

1976 S.C. Op. Atty. Gen. 357 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4498, 1976 WL 23115

Office of the Attorney General

State of South Carolina

Opinion No. 4498

October 20, 1976

*1 Mr. John C. Wilkie, Jr.
Executive Secretary
State Board of Pharmaceutical Examiners
P. O. Box 11927
Columbia, South Carolina 29211

Dear Mr. Wilkie:

You have requested an opinion from this Office as to whether or not Paragraph 6.H of the Policies and Procedures Governing the Dispensing of Drugs and the Filing of Claims for Payment therefor of Title XIX (MEDICAID PROGRAM) of the South Carolina Department of Social Services is valid in light of this Office's July 29, 1976, opinion regarding Regulation 22 of the Board of Pharmaceutical Examiners.

Paragraph 6.H provides as follows:

Physicians are advised that, as is true with hospital formalities, prescribing drugs in the Medicaid Program constitutes PRIOR CONSENT for the dispensing of either of the brands listed for any of the items listed generically.

To the extent that the provisions of Paragraph 6.H are used as authority for a pharmacist to substitute a different brand of drug product for the brand prescribed by the participating physician, then, in my opinion, that authority is in conflict with Section 56-1354, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, for the reasons stated in the July 29, 1976, opinion, to wit: a pharmacist's substitution of a different brand of drug product for the brand prescribed constitutes a designation thereof and, thus, is included in the term 'prescribing' of drugs which practice can be carried on only by a licensed physician pursuant to Section 56-1354 of the Code. Consequently, if a participating physician prescribes a drug product by brand name, a pharmacist is without authority to substitute another brand therefor, the provisions of Paragraph 6.H to the contrary notwithstanding.

On the other hand, if a participating physician prescribes a drug product generically without designating a particular brand name, then, in my opinion, that physician has, in effect, made the medical judgment that all of the available brands are therapeutically equivalent and, thus, the pharmacist may choose the specific brand of drug product prescribed just as he chooses the specific drug lot or, indeed, the specific container from which the prescription is to be filled. Consequently, if a participating physician prescribes a drug product generically only, a pharmacist may choose the particular brand of such generic drug product and such action, in my opinion, would not constitute the 'prescribing' of drugs.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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