The Board of Pharmacy receives numerous calls concerning how a hospital can or cannot use drugs purchased under preferential prices.

The Abbott Labs, Inc., V. Portland Retail Druggist Association, Inc. case answered most of those questions. In that case the court, for convenience, classified hospital sales into 10 areas and then stated if the preferential priced drugs could legally be sold in those areas of sales. We have attempted to summarize that case.

* Inpatient--one who is admitted to the hospital for at least overnight bed occupancy.
* Patients admitted to the Emergency Room.
* Outpatient--one who receives treatment or consultation on the premises, but is not an inpatient.

Court Opinion--The hospital pharmacy can sell drugs purchased at preferential prices in these instances.
Note: Board of Pharmacy regulations limit quantities dispensed from the E.R. room to a 48-hour supply, except for antibiotics.
* Inpatients or E.R. Patients upon discharge for personal use away from premises.
* Outpatients for personal use away from premises.

Court Opinion--The court ruled that the genuine take-home prescription, intended for a limited and reasonable time, is a continuation of, or supplement to, the treatment in the hospital, and allowed the hospital pharmacy to fill these prescriptions.
Note: Arkansas Hospital Regulations limit discharge medications to a "reasonable quantity." This has been defined as not more than a 30-day supply, and hospitals are not allowed to fill "outpatient" prescriptions to be used by patients away from the hospital.
* Renewal or refills of prescriptions for former patients.

Court Opinion--These are not allowed.
* Hospital employees and dependents.

Court Opinion--These can be filled.
* Staff physicians, not employees, for personal or dependents' use.

Court Opinion--These can be filled.
* Physician member of hospital staff for use in private practice away from the hospital.

Court Opinion--The hospital cannot provide these medications.
Note: This would probably apply to non-hospital based ambulance services.
* Walk-in customers who are not hospital patients.

Court Opinion--The hospital pharmacy cannot fill these orders except in emergencies and "so long as the hospital pharmacy holds the emergency situation within bounds and entertains it only as a humanitarian gesture."
Note: This is the logic the board office follows to conclude that the emergency sales by hospital
pharmacies to community pharmacies would be allowed "to meet an immediate patient need." Be careful to assure that the occasional sale is to meet a specific patient's needs, and that the hospital does not in any way become the routine source of supply.

HOSPITAL -- COMMUNITY: SALES UNDER THE DINGELL BILL

The Dingell Bill prohibits the sale, purchase, or trade, or offer to sell, purchase, or trade any drug which was purchased by a public or private hospital. It also states that this prohibition does not apply to..."a sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons." In another area it further clarifies "emergency medical reasons" to include: "transfers of a drug between health care entities or from a health care entity to a retail pharmacy undertaken to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules."

This is not a valid legal opinion but is advise: If a patient needs a medication which is not immediately available except from a hospital, we believe the hospital can sell the drug to the retail pharmacy. Remember, there is a patient who can be named who needs the medication, and thus, a medical emergency exists.

From the clarification, we believe that if a retail pharmacy has ordered a specific drug for a patient and it is not in the Friday evening delivery and not available except from the hospital, then the hospital can also sell a quantity of the drug to the retail pharmacy. Again, there is a patient that can be named who needs the medication.

The price charged in both instances is set by the seller, the hospital.

Conversely, we believe it would violate Dingell for a hospital to sell a retail pharmacy in instances where the retail pharmacy just doesn't want to buy the quantity packaged by the manufacturer.

As an example, even though they are "Emergency Boxes," the hospital cannot sell retail pharmacies the supplies just because the pharmacy does not want to purchase 25 ampules.

Sales to M.D.'s: From previous court rulings, a hospital cannot sell legend drugs to supply a physician's private practice. In situations where hospitals "underwrite" physician practices, the determination would be "is the practice private?"