

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Johnnie Eugene Sutton)
(License No. 5287))

Kinston Clinic Pharmacy North)
(Permit No. 3193))

CONSENT ORDER

This matter came on for consideration at a prehearing conference (hereinafter "conference") pursuant to 21 N.C.A.C. 46 .2008. This conference was scheduled for August 22, 2006 and was heard on that day at the Board office before Board member Stan Haywood. Also present at the conference were the following: Josh Kohler, Assistant Director of Investigations and Inspections; Karen Matthew, Director of Investigations and Inspections; Anna Baird Choi, Counsel for the Board; and Johnnie Eugene "Gene" Sutton, RPh. ("Respondent Sutton"). Based upon the record in this proceeding and the statements and materials presented at the conference, the Board makes the following:

FINDINGS OF FACT

1. Respondent Sutton is the holder of license number 5287. At all relevant times, Respondent Sutton was employed as the Pharmacist Manager at Kinston Clinic Pharmacy North ("Respondent Pharmacy"), permit number 3193, located at Doctor's Drive, Kinston, North Carolina.
2. On July 29, 2005, the Board received a complaint from Dr. M.G.F. Gilliland alleging that Respondent Pharmacy had dispensed Corgard, Chlorpheniramine ER, Procardia, Docusate SOD, and Oxazepam to a patient for approximately seven years without a valid prescription.

3. On July 14, 2005, the patient referenced in the complaint died of sudden cardiac death. An autopsy was performed on July 15, 2005 by Dr. Gilliland, Medical Examiner, at which time she discovered that Respondent Sutton had dispensed multiple medications to the patient. The medications were as follows:

| <u>Medication</u> | <u>Date Dispensed</u> |
|---------------------|-----------------------|
| Procardia XL | January 4, 2005 |
| Corgard 40mg | June 2, 2005 |
| Chlorpheniramine ER | June 30, 2005 |
| Docusate SOD | June 30, 2005 |
| Oxazepam 10mg | June 30, 2005 |

Oxazepam is a schedule IV controlled substance.

4. Upon receipt of the complaint, Assistant Director Kohler commenced an investigation.
5. During an interview with Assistant Director Kohler on August 3, 2005, Respondent Sutton admitted that for several years prior, he had dispensed and delivered medications to the patient without a prescription. Respondent Sutton stated that he had known the patient for many years and took the patient at his word when the patient told him that he was under a physician's care. Respondent Sutton admitted that he filled prescriptions for the patient without contacting any of the physicians the patient was allegedly seeing.
6. During the course of his investigation, Assistant Director Kohler obtained a patient profile for the patient covering the time period from January 1, 1999 through August 3, 2005. This profile reflects approximately 260 dispensings at Respondent Pharmacy. Of the prescriptions listed on the profile, only one was determined to be legitimate. The sole legitimate prescription was as follows:

| <u>Prescriber</u> | <u>Medication</u> | <u>Date of Dispensing</u> |
|-------------------|-------------------|---------------------------|
| Warren Perry, DDS | Propoxyphene | January 30, 2003 |

Respondent Sutton admitted that he had received no authorizations or prescriptions for any other medications listed on the profile. Assistant Director Kohler confirmed this with the doctors listed on the profile.

7. There was no evidence to establish that the medications dispensed by Respondent Sutton contributed to the patient's death.

Based on the above findings, the Board concludes as a matter of law:

CONCLUSIONS OF LAW

1. Respondent Sutton admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under G.S. 90-85.38.
2. Respondent Pharmacy admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under G.S. 90-85.38.
3. Respondent Sutton violated the following statutes and rules when he dispensed medications without a prescription:
 - a. G.S. 90-85.38(a)(6), (7) and (9);
 - b. G.S. 90-85.40;
 - c. G.S. 90-106;
 - d. G.S. 90-108;
 - e. G.S. 106-134.1;
 - f. 21 N.C.A.C. 46 .1804;
 - g. 21 N.C.A.C. 46 .1805;
 - h. 21 U.S.C. 353; and
 - i. 21 C.F.R. 1306.21.

