

1980 S.C. Op. Atty. Gen. 123 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-73, 1980 WL 81955

Office of the Attorney General

State of South Carolina

Opinion No. 80-73

June 26, 1980

***1 SUBJECT: Drugs; Pharmacy and Pharmacist; Physicians and Surgeons; Medical Practitioners, Limited; Dentists and Dentistry; Hospital.**

(1) A 'chart order' as prepared for or written by a prescribing practitioner for an in-patient of a hospital or extended care facility does not constitute a 'prescription' within the meaning and intent of the South Carolina Drug Act (§ 39-23-10, et seq. of the 1976 Code of Laws of South Carolina, as amended) and the South Carolina Controlled Substances Act (§ 44-53-110, et seq. of the 1976 Code, as amended) if the drug or controlled substance is intended to be dispensed from a pharmacy which is not under common ownership with the hospital or extended care facility.

(2) A 'chart order' and a 'prescription' are mutually exclusive terms within the meaning and intent of the South Carolina Drug Act (§ 39-23-10, et seq. of the 1976 Code, as amended) and the South Carolina Controlled Substances Act (§ 44-53-110, et seq. of the 1976 Code).

TO: Thomas D. Wyatt, Jr.
Chief
Bureau of Drug Control
S.C. Department of Health & Environmental Control

QUESTIONS PRESENTED:

Does a 'chart order' as written by a physician for an in-patient of a hospital or extended care facility, or such an order prepared by another person and signed by a physician, either immediately or at another time, constitute a 'prescription' within the meaning and intent of the South Carolina Drug Act (§ 39-23-10, et seq. of the 1976 Code of Laws of South Carolina, as amended) and the South Carolina Controlled Substances Act (§ 44-53-110, et seq. of the 1976 Code, as amended) if the drug or controlled substance is to be dispensed from a pharmacy which is not under common ownership with the hospital?

AUTHORITIES:

a. Statutes:

1. [Section 39-23-10, et seq.](#) of the 1976 Code of Laws of South Carolina, as amended (The South Carolina Drug Act).
2. [Section 44-53-110, et seq.](#) of the 1976 Code of Laws of South Carolina, as amended (the South Carolina Controlled Substances Act).
3. [Section 39-24-10, et seq. of the 1976 Code of Laws of South Carolina](#), as amended (the Drug Product Selection Act).
4. [21 U.S.C. § 301, et seq.](#) (the Federal Food, Drug and Cosmetic Act).
5. [21 U.S.C. § 801, et seq.](#) (the Federal Controlled Substances Act).

b. Regulations:

1. [Regulation 61–4](#) of the 1976 Code of Laws of South Carolina, as amended (the Controlled Substances Regulation).

c. Other:

1. Dorland's Illustrated Medical Dictionary (25th ed., 1974).

DISCUSSION:

You have asked whether a ‘chart order’ written by a physician for an in-patient of a hospital or extended care facility, or such an order prepared by another person and signed by a physician constitutes a ‘prescription’ under the intent and meaning of the South Carolina Drug Act (§ [39–23–10](#), et seq. of the 1976 Code of Laws of South Carolina, as amended) and the South Carolina Controlled Substances Act (§ [44–53–110](#), et seq. of the 1976 Code). It is our opinion that it does not.

*2 A ‘prescription’ is generally defined in the following manner by Dorland's Illustrated Medical Dictionary (25th ed., 1974) at page 1253:

‘[A ‘prescription’ is] a written direction for the preparation and administration of a remedy. A prescription consists of the heading or superscription—that is, the symbol RX or the word Recipe meaning ‘take’; the inscription, which contains the names and quantities of the ingredients; the subscription, or directions for compounding; and the signature, usually introduced by the sign S. for signa, ‘mark’ [or in general practice ‘Sig’], which gives the directions for the patient which are to be marked on the receptacle.’

Additionally, § [39–24–40](#) of the 1976 Code of Laws of South Carolina, as amended, provides:

‘Every oral or written prescription shall provide an authorization from the practitioner as to whether or not a therapeutically equivalent generic drug may be substituted.

A written prescription shall have two signature lines at opposite ends on the bottom of the form. Under the line at the left side shall be clearly printed the words ‘DISPENSE AS WRITTEN’. Under the line at the right side shall be clearly printed the words ‘SUBSTITUTION PERMITTED.’ . . . No written prescription shall be valid without the signature of the practitioner on one of these lines. . . .’ [Capitals in original; emphasis added.]

Furthermore, § [44–53–360\(d\)](#) of the 1976 Code states:

‘Unless specifically indicated in writing on the face of the prescription that it is to be refilled, and the number of times that it is to be refilled, no prescription may be refilled Preprinted refill instructions on the face of the prescription shall be disregarded by the dispenser unless an affirmative marking or other indication is made by the prescriber.’ [Emphasis added.]

Section 101(u) of Regulation [61–4](#) of the 1976 Code further provides:

‘[T]he term ‘prescription’ means an order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription).’ [Emphasis added.]

Section 505 of Regulation [61–4](#) of the 1976 Code requires:

‘All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, and the name, address, and registration number of the practitioner. . . . The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. . . .’

Section 304(d)(3) of Regulation 61–4 of the 1976 Code further provides:

‘Prescriptions for controlled substances shall be maintained in separate files from prescriptions for non-controlled substances. Prescriptions for Schedule II controlled substances shall be filed separately from prescriptions for Schedule III, IV, and V controlled substances. . . .’

*3 Section 508(d)(4), 510, 514(a), and 304(d)(4) of Regulation 61–4 of the 1976 Code each address themselves to the terms ‘face of the prescription,’ ‘back of the prescription’ and the ‘reverse side [of the prescription].’

Section 39–23–50(b) of the 1976 Code generally addresses the necessity for written prescriptions or for oral prescriptions to be ‘reduced promptly to writing and filed by the pharmacist’, and sets forth information required to appear upon the label or labeling of a dispensed prescription.

It therefore appears certain from the above-referenced provisions of the South Carolina Drug Act and the South Carolina Controlled Substances Act and the regulations duly promulgated pursuant thereto, that a ‘chart order’ does not constitute a ‘prescription’ within the meaning of the Acts. (But *see*, Op.A.G. dated November 29, 1979, construing the term ‘prescription’ under the South Carolina Pharmacy Act (§ 40–43–10, *et seq.* of the 1976 Code).) It should be noted, however, that nothing would preclude a pharmacist from reducing a chart order to a prescription document which conforms with § 39–24–40 of the 1976 Code, if oral authorization to do so is obtained from the physician or other practitioner who ordered the original drug distribution. The ordered drug may then lawfully be dispensed to the ultimate user.

CONCLUSION:

1. A ‘chart order’ does not constitute a ‘prescription’ under the provisions of the South Carolina Drug Act of the South Carolina Controlled Substances Act.
2. With the permission of the physician or other practitioner who directs the ‘chart order’, a pharmacist may reduce the ‘chart order’, to a prescription document, and lawfully dispense the ordered drug from the resulting prescription.

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