1978 WL 35054 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 23, 1978

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

Dear Mr. Wilkie:
You have requested an opinion from this Office as to whether or not the following language of Section 4 of Act No. 595 of 1978 includes all prescription labels or only those prescription labels concerning which drug substitution has taken place: The prescription label shall contain the brand name of the drug product dispensed or the generic name of the drug product dispensed and its manufacturer, either written in full or appropriately abbreviated, unless the prescribing practitioner indicates that the name of the drug shall not appear on the prescription label.

In my opinion, the above-quoted language applies to all prescription labels irrespective of whether or not drug substitution has taken place. This interpretation is based upon the fact that the provisions of Act No. 595 relate to all oral and written prescriptions, i. e., no prescription is valid unless it complies with the form prescribed therein. Moreover, the statute differentiates between prescriptions as to which substitution takes place and all other prescriptions, to wit: Section 4 states that, as to substituted drug prescriptions, a pharmacist is to note the brand name or the manufacturer of the substituted drug dispensed on the file copy of a written or oral prescription. The next sentence, hereinabove quoted, is not expressly limited to substituted drug prescriptions and, consequently, construing the two provisions of the statute in pari materia, I think that a pharmacist must now affix on all prescription labels the brand name of, or the generic name and manufacturer of, the drug product dispensed unless the prescriber instructs otherwise.

You have also inquired as to the necessity for an applicant's affidavit or certificate on a pharmacy permit application. While the law does not prescribe the form for applications but, instead, empowers the Board of Pharmaceutical Examiners to prescribe the form to be used [§ 40-43-370, CODE OF LAWS OF SOUTH CAROLINA, 1976], the inclusion of an affidavit provides a means by which the Board can ascertain, pursuant to Section 40-43-380 of the Code '(a) that the pharmacy for which the permit is sought will be conducted in full compliance with the statutory laws pertaining to pharmacy; and (b) that the pharmacy will be constantly under the personal and immediate supervision of a registered pharmacist or assistant pharmacist, ...' Moreover, in the event that an applicant fraudulently or falsely makes application for a pharmacy permit, a sworn statement by that applicant would, in my opinion, facilitate his prosecution.
With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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