4. Respondent Pharmacy violated the following statutes and rules when its pharmacist-manager dispensed medications without a prescription:
 - a. G.S. 90-85.38(a)(6), (7) and (9);
 - b. G.S. 90-85.40;
 - c. G.S. 90-106;
 - d. G.S. 90-108;
 - e. G.S. 106-134.1;
 - f. 21 N.C.A.C. 46 .1804;
 - g. 21 N.C.A.C. 46 .1805;
 - h. 21 U.S.C. 353; and
 - i. 21 C.F.R. 1306.21.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE, ORDERED, as follows:

1. The license of Respondent Sutton, no. 5287, is suspended ninety (90) consecutive days. This suspension is stayed for five (5) years on the following conditions:
 - a. Respondent Sutton's license is actively suspended for fifteen (15) consecutive days. This period of active suspension shall commence no later than thirty (30) days after the Board's acceptance of this Consent Order.
 - b. Within one (1) year of the Board's approval of this Consent Order, Respondent Sutton shall take and pass the Multistate Pharmacy Jurisprudence Exam and shall report the results to the Board's Executive Director;
 - c. Respondent Sutton 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.

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

e. Respondent Sutton shall violate no rules and regulations of the Board.

f. If Respondent Sutton fails to comply with any terms or conditions of this Consent Order, Respondent Sutton may be subject to additional disciplinary action by the Board.

2. The permit of Respondent Pharmacy, no. 3193, is suspended for fifteen (15) consecutive days. This suspension is stayed for five (5) years upon the following conditions:

a. Respondent Pharmacy shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of its practice and compliance with the provisions of this Consent Order.

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

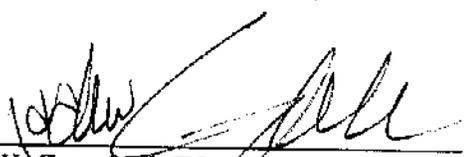
c. Respondent Pharmacy shall violate no rules and regulations of the Board.

d. If Respondent Pharmacy fails to comply with any terms or conditions of this Consent Order, Respondent Pharmacy may be subject to additional disciplinary action by the Board.

This the 17th day of October, 2006.

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director

Gene Sutton, the holder of License #5287, has full knowledge that he has the right to a hearing and to be represented by counsel in this matter. He freely, knowingly, and voluntarily waives such right by entering into this Consent Order on behalf of License #5287. The undersigned understands and agrees that by entering into this Consent Order, he certifies that he has read the foregoing Consent Order and that he voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. The undersigned further understands that should he violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. The undersigned understands and agrees that this Consent Order will not become effective unless and until approved by the Board.

Gene Sutton, License #5287, accepts Board member Stan Haywood's proposal in this matter.

CONSENTED TO BY: *Gene Sutton* 10/10/06
Gene Sutton Date
License No. 5287

State of NC
Lenoir County

I, Diedra Taylor Herring a Notary Public for the above-named County and State, do hereby certify that Gene Sutton personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

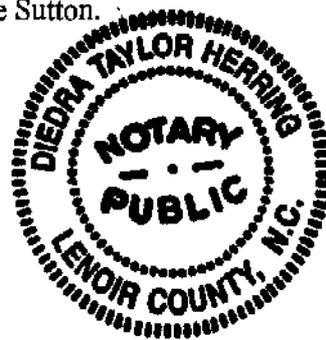
Witnessed my hand and official seal

This the 10th day of October, 2006, by Gene Sutton.

Diedra Taylor Herring
Notary Public

Diedra Taylor Herring
Typed or Printed Notary Name

My Commission Expires March 15, 2010



Gene Sutton, License No. 5287, does not accept the proposed Consent Order in this matter.

By: _____ Date _____
Gene Sutton
License No. 5287

I, Johannie E. Sutton (name), the undersigned, am pharmacist (title) for the holder of permit no. 3193 and am authorized to sign this Consent Order. I have full knowledge that the permit holder has the right to a hearing and to be represented by counsel in this matter. I freely, knowingly, and voluntarily waive such right by entering into this Consent Order on behalf of permit no. 3193. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and that the permit holder voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. I further understand that should the permit holder violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. I understand and agree that this Consent Order will not become effective unless and until approved by the Board.

Johannie E. Sutton, pharmacist on behalf of permit no. 3193, accepts Board member Stan Haywood's proposal in this matter.

CONSENTED TO BY: [Signature] 10/10/06
Name: _____ Date _____
Title: Pharmacist

State of NC Lenoir County

I, Diedra Taylor Herring a Notary Public for the above-named County and State, do hereby certify that Johannie Sutton personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 10th day of October, 2006, by Johannie Sutton

Diedra Taylor Herring
Notary Public

Diedra Taylor Herring
Typed or Printed Notary Name

My Commission Expires March 15, 2010



_____, _____ on behalf of permit no. 3193, does not accept the proposed Consent Order in this matter.

By: _____
Name: _____ Date _____
Title: _____