

STATE OF MAINE  
Professional and Financial Regulation  
Office of Licensing and Registration  
*Board of Pharmacy*  
35 State House Station, Augusta, Maine 04333

**ADVISORY RULING**

No. 2005-01

Advisory Ruling Requested by: Mark Polli, Director of Pharmacy Professional Services  
Hannaford Bros. Co.  
P.O. Box 1000  
Portland, ME 04104

Topic Satisfying "Handwritten" Requirement in Electronic  
Prescriptions

**REQUEST FOR ADVISORY RULING**

By letter dated August 25, 2005, Mr. Mark Polli requested an opinion as to whether certain electronic notations in electronic prescriptions could constitute a "handwritten check mark" for purposes of the requirements of 32 M.R.S.A. § 13781. Pursuant to the authority granted in 5 M.R.S.A. § 9001 and Board of Pharmacy Rule chapter 3, the Board considered the request at its September 13, 2005, meeting and now issues the following advisory ruling.

**FACTS**

Mr. Polli's pharmacy receives prescriptions from medical practitioners via electronic mail. Mr. Polli submitted copies of three actual prescriptions to illustrate his question. Each of these examples is from the same practitioner who employs an electronic prescription form that contains the following statement immediately above the signature line for the practitioner:

Any drug which is the generic and therapeutic equivalent of the drug specified in this prescription may be dispensed, provided that no check mark has been handwritten in the lower right hand corner. [ ]

Above this statement are several lines for patient data and the prescription itself. One of these lines is entitled "Instructions."

Sample prescription 1 contains an "x" in the box and the "instructions" line reads "BRAND MEDICALLY NECESSARY." Sample prescription 2 contains an "x" in the box and the instructions "brand name necessary." In sample prescription 3 the box is blank and the instructions line reads "BRAND NAME MEDICALLY NECESSARY."

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It is the Board's understanding that the "x's" placed in the boxes "[ ]" and the notations on the instruction line were actual entries by the practitioner at the time of prescribing and not the result of any automatic default settings.

**APPLICABLE LAW**

32 M.R.S.A. § 13781 reads in applicable part as follows:

A written prescription issued by a practitioner in this State may contain a box in the lower right-hand corner of the prescription form. The following words must appear to the left of this box: "Any drug which is the generic and therapeutic equivalent of the drug specified above in this prescription must be dispensed, provided that no check mark ( ) has been handwritten in the box in the lower right-hand corner."

Any pharmacist receiving a prescription in which no handwritten check mark ( ) is found in the box provided shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription [subject to certain conditions and exceptions not relevant to this advisory ruling].

If a written prescription issued by a practitioner in this State does not contain the box described in this section, a pharmacist shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription . . . unless a practitioner has handwritten on the prescription form, along with the practitioner's signature, "dispense as written," "DAW," "brand," "brand necessary" or "brand medically necessary . . . ."

With few limitations, Board of Pharmacy Rule chapter 19 section 3 specifically permits pharmacists to accept prescription drug orders by telephone, electronic facsimile, or electronic mail. Section 3(3)(A) requires that there be an "electronic signature" on the prescription, but this Rule otherwise does not address how the medical practitioner may satisfy the "handwritten" requirements of 32 M.R.S.A. § 13781.

**DISCUSSION AND RULING**

The dilemma presented by Mr. Polli is clear. Title 32 § 13781 appears on its face to have an unforgiving requirement that there be certain "handwritten" notations on prescriptions if other than generic medications are to be dispensed. On the other hand, certain permitted forms of prescription drug orders (e.g., by electronic mail) cannot by their nature contain what is generally understood to be "handwritten" notations. This board appreciates that efficiently providing the public with prescription drugs today necessitates the use of prescription drug orders on forms other than the traditional

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handwritten prescription form. Accordingly, it is necessary for this Board to interpret the "handwritten" requirements of 32 M.R.S.A. § 13781 in the context of these more modern prescription forms.

In the case presented for this Advisory Ruling, the electronic mail prescription form contains a box "[ ]" in which a handwritten check mark could be placed. Assuming that the electronic template for this form does not place a check mark in the box as a default, the practitioner's actual electronic entry of a check mark will satisfy the requirement of a "handwritten" check mark for purposes of 32 M.R.S.A. § 13781. Thus, because sample prescriptions 1 and 2 both contain an "x," these two electronic prescriptions satisfy the requirements of 32 M.R.S.A. § 13781, and the pharmacist could properly fill these prescriptions with brand name drugs.

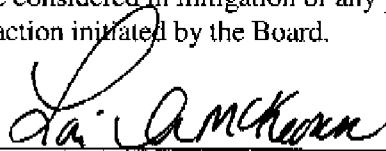
Sample prescription 3, on the other hand, contains the statement and the box, but without a check mark in the box. It does, however, contain the statement "BRAND NAME MEDICALLY NECESSARY" on the Instruction line. Section 13781 permits such notations, if handwritten, to allow for the filling of a prescription with a brand name drug, but only if the prescription "does not contain the box described in this section." Consequently, this Board cannot conclude that 32 M.R.S.A. § 13781 permits such a handwritten notation to override a blank box. Had sample prescription 3 contained no box to be checked, then a statement such as the one here entered by the practitioner on the instruction line of the electronic form would likely satisfy the requirement of 32 M.R.S.A. § 13781 that the statement be "handwritten."

**SCOPE OF ADVISORY RULING**

The board cautions that other factors may exist in other overriding state and/or federal laws or regulations for patient-eligible recipients that participate in specialized programs such Medicaid, MaineCare, or Medicare programs in which case, the pharmacist is responsible for insuring that prescription drug orders are filled in accordance with these mandates.

This advisory ruling is not binding upon the Maine Board of Pharmacy, but justifiable reliance upon this ruling shall be considered in mitigation of any penalties sought to be assessed in any subsequent enforcement action initiated by the Board.

SIGNED



Dated

10/11/2005

Lori McKeown, R.Ph., Vice-President, Maine Board of Pharmacy

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