

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF

JOHN SINK
License No. 6611

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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 May 14, 2012 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, “Board”) by Board member Dr. J. Parker Chesson, Jr. John Sink (License No. 6611) was present at the conference. Board Counsel Clinton R. Pinyan and members of the Board’s investigative and legal staff were present at this conference, as were related respondents.

Respondent has agreed to waive a formal hearing in the above-referenced matter. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. By his consent, Respondent also stipulates that he waives his right to appeal this Consent Order or challenge in any way the sufficiency of the findings of this Order. Based upon the consent of the parties, the Board hereby enters the following:

FINDINGS OF FACT

1. The North Carolina Board of Pharmacy is a body duly organized under the laws of North Carolina and is the proper body for this proceeding under the authority granted it in Chapter 90 of the General Statutes of North Carolina, and the rules and regulations promulgated thereunder.

2. Respondent is and was, at all relevant times referred to herein, a pharmacist licensed to practice pharmacy in the State of North Carolina with License No. 6611. During the relevant time period, Respondent was the pharmacist-manager at Franklin Street Pharmacy, Permit No. 4012, located at 610 East Franklin Street, Monroe, North Carolina (“Franklin Street”). Respondent is and was, at all relevant times referenced to herein, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Between approximately May 7, 2008 and July 14, 2011, Patient A presented to Franklin Street Pharmacy a total of 152 forged prescriptions for Oxycodone and Adderall in various strengths (schedule II controlled substances), Hydrocodone/APAP in various strengths (a schedule III controlled substance), and Alprazolam 2 mg and Clonazepam 1 mg (schedule IV controlled substances) that had purportedly been written for Patient A and his wife, Patient B. Respondent, as pharmacist-manager, was ultimately responsible for ensuring that these forged prescriptions were not filled.

4. Each of these prescriptions had purportedly been written by Dr. Sara Beyer, a physician at Steele Creek Family Practice. Patients A and B had never been patients of Dr. Beyer, and Dr. Beyer had left Steele Creek Family Practice in January 2011. Patient A had previously passed forged prescriptions in Dr. Beyer’s name to other pharmacies and had been arrested for prescription forgery.

5. Franklin Street’s records reflect that Respondent had personally filled 13 of the forged prescriptions. Respondent testified that he had not personally filled all 13 of the forged prescriptions. Respondent testified at length that Franklin Street and its pharmacists frequently dispensed prescriptions with the incorrect pharmacist initials on the labels and pharmacy records.

Respondent, as pharmacist-manager, did not require staff and pharmacists to log off of computers when the pharmacists left a work station, and Respondent, as pharmacist-manager, improperly permitted staff to log in to computers using pharmacist log-in information, even when the pharmacists were not present in the store. These operations under Respondent's supervision made it impossible to determine the exact number of prescriptions that Respondent filled; however, Respondent acknowledged that he had filled four of the forged prescriptions.

6. In addition, Patient A frequently presented these forged prescriptions for Patients A and B well before an earlier dispensed prescription for the same drug should have run out, and Franklin Street and its pharmacists filled those prescriptions early anyway, resulting in the dispensing of controlled substances in significant excess of normal therapeutic use. Franklin Street's records reflect that, on at least 47 occasions, Franklin Street and its pharmacists were responsible for dispensing controlled substances more than two days early (even if the prescriptions had been legitimate). Indeed, on at least 35 occasions, Franklin Street and its pharmacists dispensed controlled substances one week or more early (even if the prescriptions had been legitimate). And, on at least 13 occasions, Franklin Street and its pharmacists dispensed controlled substances two weeks or more early (even if the prescriptions had been legitimate). Respondent, as pharmacist-manager, was ultimately responsible for ensuring that these controlled substances were not dispensed in significant excess of normal therapeutic use

7. Franklin Street's records reflect that, on June 11, 2010, Respondent personally filled one prescription for Percocet seven days early. Respondent has argued that he did not fill that prescription but instead the pharmacy records – for which he is responsible as pharmacist-manager – did not reflect the correct dispensing pharmacist.

