

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Mendel Smith
(License No. 8848)

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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 November 3, 2004 and was heard on that day at the Board office before Board member Betty Dennis. Also present at the conference were the following: Sandra Burns, Board Investigator; Steve Hudson, Director of Investigations and Inspections; Anna Baird Choi, Counsel for the Board; and Mendel Smith (Respondent Smith). 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 Smith is licensed to practice pharmacy by the Board and is the holder of license number 8848. At all relevant times, Respondent Smith was employed as a pharmacist at CVS Pharmacy (permit #6868), 325 Pineola Street, Newland, North Carolina.
2. On March 29, 2004, the Board received a call from CVS staff alleging that Respondent Smith was dispensing prescription orders for Tylenol #4 to himself, pursuant to prescription orders from his father, Dr. Wallace Smith, who no longer held a DEA number. Tylenol #4 is a schedule III controlled substance.
3. Upon investigation, CVS records reflected that Respondent Smith dispensed Tylenol #4 to himself on multiple occasions pursuant to prescription orders from his father who no longer held a DEA number.

4. Respondent Smith did not obtain a new prescription for the subsequent dispensings. Instead, Respondent Smith made a copy of the original prescription, covered the prior date with correction fluid, and wrote a new date on the prescription copy. The dates of dispensing are listed below; all dispensings were for 100 units (except where noted) of Tylenol #4 and are reflected under CVS patient profile for "M SmithII:"

3/11/01	1/26/02	11/3/92	7/25/03
3/25/01	2/2/02	11/9/02	8/3/03
4/8/01	2/16/02	11/16/02	8/9/03
4/21/01	2/23/02	11/30/02	8/15/03
5/26/01	3/2/02	12/7/02	8/24/03
6/2/01	3/9/02	12/14/02	8/29/03
6/10/01	3/16/02	12/21/02	9/7/03
6/17/01 (200)	3/23/02	12/26/02	9/13/03
7/7/01	3/31/02	1/4/03	9/19/03
7/14/01	4/6/02	1/11/03	9/27/03
7/21/01 (200)	4/13/02	2/9/03	10/4/03
8/4/01	4/20/02	2/16/03	10/11/03
8/11/01	4/27/02	2/22/03	10/25/03
8/18/01	5/3/02	3/2/03	10/31/03
8/25/01	5/11/02	3/8/03	11/8/03
9/1/01	5/25/02	3/21/03	11/15/03
9/8/01	6/1/02	3/28/03	11/29/03
9/15/01	6/9/02	3/30/03	12/6/03
9/22/01	6/16/02	4/4/03	12/13/03 (200)
9/29/01	6/23/02	4/5/03	12/21/03
10/6/01	6/30/02	4/11/03	12/27/03
10/21/01	7/7/02	4/19/03	1/4/04
10/27/01	7/21/02	4/26/03	1/10/04 (300)
11/4/01	8/4/02	5/3/03	1/31/04
11/10/01	8/10/02	5/10/03	2/7/04
11/18/01	8/24/02	5/17/03	2/14/04
11/24/01	9/1/02	5/24/03	2/21/04
12/01/01	9/6/02	5/31/03	2/28/04
12/08/01	9/13/02	6/8/03	3/6/04 (200)
12/15/01	9/21/02	6/14/03	3/13/04
12/22/01	9/28/02	6/20/03	3/20/04
1/5/02	10/5/02	6/28/03	
1/13/02	10/19/02	7/6/03	
1/19/02	10/27/02	7/18/03	

5. Respondent Smith stated that he took Tylenol #4 due to pain from a dual hip replacement. Additionally, Respondent Smith stated that both he and his father were unaware that his father's DEA registration had expired.

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

CONCLUSIONS OF LAW

1. Respondent Smith admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under G.S. 90-85.38.
2. Respondent Smith violated the following statutes and rules when he dispensed Tylenol #4 to himself:
 - a. G.S. 90-85.38(a)(6), (7), and (9);
 - b. G.S. 106-134.1;
 - c. 21 U.S.C. 829;
 - d. 21 U.S.C. 842
 - e. 21 CFR 1306.21
 - f. 21 N.C.A.C. 46 .1805; and
 - g. 21 N.C.A.C. 46 .2301.

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

1. Respondent Smith's license, number 8848, is suspended for ten (10) days.
2. This suspension is stayed for a period of five (5) years on the following conditions:
 - a. That there will be one (1) day of active suspension which shall occur on a day during which the pharmacy is open for a full day of regular business. This

one (1) day of active suspension shall occur within sixty (60) days of the date this Consent Order is approved by the Board.

- b. Respondent Smith shall advise the Board promptly in writing of any change of address or change in practice status;
 - c. Respondent Smith 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 Smith shall violate no laws governing the practice of pharmacy; and
 - e. Respondent Smith shall violate no rules and regulations of the Board.
3. If Respondent Smith fails to comply with any terms or conditions of this Consent Order, his license may be temporarily suspended pending a hearing into the matter. Following such hearing, Respondent Smith may be subject to additional disciplinary action.

This the 18th day of January, ~~2004~~²⁰⁰⁵.

NORTH CAROLINA BOARD OF PHARMACY

By: David R. Work
David R. Work
Executive Director

Mendel Smith, the holder of License #8848, 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 #8848. 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.

Mendel Smith, License #8848, accepts Board member Betty Dennis's proposal in this matter.

CONSENTED TO BY: _____
Mendel Smith
License No. 8848
Date 12/16/04

State of North Carolina
ASHE County

I, Christine Hart, a Notary Public for the above-named County and State, do hereby certify that Mendel Smith personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 16th day of December, 2004.
Christine Hart
Notary Public



My Commission Expires March 19, 2005

Mendel Smith, License No. 8848, does not accept the proposed Consent Order in this matter.

By: _____
Mendel Smith
License No. 8848
Date _____