

SENATE BILL No. 249

By Committee on Ways and Means

2-9

10 AN ACT concerning pharmacists; relating to substitution of drug prod-
11 uct; amending K.S.A. 2008 Supp. 65-1637 and repealing the existing
12 section.

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2008 Supp. 65-1637 is hereby amended to read as
16 follows: 65-1637. In every store, shop or other place defined in this act
17 as a “pharmacy” there shall be a pharmacist in charge and, except as
18 otherwise provided by law, the compounding and dispensing of prescrip-
19 tions shall be limited to pharmacists only. Except as otherwise provided
20 by the pharmacy act of this state, when a pharmacist is not in attendance
21 at a pharmacy, the premises shall be enclosed and secured. Prescription
22 orders may be written, oral, telephonic or by electronic transmission un-
23 less prohibited by law. Blank forms for written prescription orders may
24 have two signature lines. If there are two lines, one signature line shall
25 state: “Dispense as written” and the other signature line shall state:
26 “Brand exchange permissible.” Prescriptions shall only be filled or refilled
27 in accordance with the following requirements:

28 (a) *Except as otherwise provided in this section*, all prescriptions shall
29 be filled in strict conformity with any directions of the prescriber, ~~except~~
30 ~~that a~~.

31 (1) A pharmacist who receives a prescription order for a brand name
32 drug product may exercise brand exchange with a view toward achieving
33 a lesser cost to the purchaser unless:

34 ~~(1)~~ (A) The prescriber, in the case of a prescription signed by the
35 prescriber and written on a blank form containing two signature lines,
36 signs the signature line following the statement “dispense as written,” or

37 ~~(2)~~ (B) the prescriber, in the case of a prescription signed by the
38 prescriber, writes in the prescriber’s own handwriting “dispense as writ-
39 ten” on the prescription, or

40 ~~(3)~~ (C) the prescriber, in the case of a prescription other than one in
41 writing signed by the prescriber, expressly indicates the prescription is to
42 be dispensed as communicated, or

43 ~~(4)~~ (D) the federal food and drug administration has determined that

1 a drug product of the same generic name is not bioequivalent to the
2 prescribed brand name prescription medication.

3 (2) A pharmacist may dispense a dosage form of an orally adminis-
4 tered drug product different from that **[oral product]** prescribed, if:

5 (A) The patient consents to the dosage form substitution and the sub-
6 stitution does not increase the cost to the patient; and

7 (B) the substituted dosage form dispensed (i) contains the identical
8 amount of active ingredients as the dosage prescribed for the patient; (ii)
9 is not an enteric-coated or time-release product; **[(iii) is not a combi-
10 nation medication product containing two or more active ingredi-
11 ents; (iv) the substituted dosage form is not intended to be split;]
12 and ~~(iii)~~ [(v)] use of the dosage form is consistent with the desired clinical
13 outcomes.**

14 (3) A pharmacist shall not dispense a dosage form of an orally ad-
15 ministered drug product different from that prescribed, if:

16 (A) The prescriber, in the case of a prescription other than one in
17 writing signed by the prescriber, expressly indicates the prescription is to
18 be dispensed as communicated; or

19 (B) the substituted dosage form ~~does not include~~ **[includes]** the sub-
20 stitution of a product that has been compounded by the pharmacist unless
21 the pharmacist contacts the prescribing prescriber prior to dispensing and
22 obtains permission to dispense the compounded product.

23 (b) Prescription orders shall be recorded in writing by the pharmacist
24 and the record so made by the pharmacist shall constitute the original
25 prescription to be dispensed by the pharmacist. This record, if telephoned
26 by other than the physician shall bear the name of the person so tele-
27 phoning. Nothing in this paragraph shall be construed as altering or af-
28 fecting in any way laws of this state or any federal act requiring a written
29 prescription order.

30 (c) (1) Except as provided in paragraph (2), no prescription shall be
31 refilled unless authorized by the prescriber either in the original prescrip-
32 tion or by oral order which is reduced promptly to writing and filled by
33 the pharmacist.

34 (2) A pharmacist may refill a prescription order issued on or after the
35 effective date of this act for any prescription drug except a drug listed on
36 schedule II of the uniform controlled substances act or a narcotic drug
37 listed on any schedule of the uniform controlled substances act without
38 the prescriber's authorization when all reasonable efforts to contact the
39 prescriber have failed and when, in the pharmacist's professional judg-
40 ment, continuation of the medication is necessary for the patient's health,
41 safety and welfare. Such prescription refill shall only be in an amount
42 judged by the pharmacist to be sufficient to maintain the patient until
43 the prescriber can be contacted, but in no event shall a refill under this

1 paragraph be more than a seven day supply or one package of the drug.
2 However, if the prescriber states on a prescription that there shall be no
3 emergency refilling of that prescription, then the pharmacist shall not
4 dispense any emergency medication pursuant to that prescription. A phar-
5 macist who refills a prescription order under this subsection (c)(2) shall
6 contact the prescriber of the prescription order on the next business day
7 subsequent to the refill or as soon thereafter as possible. No pharmacist
8 shall be required to refill any prescription order under this subsection
9 (c)(2). A prescriber shall not be subject to liability for any damages re-
10 sulting from the refilling of a prescription order by a pharmacist under
11 this subsection (c)(2) unless such damages are occasioned by the gross
12 negligence or willful or wanton acts or omissions by the prescriber.

13 (d) If any prescription order contains a provision that the prescription
14 may be refilled a specific number of times within or during any particular
15 period, such prescription shall not be refilled except in strict conformity
16 with such requirements.

17 (e) If a prescription order contains a statement that during any par-
18 ticular time the prescription may be refilled at will, there shall be no
19 limitation as to the number of times that such prescription may be refilled
20 except that it may not be refilled after the expiration of the time specified
21 or one year after the prescription was originally issued, whichever occurs
22 first.

23 (f) Any pharmacist who exercises brand exchange and dispenses a less
24 expensive drug product *or dispenses a different form of drug product*
25 *pursuant to subsection (a)* shall not charge the purchaser more than the
26 regular and customary retail price for the dispensed drug.

27 Nothing contained in this section shall be construed as preventing a
28 pharmacist from refusing to fill or refill any prescription if in the phar-
29 macist's professional judgment and discretion such pharmacist is of the
30 opinion that it should not be filled or refilled.

31 Sec. 2. K.S.A. 2008 Supp. 65-1637 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.