

1984 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-6, 1984 WL 159815

Office of the Attorney General

State of South Carolina

Opinion No. 84-6

**January 20, 1984**

**\*1 SUBJECT: Drugs; Pharmacy and Pharmacists; Rules and Regulations; State Agencies, Board of Pharmacy**

Medical clinics such as ambulatory surgical facilities must obtain a Pharmacy Permit from the State Board of Pharmacy in order to lawfully possess and dispense 'legend' drugs in this State.

To: Executive Secretary  
South Carolina Board of Pharmacy

QUESTION:

Do ambulatory surgical facilities require a pharmacy permit from the State Board of Pharmacy in order to lawfully possess and dispense 'legend' drugs?

STATUTES AND CASES:

Sections 40-43-100, 40-43-130, 40-43-140; 40-43-370 and 40-43-430, 1976 CODE OF LAWS OF SOUTH CAROLINA, as amended; [Regulation 99-31](#); [Regulation 99-38](#); [State v. McTier](#), 264 S.C. 475, 215 S.E. 2d 908 (1975); 1977 Op. A.G. No. 77-84, p. 77.

DISCUSSION:

You have asked whether an ambulatory surgical facility must be permitted as a pharmacy by the Board of Pharmacy (the Board) in order to possess or dispense 'legend' drugs. It is our opinion that it must be so permitted by the Board.

You advise that an ambulatory surgical facility or clinic provides medical care to persons on an out-patient basis. As the name implies, such out-patients are able to come and go on their own and do not stay there overnight. The facility accordingly does not provide in-patient care and is not classified as a hospital so as to except its operations from compliance with the South Carolina Pharmacy Act.<sup>1</sup> Ambulatory surgical facilities, you further advise, are generally owned by stockholders, who may or may not be physicians that practice in the facility. 'Legend' drugs are routinely dispensed to out-patients, which drugs are purchased and owned by the facility and not by any individual physician. A registered pharmacist or permitted pharmacy usually is not involved in preparing or dispensing those drugs to the receiving patient from the facility's stock.

[Section 40-43-130 of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended, provides as follows:

The Board [of Pharmacy] shall also regulate the practice of pharmacy, . . . the compounding, dispensing and sale of drugs, medicines, poisons and physicians' prescriptions and, in so doing, shall make, publish, supervise and enforce rules and regulations for the practice of pharmacy . . . and the compounding, dispensing and sale of drugs, medicines, poisons and physicians' prescriptions . . .

[Section 40-43-150 of the 1976 CODE](#), in pertinent part, declares it unlawful for any person:

. . . to sell, give away, barter, exchange, distribute or possess in the State, except on a [valid] prescription, . . . dangerous drugs . . .

'Dangerous drugs' are defined in [Regulation 99-38](#) of the 1976 CODE as being those drugs bearing the legend 'CAUTION: Federal law prohibits dispensing without prescription.' The 'legend' drugs to which you refer in your question, therefore, are those which bear the Federal legend above. [Section 40-43-150](#) goes on to provide, among other things, that its provisions:

\*2 . . . shall apply to the sale by any manufacturer, wholesaler or retailer to any person other than those legally qualified and authorized to purchase and hold the same for resale in this State.

This section, therefore, makes it unlawful for any person to deal with certain drugs, here 'legend' drugs, without a prescription and applies to all persons, and not merely to pharmacists. [State v. McTier](#), 264 S.C. 475, 215 S.E. 2d 908 (1975). Our research has disclosed no relevant exception for out-patient medical clinics from the prohibition of [Section 40-43-150](#) discussed above, therefore, such clinics may not lawfully possess 'legend' drugs solely in the business name.

As to dispensing 'legend' drugs, pursuant to [Section 40-43-130](#), above, the Board has promulgated [Regulation 99-31](#) relating to medical clinics, which includes ambulatory surgical facilities, and which expressly provides as follows:

Drugs and pharmaceutical preparations restricted to prescription use only [i.e., 'legend' drugs] must be dispensed by or under the immediate supervision of the physician in charge. In the event medications are dispensed for 'take home' purposes, such medications must be dispensed by a registered pharmacist and recorded in the same manner as in retail pharmacies. A Pharmacy Permit must be obtained for such clinics.

As discussed in a previous opinion of this Office, [Regulation 99-31](#) represents the valid exercise of the Board's authority as it relates to such medical clinics. 1977 Op. A.G. No. 77-84, p. 77, which is attached hereto for your information and convenience.

CONCLUSION:

Therefore, it is the opinion of this Office that outpatient medical clinics such as ambulatory surgical facilities must obtain a Pharmacy Permit from the State Board of Pharmacy in order to lawfully possess and dispense 'legend' drugs in this State.

Richard P. Wilson  
Assistant Attorney General

Footnotes

- 1 [See 40-43-430](#), which excepts licensed hospitals which dispense to in-patients.  
1984 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-6, 1984 WL 159815