

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Robert McCunn)	
(License No. 11884))	
)	CONSENT ORDER
Medicap Pharmacy)	
(Permit No. 7684))	
)	

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 11, 2002 and was heard on that day at the Board office before Board member Betty Dennis. Also present at the conference were the following: David Work, Executive Director; Josh Kohler, Board Investigator; Steve Hudson, Director of Investigations and Inspections; Amy Sykes, Board Investigator; Anna Baird Choi, Counsel for the Board; and Robert McCunn (Respondent McCunn). 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 McCunn is licensed to practice pharmacy by the Board and is the holder of license number 11884.
2. On February 27, 2002, the Board received a complaint (#77.02) from Aimee Varone of Johnston Pain Management Clinic who advised the Board that Respondent Medicap Pharmacy in New Bern, Craven County, North Carolina was filling Lortab 10/500 mg prescriptions contrary to physician's orders.

3. The complainant stated that the dispensing pharmacist disregarded the specific fill date on the prescription and dispensed refills too early without authorization from the physician and contrary to written instructions by the physician stating "no early refills." The patient's treating physician at Johnston Pain Management Clinic was Dr. Kirk Harum.
4. The first prescription, number 4401186 written by Dr. Harum, prescribed Lortab 10/500 mg by mouth four times per day, 60 units. The prescription was dated 10/22/01, included one refill and stated as follows, "Fill 11/13/01 no early refills." Taken as prescribed, the initial fill and refill would each last the patient 15 days.
5. The first prescription was dispensed on 10/22/01 and was refilled on 10/30/01 by Respondent McCunn. The initial fill date was prior to the date specified on the prescription. The refill date was only eight days after the initial fill.
6. The second prescription, number 4401356 written by Dr. Harum, prescribed Lortab 10/500 mg by mouth four times per day, 60 units. The prescription was dated 10/22/01, included one refill and stated as follows, "Fill 12/12/01 no early refills." Taken as prescribed, the initial fill and refill would each last the patient 15 days.
7. The second prescription was dispensed on 11/13/01 and was refilled on 11/21/01 by Respondent McCunn. The fill date was one month prior to the date specified on the prescription. The refill date was only eight days after the original fill.
8. The third prescription, number 4401498 written by Dr. Harum, prescribed Lortab 10/500 mg by mouth four times per day, 60 units. The prescription was dated 12/3/01, included three refills and stated as follows, "Fill 12/12/01 no early refills." Taken as prescribed, the initial fill and all refills would each last the patient 15 days.

9. The third prescription was dispensed on 12/3/01 and was refilled on 12/12/01, 12/18/01 and again on 12/24/01 by Respondent McCunn. The initial fill date was nine days prior to the fill date specified on the prescription and the refill dates occurred at intervals of nine, six and six days respectively after the prior fill.
10. The fourth prescription, number 4401799 written by Dr. Harum, prescribed Lortab 10/500 mg by mouth four times per day, 60 units. The prescription was dated 1/15/02, included three refills and stated as follows, "Fill 2/10/02 no early refills." Taken as prescribed, the initial fill and all refills would each last the patient 15 days.
11. The fourth prescription was dispensed on 1/15/02 and was refilled on 1/23/02, 1/29/02, and 2/4/02 by Respondent McCunn. The initial fill date was 25 days prior to the fill date specified on the prescription and the refill dates occurred at intervals of eight, six and six days respectively after the prior fill.
12. The patient provided multiple excuses to Respondent McCunn for requiring early refills, including her cat knocking her pills in the toilet, travelling without the medication, leaving the medication on a plane, and theft.

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

CONCLUSIONS OF LAW

1. Respondent McCunn admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under G.S. 90-85.38(a)(6), (7), and (9).
2. Respondent violated 21 NCAC 46 .1802(a) and 21 NCAC 46 .2504(g) when he failed to properly and accurately dispense medication.

3. Respondent violated G.S. 90-95 and 90-108 regarding the sale and delivery of a controlled substance.

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

1. License number 11884 is suspended for thirty (30) days.
2. This suspension is stayed for a period of three (3) years. The suspension is stayed on the condition that there will be one (1) day of active suspension that shall occur on a Monday, Tuesday, Wednesday, Thursday, Friday or Saturday on 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.
3. Additionally, the suspension is stayed for a period of three (3) years upon the following conditions:
 - a. Respondent McCunn shall advise the Board promptly in writing of any change of address or change in practice status;
 - b. Respondent McCunn 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 McCunn shall violate no laws governing the practice of pharmacy;
 - d. Respondent McCunn shall violate no rules and regulations of the Board; and
 - e. If Respondent McCunn 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 McCunn may be subject to additional disciplinary action.

4. The suspension and stay of suspension described in the paragraphs above commences upon the date this Consent Order is approved by the Board.
5. No action is taken against permit number 7684 issued to Respondent Medicap Pharmacy.

This the 21st day of January, 2003.

NORTH CAROLINA BOARD OF PHARMACY

By:

David R. Work
David R. Work
Executive Director

Robert McCunn, the holder of License #11884, 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 #11884. 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.

Robert McCunn, License #11884, **accepts** Board member Betty Dennis's proposal in this matter.

CONSENTED TO BY: Robert S. McCunn 12/24/02
Robert McCunn Date
License No. 11884

State of North Carolina
Craven County

I, Donna R. Martin, a Notary Public for the above-named County and State, do hereby certify that Robert McCunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 24 day of December, 2002.

Donna R. Martin
Notary Public

My Commission Expires Jan 11, 2005

Robert McCunn, License No. 11884, **does not accept** the proposed Consent Order in this matter.

By: _____
Robert McCunn Date
License No. 11884