

151.21 SUBSTITUTION.

Subdivision 1. **Generally.** Except as provided in this section, it shall be unlawful for any pharmacist or pharmacist intern who dispenses prescriptions, drugs, and medicines to substitute an article different from the one ordered, or deviate in any manner from the requirements of an order or prescription without the approval of the prescriber.

Subd. 2. **Brand name specified.** When a pharmacist receives a paper or hard copy prescription on which the prescriber has personally written in handwriting "dispense as written" or "D.A.W.," a prescription sent by electronic transmission on which the prescriber has expressly indicated in a manner consistent with the standards for electronic prescribing under Code of Federal Regulations, title 42, section 423, that the prescription is to be dispensed as transmitted and which bears the prescriber's electronic signature, or an oral prescription in which the prescriber has expressly indicated that the prescription is to be dispensed as communicated, the pharmacist shall dispense the brand name legend drug as prescribed.

Subd. 3. **Brand name not specified.** When a pharmacist receives a paper or hard copy prescription on which the prescriber has not personally written in handwriting "dispense as written" or "D.A.W.," a prescription sent by electronic transmission on which the prescriber has not expressly indicated in a manner consistent with the standards for electronic prescribing under Code of Federal Regulations, title 42, section 423, that the prescription is to be dispensed as transmitted and which bears the prescriber's electronic signature, or an oral prescription in which the prescriber has not expressly indicated that the prescription is to be dispensed as communicated, and there is available in the pharmacist's stock a less expensive generically equivalent drug that, in the pharmacist's professional judgment, is safely interchangeable with the prescribed drug, then the pharmacist shall, after disclosing the substitution to the purchaser, dispense the generic drug, unless the purchaser objects. A pharmacist may also substitute pursuant to the oral instructions of the prescriber. A pharmacist may not substitute a generically equivalent drug product unless, in the pharmacist's professional judgment, the substituted drug is therapeutically equivalent and interchangeable to the prescribed drug. A pharmacist shall notify the purchaser if the pharmacist is dispensing a drug other than the brand name drug prescribed.

Subd. 3a. **Prescriptions by electronic transmission.** Nothing in this section permits a prescriber to maintain "dispense as written" or "D.A.W." as a default on all prescriptions. Prescribers must add the "dispense as written" or "D.A.W." designation to electronic prescriptions individually, as appropriate.

Subd. 4. **Pricing.** A pharmacist dispensing a drug under the provisions of subdivision 3 shall not dispense a drug of a higher retail price than that of the brand name drug prescribed. If more than one safely interchangeable generic drug is available in a pharmacist's stock, then the pharmacist shall dispense the least expensive alternative. Any difference between acquisition cost to the pharmacist of the drug dispensed and the brand name drug prescribed shall be passed on to the purchaser.

Subd. 4a. **Sign.** A pharmacy must post a sign in a conspicuous location and in a typeface easily seen at the counter where prescriptions are dispensed stating: "In order to save you money, this pharmacy will substitute whenever possible an FDA-approved, less expensive, generic drug product, which is therapeutically equivalent to and safely interchangeable with the one prescribed by your doctor, unless you object to this substitution."

Subd. 5. **Reimbursement.** Nothing in this section requires a pharmacist to substitute a generic drug if the substitution will make the transaction ineligible for third-party reimbursement.

Subd. 6. **Disclosure.** When a pharmacist dispenses a brand name legend drug and, at that time, a less expensive generically equivalent drug is also available in the pharmacist's stock, the pharmacist shall disclose to the purchaser that a generic drug is available.

Subd. 7. **Drug formulary.** This section does not apply when a pharmacist is dispensing a prescribed drug to persons covered under a managed health care plan that maintains a mandatory or closed drug formulary.

Subd. 8. **List of excluded products.** The Drug Formulary Committee established under section 256B.0625, subdivision 13, shall establish a list of drug products that are to be excluded from this section. This list shall be updated on an annual basis and shall be provided to the board for dissemination to pharmacists licensed in the state.

History: (5808-22) 1937 c 354 s 22; 1969 c 933 s 10; 1975 c 101 s 2; 1986 c 444; 1993 c 345 art 5 s 10; 1994 c 625 art 8 s 48,49; 1997 c 202 art 2 s 40; 2007 c 123 s 125-128