

4045

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. CROUCH, KOLB -- Multi-Sponsored by -- M. of A.
CALHOUN, HAWLEY, TOWNSEND -- read once and referred to the Committee
on Consumer Affairs and Protection

AN ACT to amend the education law, in relation to authorizing the
substitution of brand name prescription drugs by a pharmacist

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 6 of section 6810 of the
2 education law, as amended by chapter 649 of the laws of 1993, is amended
3 to read as follows:
4 (a) Every prescription written in this state by a person authorized to
5 issue such prescription shall be on prescription forms containing one
6 line for the prescriber's signature. The prescriber's signature shall
7 validate the prescription. Imprinted conspicuously in eight point upper
8 case type immediately below the signature line shall be the words: "THIS
9 PRESCRIPTION WILL BE FILLED GENERICALLY UNLESS PRESCRIBER WRITES 'd a w'
10 IN THE BOX BELOW". Unless the prescriber writes d a w in such box in the
11 prescriber's own handwriting, the prescriber's signature shall designate
12 approval of substitution by a pharmacist of a drug product pursuant to
13 paragraph (o) of subdivision one of section two hundred six of the
14 public health law. No other letters or marks in such box shall prohibit
15 substitution. No prescription forms used or intended to be used by a
16 person authorized to issue a prescription shall have 'd a w' preprinted
17 in such box. Such box shall be placed directly under the signature line
18 and shall be three-quarters inch in length and one-half inch in height.
19 Immediately below such box shall be imprinted in six point type the
20 words "Dispense As Written". Notwithstanding any other provision of law,
21 no state official, agency, board or other entity shall promulgate any
22 regulation or guideline modifying those elements of the prescription
23 form's contents specified in this subdivision. To the extent otherwise
24 permitted by law, a prescriber may modify only those elements of the

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 prescription form's contents not specified in this subdivision. Notwith-
2 standing any other provision of this section or any other law, when a
3 generic drug is not available and the brand name drug originally
4 prescribed is available and the pharmacist agrees to dispense the brand
5 name product for a price that will not exceed the price that would have
6 been charged for the generic substitute had it been available, substi-
7 tution of a generic drug product will not be required. If the generic
8 drug product is not available and a medical emergency situation, which
9 for purposes of this section is defined as any condition requiring alle-
10 viation of severe pain or which threatens to cause disability or take
11 life if not promptly treated, exists, then the pharmacist may dispense
12 the brand name product at his regular price. In such instances the
13 pharmacist must record the date, hour and nature of the medical emergen-
14 cy on the back of the prescription and keep a copy of all such
15 prescriptions. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, OR
16 OF ANY OTHER LAW, IF A GENERIC DRUG PRODUCT IS AVAILABLE, A PHARMACIST
17 MAY INFORM THE PATIENT THAT THE BRAND NAME DRUG IS ALSO AVAILABLE AND
18 THAT THE PRICE OF SUCH BRAND NAME DRUG WILL EXCEED THE PRICE OF THE
19 GENERIC DRUG PRODUCT. UPON THE REQUEST OF THE PATIENT, THE PHARMACIST
20 MAY DISPENSE THE BRAND NAME PRODUCT AT THE REGULAR PRICE. IN SUCH
21 INSTANCES THE PHARMACIST MUST RECORD THE DATE AND HOUR OF THE PATIENT
22 REQUEST ON THE BACK OF THE PRESCRIPTION AND KEEP A COPY OF ALL SUCH
23 PRESCRIPTIONS.

24 S 2. This act shall take effect on the one hundred twentieth day after
25 it shall have become a law. Effective immediately any rule or regulation
26 necessary for the timely implementation of this act on its effective
27 date may be promulgated on or before such date.