

## Minnesota Board of Pharmacy

### **FAQ: 90-Day Supply of Medication**

*Interpretation of Minn. Stats. 151.21, subd. 9*

During the 2016 Session, at the request of other entities, the Legislature added a subdivision to Minn. Stats. §151.21 – which is the section of the Pharmacy Practice Act that basically addresses generic substitution. Here is the new subdivision:

**Subd. 9. Extended supply.** (a) After a patient has obtained an initial 30-day supply of a prescription drug, and the patient returns to the pharmacy to obtain a refill, a pharmacist may dispense up to a 90-day supply of that prescription drug to the patient when the following requirements are met:

- (1) the total quantity of dosage units dispensed by the pharmacist does not exceed the total quantity of dosage units of the remaining refills authorized by the prescriber; and
  - (2) the pharmacist is exercising the pharmacist's professional judgment.
- (b) The initial 30-day supply requirement in paragraph (a) is not required if the prescription has previously been filled with a 90-day supply.
- (c) Notwithstanding paragraph (a), a pharmacist may not exceed the number of dosage units authorized by a prescriber for an initial prescription or subsequent refills if:
- (1) the prescriber has specified on the prescription that, due to medical necessity, the pharmacist may not exceed the number of dosage units identified on the prescription; or
  - (2) the prescription drug is a controlled substance, as defined in section 152.01, subdivision 4

Board staff did not have involvement in the drafting of this language. Due to the way in which the language was drafted, staff anticipated that questions would arise about the meaning of the language. Staff requested that the Board approve the following questions and answers, which the Board did at its July 13, 2016 Board meeting.

**Q.** What happens if a patient gives a pharmacy an initial prescription on which the prescriber has indicated a supply *greater* than 30 days? Does the pharmacy have to dispense only a 30-day supply for the first fill?

**A.** No. The pharmacy can fill up to the quantity indicated on the prescription, even if that quantity exceeds a 30-day supply.

**Rationale:** This legislation was meant to address the issue of patients who have insurance that allows them to receive a 90-day supply of medication at one time – often at a cost-savings to the patient. Prior to passage of this legislation, a pharmacist would have had to call the prescriber to dispense a 90-day supply if the prescription had been written for a 30-day supply. The intent was not to limit the first fill of prescriptions to 30-day supplies to ensure that the patient has no adverse reactions.

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**Q.** The language of this subdivision mentions the patient returning to “*the* pharmacy,” rather than “*a* pharmacy.” What happens if the patient transfers the prescription to another pharmacy during the initial 30-day period – can the new pharmacy dispense a 90-day supply?

**A.** Yes, as long as the new pharmacist, using sound professional judgment, concludes that it is safe to dispense the 90-day supply.

**Rationale:** Again, this legislation was meant to benefit patients by allowing them to receive up to a 90-day supply, often at a discount. As long as the new pharmacist ascertains that the patient appears to be responding to the drug and has no significant side-effects, it would be reasonable to allow the dispensing of a 90-day supply.

**Q.** What if the patient receives an initial 30-day supply but does not request a refill for several months – can a pharmacist still dispense up to a 90-day supply?

**A.** Yes, as long as the pharmacist, using sound professional judgment, determines that it would be safe to dispense the 90-day supply to the patient. However, there may be situations where it is not appropriate to dispense a 90-day supply (e.g. if the patient appears to have not been compliant) and the pharmacist would be well-advised to contact the prescriber to discuss the patient’s therapy.

**Rationale:** The language does not state that a refill request must be made by the patient within any specified period of time.

**Q.** The patient presented with a prescription for a 30-day supply of a drug. The patient has received a 90-day supply of the drug before – but it was at another pharmacy (or it was last filled months ago). Can the prescription be filled for a 90-day supply, as allowed under paragraph (b)?

**A.** Yes, as long as the pharmacist, using sound professional judgment, concludes that it is safe to dispense the 90-day supply.

**Rationale:** Again, this legislation was meant to benefit patients by allowing them to receive up to a 90-day supply, often at a discount. As long as the new pharmacist ascertains that the patient appears to be responding to the drug and has no significant side-effects, it would be reasonable to allow the dispensing of a 90-day supply.

**Q.** The patient presented with a prescription for a 30-day supply of a drug, with either “refill for one year” or “refill as needed” indicated on the prescription. A 30-day supply was initially dispensed, followed by three 90-day fills. The patient has therefore received 10 months’ worth of medication. The patient wants another 90-day supply filled. Can I fill the prescription for a 90-day supply?

**A.** No. Minnesota Rules 6800.3510 states: “*No prescription drug order may be filled or refilled more than 12 months after the date on which it was issued. Refills originally authorized in excess of 12 months are void 12 months after the original date of issuance of the prescription drug order. After 12 months from the date of issuance of a prescription drug order, no additional authorizations may be accepted for that prescription drug order. If the prescriber desires continued therapy, a new prescription drug order must be generated and a new prescription number assigned.*” Consequently, no prescription drug order in Minnesota can be after one year from the date on which the prescription was issued. The new statutory language clearly states that the total quantity of dosage units dispensed by the pharmacist can’t exceed the total quantity of dosage units of the remaining refills authorized by the prescriber. If a pharmacy has already filled 10 months’ worth of the prescription, only two months of valid refills remain. To dispense another 90-day supply, the pharmacist would have to get permission from the prescriber.

**Rationale:** The rationale is contained within the answer.

**Q.** If the prescriber writes “Dispense as written” or “DAW” on the prescription written for a 30-day supply, can a pharmacy fill it for a 90-day supply after the first 30-day fill?

**A.** Yes. The new language requires the prescriber to indicate on the prescription that the quantity dispensed cannot exceed the quantity prescribed due to *medical necessity*. Minn. Stats. §151.21 uses “DAW” in reference to the issue of dispensing brand vs. generic drugs – not in reference to the quantity of drug dispensed. A prescriber would write “DAW” or “Dispense as Written” to indicate that no generic substitutions should be made. The prescriber would have to separately note on the prescription that the quantity written should not be exceeded due to medical necessity.

**Rationale:** The rationale is contained within the answer.