionary, Second Edition, Unabridged*, defines “patient” as:

“Patient – A sick person, now commonly, one under treatment or care, as by a physician or surgeon, or in a hospital; hence, a client of a physician, hospital or the like.”

Webster’s Seventh New Collegiate Dictionary defines “patient” as:

“Patient: An individual awaiting or under medical care and treatment.”

It seems clear from these definitions that a bona fide outpatient would be a client of a hospital and a person under medical treatment of a hospital, and, hence, a “patient” within the meaning of 32 M.R.S.A. § 2801.

Your second question is somewhat ambiguous. We have construed it to ask: whether or not an employee is, by mere force of his relationship as an employee, necessarily an “outpatient” of the hospital employing him? If that is the intent of question 2, the answer must be in the negative, since a “patient” and an “employee” constitute two distinctly different relationships. One is at the hospital for work and the other is there for medical treatment. While it is clearly possible for an employee to become sick and to seek and obtain medical care from that hospital, and, *thereby*, to become also a “patient” of the hospital, it is equally clear that a lot more is required to establish a bona fide status of “patient,” including “outpatient,” than merely the establishment of the status of “employee.”

Your third question is construed to ask: whether or not non-licensed pharmacy personnel, of a hospital pharmacy which does not have an apothecary business license, may dispense to employees of a hospital who are not bona fide “patients,” including, “outpatients,” of that hospital? The answer to that question is negative for two reasons. The first reason has already been indicated in the explanation of the answer to the second question. A hospital that does not have an apothecary business license can only dispense drugs to its bona fide “patients,” including “outpatients,” and, as above-explained, an “employee” is not per se a “patient,” including “outpatient.” The second reason for the negative answer to the third question is that while a hospital is exempt from the requirement of an apothecary business license, its personnel are not excluded from the requirement of 32 M.R.S.A. § 2902, which requires that every person who practices pharmacy must be licensed.

A similar opinion relating to similar questions was expressed in a letter dated January 31, 1963, to Mr. Edward L. Allen, Secretary of the Commission of Pharmacy, by Leon V. Walker, Jr., Assistant Attorney General.

CHARLES R. LAROUCHE
Assistant Attorney General