



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

April 13, 1939

Mr. W. H. Cousins, Secretary  
Texas Board of Pharmacy  
912 Insurance Building  
Dallas, Texas

Dear Sir:

Opinion No. 0-405

Re: Opinion as to who should enforce that part of the Medical Practice Act, dealing with the sale of prophylactics and contraceptives.

Your request for an opinion as to who has the duty of enforcing that portion of the Medical Practice Act relating to the sale of prophylactics and contraceptives, has been received by this office.

For the purpose of this opinion we must assume that you have reference to that part of House Bill No. 148 of the present Session of the Legislature of the state of Texas, which reads as follows:

"This law shall be so construed as to apply to persons other than registered pharmacists of this state not pretending to be physicians to offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease."

The aboveportion of House Bill No. 148 is a part of the "Medical Practice Act" and the laws of the state relating to the practice of medicine placed upon the Board of Medical Examiners

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the burden of enforcing the same. There is no question but that it is the duty of the State Board of Medical Examiners to enforce this law, for the reason that a person would be unquestionably in violation of the law relating to the practice of medicine, as the practice of medicine is defined by the statutes of this state.

There is a close question as to whether or not a violation of this Act would be an offense for the illegal practice of pharmacy, but to so hold would have the effect of putting a person charged in double jeopardy. It has often been held by our courts that a person cannot be twice tried and convicted for the same overt act.

We are, therefore, of the opinion that the duty of enforcing the Medical Practice Act, as the same relates to the sale of prophylactics and contraceptives, rests with the State Board of Medical Examiners.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Richard H. Cocks  
Assistant

RHC:omb

H. Q. B.

APPROVED.



GERALD C. MANN

ATTORNEY GENERAL OF TEXAS