

The State of South Carolina



Office of the Attorney General

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February 27, 1989

Mr. C. Douglas Chavous
Executive Director
S.C. Board of Pharmacy
P. O. Box 11927
Columbia, S.C. 29211

RE: Validity of Prescriptions on Suspension Of Physician

Dear Mr. Chavous:

Your letter of October 5, 1988, to the Attorney General has been referred to me for handling and reply. Please address any future correspondence in the matter directly to me.

You have requested our opinion as to whether or not a pharmacist may lawfully dispense a prescription of a physician whose medical license has been suspended pursuant to statutory authority, and may the pharmacist dispense refills of the suspended physician's prescriptions during the period of suspension. For purposes of the following discussion, the term "suspension" applies to any situation in which a physician's active license to practice medicine in this State has been terminated or restricted, whether permanently (as by death, voluntary surrender, or revocation) or temporarily (as by inactivation upon retirement, suspension, or applicable probation and conditions.)

The S. C. Pharmacy Act at §40-43-150 of the 1976 Code of Laws of South Carolina, as amended, provides that "a prescription of a duly licensed physician" is required for the sale of certain drugs. That section further provides that "[no] such prescription shall be refilled except upon authorization of the duly licensed physician...who prescribed it."

The S.C. Controlled Substances Act at §44-53-360(c) of the amended Code similarly provides that "no practitioner shall dispense any controlled substances outside of a bona fide physician-patient relationship." Section 44-53-110 of the amended Code

Mr. Douglas C. Chavous

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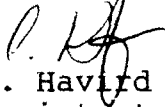
defines "practitioner" as including "[a] physician...or other person as licensed...to distribute, dispense...or to administer a controlled substance in the course of professional practice...in this State." That section also defines "dispense" as including "prescribing." These and other accompanying provisions of State law are consistent with those generally found in Federal law. For example, 21 CFR Section 1306.03 requires that a valid license be held in order to write a valid prescription.

Clearly, the statutory scheme predicates the lawful dispensing of all prescription drugs on the lawful order of a licensed medical practitioner issued in the course of a bona fide physician-patient relationship. It makes no difference whether the pharmacist is authorized to dispense a drug by an initial prescription or pursuant to a refill, because at the time of actual delivery to the patient a bona fide physician-patient relationship must be in existence. As mentioned above, by definition, such a relationship cannot exist without a valid license being held by the practitioner. Since the S.C. Medical Practice Act at §40-47-60 of the amended Code prohibits the practice of medicine in this State without a license, it is manifestly certain that one may not lawfully practice medicine during such time as his license is under suspension. Consequently, when the license of the physician is suspended, then the physician-patient relationship is also suspended inasmuch as the physician may not lawfully continue to care for any patient until his license is restored, if ever. A licensed physician's exercise of judgment is properly required by law in order for prescription drugs to be dispensed, so, stated another way, when his authority to exercise that judgment is suspended, his involvement may not lawfully continue and another duly licensed physician must undertake responsibility for the authorization of any drugs that may be utilized in treatment.

Therefore, it is our opinion that a suspended physician's prescriptions, along with the authority to refill the same, become invalid upon suspension of the prescribing physician's license.

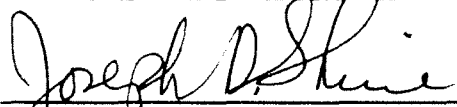
I trust the preceding discussion adequately answers your question, however, if any further assistance is required, please do not hesitate to contact me.

Very truly yours,

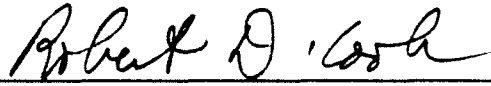

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