

MAINE STATE LEGISLATURE

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April 12, 1976

Richard O. Campbell, Secretary

Commission of Pharmacy

Phillip, M. Kilmister, Assistant

Attorney General

Hospital Pharmacies

As per our recent telephone conversations and more for the sake of the record than anything else, it should be emphasized that the recent (March 24, 1976) decision of the United States Supreme Court in the case of Abbot Laboratories v. Portland Retail Druggists Assn., Inc., clearly overrules all previous opinions of this Office which have held that employees of hospitals and dependent members of their immediate families, may not purchase drugs from hospital pharmacies.

This recent decision by the Supreme Court will continue to spark controversy, and it should be noted that Justices Stewart and Brennan filed dissenting opinions in this matter.

It might be well to set forth for easy reference, Justice Blackmun's delineation of factual situations which permit the dispensation of drugs from hospital pharmacies to patients, staff members, and other eligible consumers.

Justice Blackmun's ruling reads in pertinent part as follows:

" . . . , drug purchases by a nonprofit hospital are exempt as being for the hospital's 'own use' if the drugs are dispensed:

a) To the inpatient for use in his treatment at the hospital; the patient admitted to the hospital's emergency facility for use in his treatment there; or the outpatient for personal use on the hospital premises. Such dispensations are part of the hospital's basic function.

b) To the inpatient, or to the emergency facility patient, upon his discharge, and to the outpatient, all for off-premises personal use, provided these take-home dispensations are for a limited and reasonable time, as a continuation of, or supplement to, hospital treatment.

c) To the hospital employee or student for personal use, or for the use of his dependent. Each is a member of the hospital family and dispensation to him furthers the hospital's functions. (emphasis supplied)

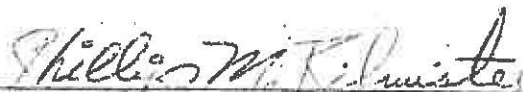
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d) To the physician staff member for his personal use or the use of his dependent. Here the considerations are similar to those in (c), supra."

Justice Blackmun's definitions of dispensation which are not categorized as being for the hospital's "own use" are equally important and worthy of analysis, but need not be reiterated in this memo.


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