

New Hampshire Board of Pharmacy
Order on Petition for Declaratory Ruling
Petitioner: Mogan Faustino for ConvenientMD

Morgan Faustino, on behalf of ConvenientMD (“ConvenientMD”) filed a Petition for Declaratory ruling requesting the Board of Pharmacy (“Board”) find that school nurses may receive epinephrine directly to their schools from a licensed manufacturer, distributor, wholesaler, broker, non-resident pharmacy, or in-state pharmacy.

The Board considered this matter at its November 15, 2023 meeting. The Board hereby denies the Petitioner’s request.

I. BACKGROUND

Petitioner ConvenientMD is a New Hampshire based company with urgent care clinic and primary care offices throughout the state. The Petitioner participates in a community program to help schools obtain free EpiPens thorough the EpiPens4Schools program. EpiPens4Schools donates two stock EpiPen twin packs to participating K-12 schools nationally at no cost to the schools.

The Petitioner seeks guidance as to whether RSA 318:42 allows epinephrine to be shipped directly from a manufacturer, distributor, wholesaler, broker, non-resident pharmacy, or in-state pharmacy to licensed practical nurses or registered nurses employed or contracted by a school. EpiPens4Schools is managed by Asembia, working with BioRidge Pharma, a licensed manufacturer/distributor/wholesaler/broker (#5185). BioRidge Pharma uses Premier Pharmacy Services to dispense the EpiPens. Premier Pharmacy Services is a licensed non-resident pharmacy (NR2075).

BioRidge Pharma presently ships EpiPens through this program to the ordering providers who must then dispense the medication to the school. Per BioRidge Pharma, legal counsel has advised that New Hampshire statute is unclear as to whether epinephrine may be shipped directly to New Hampshire schools. Petitioner contends this model creates inefficiency.

II. STANDARD OF REVIEW

A declaratory ruling is “an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.” RSA 541-A:1, *See* N.H. Admin. R. Pt. Ph (“Ph”)

201.02(c). A declaratory ruling is a statement by the Board regarding whether a particular statute or rule applies to the specific situation presented in the petition. *Id.* Therefore, they do not have precedential value; nor do they apply to anyone other than the petitioner.

III. ANALYSIS

RSA 318:42, VII-a (b) legalizes “[t]he possession and administration of epinephrine for the emergency treatment of anaphylaxis by licensed practical nurses or registered nurses employed or contracted by public school systems or licensed by campus medical professionals in postsecondary educational institutions or independent schools.” School nurses are clearly permitted to possess and administer EpiPens. RSA 318:42, III further permits “[t]he **sale** of prescription drugs by licensed manufacturers or wholesalers to persons or entities legally authorized to possess such drugs” (emphasis added).

A “sale” is defined as “1. The transfer of property or title for a price. *See* UCC § 2-106(1). 2. The agreement by which such a transfer takes place. • The four elements are (1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.”¹ This is in contrast to “dispense” which is defined within RSA 318 as “to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of a drug that will be administered or taken at a later date, time, or location.”² The plain language of a statute is considered the legislative intent when it does not define a disputed term.³ When the language of a statute is clear on its face, its meaning is not subject to modification.⁴

The plain meaning of “sale” does not include gifts or donations. While a sale is a transaction included in the definition of “dispense,” it is a distinct type of transaction. RSA 318:42, VII-a (b) permits a licensed campus medical professional to possess and administer epinephrine. RSA 318:42, III permits a licensed manufacturer or wholesaler to sell epinephrine to a licensed campus medical professional, but not to “dispense” epinephrine directly to a licensed campus medical professional in a broader sense. The Board has no statutory authority to alter, amend, or conflict with the clearly defined restrictions set forth in the law by the legislature.

¹ SALE, Black’s Law Dictionary (11th ed. 2019).

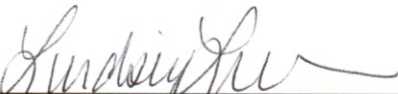
² N.H. Rev. Stat. Ann. 318:1, V.

³ *Benson v. N.H. Ins. Guar. Ass’n*, 151 N.H. 590, 594-95 (2004).

⁴ *Marcotte v. Timberlane/Hampstead School Dist.*, 143 N.H. 331, 337 (1999); *See also Monahan-Fortin Properties v. Town of Hudson*, 148 N.H. 769, 771 (2002) (“In construing a statute, we will neither consider what the legislature might have said nor add words that it did not see fit to include.”).

IV. CONCLUSION

For the foregoing reasons, the Board concludes that RSA 318:42 does not permit epinephrine to be shipped directly from a manufacturer, distributor, wholesaler, broker, non-resident pharmacy, or in-state pharmacy to licensed practical nurses or registered nurses, or another licensed campus medical professional, employed or contracted by a school. Petitioner's Request for Declaratory Ruling is hereby denied.

X 

Lindsey Laliberte, R.Ph.

Vice Chair of the New Hampshire Board of Pharmacy