



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

March 3, 1975

The Honorable J. H. Arnette, R. Ph.  
Texas State Board of Pharmacy  
914 Littlefield Building  
Austin, Texas 78701

Opinion No. H- 542

Re: Whether Board of Pharmacy,  
when it has closed a pharmacy  
department, may post a sign to  
that effect.

Dear Mr. Arnette:

On behalf of the Texas State Board of Pharmacy you have asked whether the Board under article 4542a, V. T. C. S. (the act regulating pharmaceutical practices in Texas), has the authority to direct that in the prescription departments or areas of pharmacies which have been duly determined by the Board to have violated the laws respecting pharmaceuticals a sign be posted informing the public that "This Prescription Department has been closed by order of the Texas State Board of Pharmacy," during such times as the Board has directed that the pharmacy department of a retail outlet be closed.

Section 4 of article 4542a, V. T. C. S., confers on the Board the power "to make by-laws and regulations, not inconsistent with the law, for the proper performance of its duties and the duties of its officers and employees. . . ." Section 7 makes it the duty of the Board to see that the pharmacy laws are enforced. Section 15 requires that "[i]n all stores in which a registered pharmacist is continually employed and where the provisions of this Act have been fully complied with, there should be displayed in a prominent place in or on the front of said store the word "pharmacy." Section 16 makes it unlawful for any person to display in or on any place of business any words which would mislead the public into believing that prescriptions could be filled there. Section 20A, added by Acts 1973, 63rd Leg., ch. 431, p. 1178, recognizes that prescription drugs are designated as such because they are patent medications not safe for use except when medically necessary and then only under

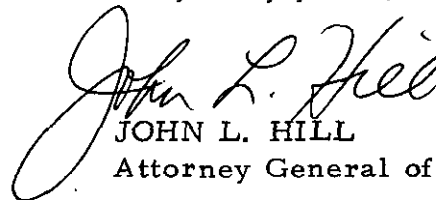
close professional supervision and control, and section 21 specifies that every license to any proprietor or employee to conduct a drug store or pharmacy shall be conspicuously displayed in the place of business.

The Board does not have the authority to confiscate all indicia which might mislead the public. Attorney General Opinion O-3109 (1941). The pharmacy, although closed, will usually still be present in its same physical location, and outward appearance might be such that many potential customers, especially those who had patronized the pharmacy in the past, might be misled into believing that prescriptions could be filled there. In such situations we think that it is within the authority of the Texas State Board of Pharmacy, if done pursuant to duly adopted and fairly administered regulations, to direct that such places of business which have been prohibited from dispensing drugs but which retain indicia which might mislead the public into believing otherwise, post the sign referred to above during such times as the Board has properly directed that the pharmacy department of such a place of business be closed.

SUMMARY

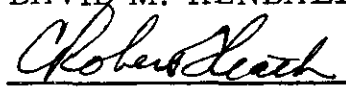
The Texas State Board of Pharmacy under appropriate circumstances and pursuant to fairly administered regulations and for purposes of protecting the public against misleading appearances may direct that a sign be posted informing the public that a prescription department of a retail outlet has been closed by order of the Board.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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DAVID M. KENDALL, First Assistant

  
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C. ROBERT HEATH, Chairman  
Opinion Committee