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Licensing  
Department of Commerce &  
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State licensure of  
pharmacist employed in  
facility administered by  
Native regional  
corporation

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In August 1990, the former director of the Division of Occupational Licensing asked for our advice on whether a pharmacist employed in a pharmacy located within a facility administered by a Native regional corporation under contract with the federal government was subject to state licensure laws. Please excuse the delay in responding to this request. The short answer to this question is that the pharmacist is subject to state licensure laws.

#### DISCUSSION

This question arose under the following fact situation.

25 U.S.C. • 450 et seq., otherwise known as Public Law 93-638, (the Act) was enacted in 1974. Under this federal law, the United States authorized Native organizations to assume administration of Native health facilities previously operated by the federal government; i.e., a Native corporation may contract with the federal government to operate a health facility and receive federal funds for this operation. The facility itself is often federally owned and located on federal land.

Before implementation of the Act, pharmacists working in Native health facilities were employed directly by the federal government either in the military or civil service. Under the Act, pharmacists are most often not employed by the federal government; instead, the pharmacists are employed directly by the Native corporation. This memorandum addresses licensure of the latter group of pharmacists.<sup>1</sup>

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<sup>1</sup> Under the supremacy clause of the United States Constitution, a state government may not normally impose state licensure requirements on an employee of the federal government. Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956); 1970 Inf. Op. Att'y Gen. (Sept. 10).

Our office addressed state licensure of persons who contract with the federal government in a prior opinion, 1970 Inf. Op. Att'y Gen. (Sept. 10). In this opinion we concluded that Alaska could not require electrical contractors who had contracted directly with the federal government to work on federal projects to obtain state licenses under AS 08.40. However, in this opinion we noted that there were situations involving federal contracts in which the state would not be prohibited from applying its licensure laws, as follows:

The controversy in Leslie Miller surrounded a contractor which itself held a government contract and the opinion does not answer the question of whether or not a state can compel the licensing of a contractor working on a federal project under a subcontract to which the federal government is not a party. Indeed, no case has ever faced this issue, meaning, of course, that no judicial edict forbids Alaska from requiring such subcontractors to submit to licensing.

1970 Inf. Op. Att'y Gen. (Sept. 10) (emphasis added). This principle operates to distinguish Leslie Miller and the earlier attorney general's opinion from the situation presented in this memorandum. The federal government is not a party to the Native corporation's employment of pharmacists.<sup>2</sup> Thus, Alaska is not prohibited from applying state licensure laws to these pharmacists.

Leslie Miller involved a comprehensive federal regulatory scheme governing contracting and Arkansas's interference with that scheme. Leslie Miller is thus distinguishable from the situation outlined in this memorandum. Alaska's regulation of pharmacists does not interfere with federal government operations. Alaska has an important public health and safety interest in assuring that pharmacists are qualified. The pharmacists at issue are not contractors with, or employees of, the federal government. Therefore, these persons

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<sup>2</sup> We note that 25 U.S.C. • 450f(d) provides that employees of Native corporations are deemed federal employees for limited purposes. Those limited purposes do not include exemption from enforcement of state licensure laws. This statute thus supports our conclusion that Native corporation employees are not federal employees for purposes of state licensure laws and must therefore comply with these laws.

are not exempt from state licensure laws.<sup>3</sup>

As part of our consideration of the question presented in this memorandum, we consulted with staff of the federal public health service and the office of the regional counsel for Alaska.

The assistant regional counsel and public health service staff also believe that a pharmacist employed by a Native corporation must comply with state licensure laws. The federal government staff agree that the supremacy clause and Leslie Miller do not prohibit the State of Alaska from applying its licensure laws to employees of a Native corporation.

We trust that this memorandum answers your question.

SJF:jp

cc: Members, Board of Pharmacy  
Elaine Seymour, Licensing Examiner  
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<sup>3</sup> AS 08.80.475, entitled "federal facilities not affected," is in accord with this analysis; it provides:

This chapter does not apply to the safe storage, preservation, dispensing, or control of drugs in a federally operated hospital or institution.

(Emphasis added.) In our view, an institution operated by a Native health corporation is not a "federally operated" institution. Therefore, the exemption from operation of the pharmacy licensure laws set out in the Alaska statutes also does not apply to a pharmacy operated by a Native corporation. Thus, these facilities and employees working in these facilities must comply with state licensure laws.