Ohio Revised Code

Section 4729.38 Selecting generically equivalent drugs or interchangeable biological products.

Effective: July 22, 1998
Legislation: Senate Bill 66 - 122nd General Assembly

(A) Unless instructed otherwise by the person receiving the drug pursuant to the prescription, a pharmacist filling a prescription for a drug prescribed by its brand name may select a generically equivalent drug, as defined in section 3715.01 of the Revised Code, subject to the following conditions:

(1) The pharmacist shall not select a generically equivalent drug if the prescriber handwrites "dispense as written," or "D.A.W.," on the written prescription, or, when ordering a prescription electronically or orally, the prescriber specifies that the prescribed drug is medically necessary. These designations shall not be preprinted or stamped on the prescription. Division (A)(1) of this section does not preclude a reminder of the procedure required to prohibit the selection of a generically equivalent drug from being preprinted on the prescription.

(2) The pharmacist shall not select a generically equivalent drug unless its price to the patient is less than or equal to the price of the prescribed drug.

(3) The pharmacist, or the pharmacist's agent, assistant, or employee shall inform the patient or the patient's agent if a generically equivalent drug is available at a lower or equal cost, and of the person's right to refuse the drug selected. Division (A)(3) of this section does not apply to any:

(a) Prescription that is billed to any agency, division, or department of this state which will reimburse the pharmacy;

(b) Prescriptions for patients of a hospital, nursing home, or similar patient care facility.

(B) Unless the prescriber instructs otherwise, the label for every drug dispensed shall include the drug's brand name, if any, or its generic name and the name of the distributor, using abbreviations if necessary. When dispensing at retail a generically equivalent drug for the brand name drug

prescribed, the pharmacist shall indicate on the drug's label or container that a generic substitution was made. The labeling requirements established by this division are in addition to all other labeling requirements of Chapter 3715. of the Revised Code.

(C) A pharmacist who selects a generically equivalent drug pursuant to this section assumes no greater liability for selecting the dispensed drug than would be incurred in filling a prescription for a drug prescribed by its brand name.

(D) The failure of a prescriber to restrict a prescription by specifying "dispense as written," or "D.A.W.," pursuant to division (A)(1) of this section shall not constitute evidence of the prescriber's negligence unless the prescriber had reasonable cause to believe that the health condition of the patient for whom the drug was intended warranted the prescription of a specific brand name drug and no other. No prescriber shall be liable for civil damages or in any criminal prosecution arising from the interchange of a generically equivalent drug for a prescribed brand name drug by a pharmacist, unless the prescribed brand name drug would have reasonably caused the same loss, damage, injury, or death.