§ 6816. Omitting to label drugs, or labeling them wrongly. 1. a. Any person, who, in putting up any drug, medicine, or food or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, except where required pursuant to section sixty-eight hundred sixteen-a of this article, or puts up a greater or lesser quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered or demanded, except where required pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of the social services law, or otherwise deviates from the terms of the prescription, order or demand by substituting one drug for another, except where required pursuant to section sixty-eight hundred sixteen-a of this article, is guilty of a misdemeanor; provided, however, that except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to the payment of a fine not to exceed one thousand dollars and may be sentenced to imprisonment for a term not to exceed one year. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a second conviction, shall forfeit any right which he may possess under the law of this state at the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions

or orders for drugs, medicines, or foods or preparations used in medical practice.

b. The provisions of this section shall not apply to the practice of a practitioner who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption by the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the board of pharmacy or by any competent board of health.

c. The provisions of this section shall not apply to a limited pharmacy which prepares a formulary containing the brand names and the generic names of drugs and of manufacturers which it stocks, provided that it furnishes a copy of such formulary to each physician on its staff and the physician signs a statement authorizing the hospital to supply the drug under any generic or non-proprietary name listed therein and in conformity with the regulations of the commissioner of education.

2. For the purposes set forth in this section, the terms prescription, order or demand shall apply only to those items subject to provisions of subdivision one of section sixty-eight hundred ten of this chapter. The written order of a physician for items not subject to provisions of subdivision one of section sixty-eight hundred ten of this chapter shall be construed to be a direction, a fiscal order or a voucher.