8. The circumstances surrounding the dispensing of the forged prescriptions were such that a reasonable pharmacist-manager in Respondent's position would have determined sooner that the prescriptions were fraudulent and would have ceased filling the prescriptions. Respondent acknowledged that he was aware that Patient A would come into the pharmacy and specifically request to talk with R. Ph. Black. R. Ph. Black would then come out from behind the pharmacy counter and personally take the prescriptions from Patient A, and R. Ph. Black would personally perform the data entry and filling of the prescriptions. Patient A would come into the pharmacy at busy times, in circumstances in which R. Ph. Black would be rushed.

9. In addition, Respondent testified that, in June 2010, he "almost came to blows" with Patient A when Patient A insisted that a controlled substance prescription be filled immediately. This was one of the forged controlled substance prescriptions at issue in this matter. Notwithstanding both that incident and the unusual interactions between R. Ph. Black and Patient A that had come to Respondent attention, Respondent testified that he allowed Franklin Street Pharmacy to continue to fill controlled substance prescriptions for Patients A and B, and that Respondent never accessed or reviewed the patient profiles for either Patient A or Patient B, which would have confirmed that the prescriptions were being presented with questionable frequency resulting in distribution in significant excess of normal therapeutic use. Respondent further never called Dr. Beyer or her practice to question the legitimacy of the prescriptions, notwithstanding the number of the prescriptions and the frequency with which they were presented.

10. On July 14, 2011, Respondent became concerned that Patient A had presented forged prescriptions. On July 15, 2011, Respondent confirmed that the prescriptions were forged and, for the first time, researched the patient profiles for Patients A and B and determined the

extent to which Franklin Street had previously filled forged prescriptions for Patients A and B. On July 18, 2011, Respondent terminated the employment of R. Ph. Black and reported the diversion to the local police department. Notwithstanding learning of the diversion by July 15, 2011 at the latest, Respondent failed to report the diversion to the Board until August 17, 2011.

11. Respondent has a prior disciplinary history with the Board. On March 15, 2005, the Board reprimanded Respondent for violations of federal and state pharmacy law and regulations.

CONCLUSIONS OF LAW

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

1. Respondent violated N.C. Gen. Stat. §§ 90-85.25, 90-85.38(a)(6), (7) and (9), 90-85.40(b) and (f), 90-104, 90-106, 90-108, 106-122, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1801, 46 .1802, 46 .1804(a), 46 .1805, 46 .2302(a) and 46 .2502(a); and 21 U.S.C. §§ 331, 829 and 842.

2. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under N.C. Gen. Stat. § 90-85.38.

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

1. Respondent Sink's license (License No. 6611) is hereby SUSPENDED for THIRTY (30) DAYS, which suspension is hereby STAYED for TWO (2) YEARS from the date that this Order is accepted by the Board, upon the following conditions:

a. Respondent shall advise the Board promptly in writing of any change of address, change of employment, or change in practice status;

b. Respondent shall obtain prior written approval of all employment as a pharmacist from the Board's Executive Director;

c. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs; and

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

At no time during the period of the two-year stay may Respondent petition to have any of these conditions lifted. If a petition is filed, the Executive Director is instructed to deny the petition and not to schedule any hearing on the petition before the Board.

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

3. If Respondent fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and, in addition, Respondent may be subject to additional disciplinary action by the Board.

This the 19th day of June 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jay W. Campbell, IV
Executive Director

John Sink, the holder of License Number 6611, has full knowledge that he has the right to a hearing, at which he would have the right to be represented at his expense by counsel in this matter. The undersigned freely, knowingly and voluntarily waives such right by entering into this Consent Order.

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 forth 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.

The undersigned understands that he has the right to have counsel of his choice review and advise him with respect to his rights and this Consent Order, and represents that he enters this Consent Order after consultation with his counsel or after knowingly and voluntarily choosing not to consult with counsel.

ACCEPTED AND CONSENTED TO BY:

JOHN SINK (License Number 6611)

John W. Sink, Jr. Date 5/31/2012

STATE OF North Carolina

Stanly COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person personally appeared before me this day and acknowledged the due execution of the foregoing document: **John Sink.**

Date: May 31, 2012

Claudine Burris
Notary Public
Claudine Burris

Claudine Burris
Notary Public
Stanly County, NC
My Commission Expires June 27, 2017

My commission expires: June 27, 2017