

11/1/06

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Morris B. Bray
(License Number 10241)

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FINAL DECISION

This matter came on for hearing upon a Notice of Hearing issued August 9, 2006 to determine whether or not Morris B. Bray (Respondent) violated North Carolina General Statute §90-85.38(a)(7), which provides that the Board may issue a letter of reprimand or suspend, restrict, revoke or refuse to grant or renew a license or require a licensee to complete remedial education if the licensee has:

“(7) Failed to comply with any provision of this Article or rules adopted by the Board.”

The Notice set forth specific factual allegations and scheduled a hearing for September 26, 2006. The hearing was conducted at the Board office before Board members Chater, Dennis, Nelson, Chesson, Haywood and McLaughlin. At the hearing, counsel for the Board presented evidence in the form of testimony and exhibits; Respondent presented evidence in the form of testimony. Having heard the testimony presented, considered the exhibits offered, and judged the credibility of the testifying witnesses, the Board makes the following:

FINDINGS OF FACT

1. At all relevant times, Respondent was the holder of license number 10241. Respondent is currently employed at Walgreens as a staff pharmacist.
2. On March 18, 2002, the Board issued a Final Decision pursuant to a hearing conducted on February 19, 2002. The Board ordered as follows:

- a. Respondent shall maintain compliance with, and successfully complete, his PRN contract.
 - b. Respondent shall successfully complete his criminal probation.
 - c. Respondent shall be subject to unannounced drug screens to be performed at his expense by the Board or its agents, and shall supply urine, blood, hair, nail, or any other bodily fluid or tissue sample required for the screens. The results of the screens shall not disclose the presence of any prescription drug or controlled substance which was not previously prescribed for Respondent by a practitioner acting in the normal course of medical treatment of Respondent, and legally dispensed to Respondent.
 - d. Respondent shall not serve as pharmacist manager of any pharmacy.
 - e. Respondent shall obtain approval from the Board's Executive Director of any employment as a pharmacist, prior to beginning such employment. Any subsequent change in employer or location will also require prior approval from the Board's Executive Director.
 - f. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs.
 - g. Respondent shall violate no rules or regulations of the Board.
3. On or about August 23, 2005, the N.C. Pharmacist Recovery Network (NCPRN) reported to the Board that Respondent had failed to comply with his NCPRN contract.
 4. On August 30, 2005, a Prehearing Conference was conducted at the Board's Chapel Hill office to determine whether Respondent's conduct warranted disciplinary action.
 5. On November 15, 2005, the Board approved a Consent Order that arose out of the

August 30, 2005 Prehearing Conference. The Findings of Fact in the November 15, 2005 Consent Order were as follows:

a. Morris Bray (Respondent Bray) is the holder of license number 10241. At all relevant times, Respondent Bray was employed at Walgreens Pharmacy, permit number 8430, located at 11306 U.S. Highway 70 West, Clayton, North Carolina.

b. On or about August 23, 2005, Paul Peterson reported to the Board that Respondent Bray, who is currently under an NC PRN contract, has missed 23 call-ins since April 5, 2005, one drug test, and has failed to pick up a June 20, 2005 letter mailed to him via certified mail regarding his non compliance.

c. Paul Peterson informed Dr. Dennis that even if missed call-ins which occurred in April of 2005 are excluded, Respondent Bray missed 13 call-ins. Additionally, he tested positive for alcohol in October of 2004.

d. On February 19, 2002, the Board issued a Final Decision to Respondent Bray, in which it required him to maintain compliance with his NC PRN contract.

e. Respondent Bray stated that he takes responsibility for not calling in as required by his PRN contract. However, he stated that he never received a notification that he received the certified letter. Additionally, he stated that the positive urine drug screen was due to the fact that his diabetes is not well-controlled which can result in a false positive for alcohol.

6. In the Consent Order approved on November 15, 2005, the Board Ordered as follows:

- a. Respondent Bray, license number 10241, is hereby suspended indefinitely. The suspension is stayed 1 year upon the condition that his license shall be actively suspended for three (3) consecutive business days which shall commence no later than thirty (30) days after Respondent Bray's receipt of this Order.
- b. Respondent Bray shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of his practice and compliance with the provisions of this Consent Order.
- c. Respondent Bray shall violate no laws governing the practice of pharmacy or the distribution of drugs.
- d. Respondent Bray shall violate no rules and regulations of the Board.
- e. If Respondent Bray fails to comply with any terms or conditions of this Consent Order, Respondent Bray may be subject to additional disciplinary action by the Board.

7. Evidence presented at the hearing established that on November 19, 2005, February 3, 2006, May 23, 2006, and June 3, 2006, Respondent failed to call in as required by his NCPRN contract to determine if he was selected for a random urine drug screen test.

8. Respondent failed to comply with the terms of his NCPRN contract executed on September 17, 2001.

CONCLUSIONS OF LAW

Respondent willfully disregarded the Board's 2002 Final Decision, the 2005 Consent Order, and the following statutes when he failed to comply with the terms of his NCPRN contract:

- a. G.S. 90-85.38(a)(7);

b. G.S. 90-85.40(f); and

b. G.S. 90-85.41.

IT IS THEREFORE, ORDERED as follows:

The license of Respondent, no. 10241, is indefinitely suspended. This suspension is stayed for one (1) year upon the following conditions:

1. Respondent's license shall be actively suspended for twenty-one (21) consecutive days, commencing no later than 30 days after Respondent's receipt of this Final Decision.

Within ten (10) days after completion of the active suspension, Respondent shall provide documentation to the Board's Executive Director regarding the dates on which he served his active suspension.

2. Respondent shall advise the Board promptly in writing of any change of address or change in practice status.

3. Respondent shall not serve as pharmacist manager of any pharmacy.

4. Respondent shall not serve as a preceptor of pharmacy students.

5. Respondent may not be employed as a pharmacist more than forty (40) hours per week, on average.

6. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs.

7. Respondent shall violate no rules or regulations of the Board.

8. If Respondent fails to comply with any terms or conditions of this Final Decision, Respondent may be subject to additional disciplinary action by the Board.

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This the 3rd day of October, 2006.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director