

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

John Sink)	
(License No. 6611))	
)	CONSENT ORDER
Franklin St. Pharmacy)	
(Permit No. 4012))	

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 April 28, 2004 and was heard on that day at the Board office before Board member Wallace E. Nelson. 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 John Sink (Respondent Sink). 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 Sink is licensed to practice pharmacy by the Board and is the holder of license number 6611. Franklin Street Pharmacy (Respondent Pharmacy) is the holder of permit number 4012 and is located at 610 E. Franklin Street, Monroe, North Carolina. At all relevant times, Respondent Sink was the owner of Respondent Pharmacy and was employed as the Pharmacist Manager.
2. On May 27, 2003, the Board received a complaint alleging that on April 8, 2003, Respondent Pharmacy had dispensed an unknown medication on a prescription order for Zyrtec 10mgs.

3. In early 2003, Respondent Sink purchased medication advertised as Zyrtec from a website identified as www.globaldrug.tv. This website is located outside of the United States.
4. Subsequent to the purchase described above, Board Investigator Ken Wilkins discovered and confiscated foreign medications from Respondent Pharmacy. However, the investigator did not confiscate the Zyrtec because it had been restocked into a Pfizer Zyrtec 10mg stock bottle. Respondent Sink did not bring this medication to the investigator's attention. On the stock bottle was a label which read, "this is the same medication you have been getting, color and markings may appear different."
5. Pfizer, the manufacturer of Zyrtec, confirmed that during this time, it had not changed the appearance of Zyrtec.
6. On or about April 8, 2003, Respondent Sink dispensed the "foreign" Zyrtec 10mgs on a prescription order for Zyrtec 10mgs. 30 dosage units were dispensed.
7. The patient ingested fifteen dosage units over a period of fifteen days. During this period, he felt that the medication did not relieve his allergy symptoms as it had previously. He noticed that the medication dispensed by Respondent Sink looked different from the medication in Zyrtec 10mg sample packs which were in his possession. During a subsequent visit to his physician, the doctor could not identify the medication dispensed by Respondent Sink.
8. Investigator Burns subsequently submitted the medication to Pfizer for analysis. On October 30, 2003, Pfizer conducted a test of the medication. In its Analytical Testing Report, Pfizer stated that the "subject sample is confirmed to contain cetirizine

hydrochloride drug substance in a formation that is the same as that of authentic 10mg Benadryl One a Day (97% spectral match of infrared spectra).”

9. Respondent Sink accepted responsibility for the dispensing error.

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

CONCLUSIONS OF LAW

1. Respondent Sink 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 Sink violated the following statutes and rules when he failed to properly and adequately dispense medication:
 - a. G.S. 90-85.38(a)(6), (7), and (9);
 - b. G.S. 106-134.1;
 - c. 21 U.S.C. 331 and 353; and
 - d. 21 N.C.A.C. 46 .1804.
4. Respondent Pharmacy violated the following statutes and rules when it failed to properly and adequately dispense medication:
 - a. G.S. 90-85.38(a)(6), (7), and (9);
 - b. G.S. 106-134.1;
 - c. 21 U.S.C. 331 and 353; and
 - d. 21 N.C.A.C. 46 .1804.

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

1. Respondent Sink, license number 6611, is hereby reprimanded.
2. Respondent Pharmacy, permit number 4012, is hereby reprimanded.
3. Respondents shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of their practice and compliance with the provisions of this Consent Order.
4. Respondents shall violate no laws governing the practice of pharmacy or the distribution of drugs.
5. Respondents shall violate no rules and regulations of the Board.
6. If Respondents fail to comply with any terms or conditions of this Consent Order, Respondents may be subject to additional disciplinary action by the Board.

This the 15th day of March, 2005.

NORTH CAROLINA BOARD OF PHARMACY

By:



David R. Work
Executive Director

John Sink, the holder of License #6611, 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 #6611. 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.

John Sink, License #6611, accepts Board member Wallace E. Nelson's proposal in this matter.

CONSENTED TO BY: John Sink, R. Ph. 3/2/2005
John Sink Date
License No. 6611

State of NORTH CAROLINA
UNION County

I, Billy R. Thomas, a Notary Public for the above-named County and State, do hereby certify that John Sink personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 2 day of MARCH, 2005.

Billy R. Thomas
Notary Public

My Commission Expires 6-28-09

John Sink, License No. 6611, does not accept the proposed Consent Order in this matter.

By: _____ Date _____
John Sink
License No. 6611

I, John Sink, R.Ph., (name), the undersigned, am PHARMACIST MANAGER (title) for the holder of permit #4012 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 #4012. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and that 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.

John Sink, R.Ph. PHARMACIST MANAGER on behalf of permit #4012, accepts Board member Wallace E. Nelson's proposal in this matter.

CONSENTED TO BY: John Sink, R.Ph. 3/2/2005
Name: _____ Date _____
Title: PHARMACIST MANAGER

State of North Carolina
Union County

I, Billy R. Thomas, a Notary Public for the above-named County and State, do hereby certify that John Sink personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 2 day of March, 2005.

Billy R. Thomas
Notary Public

My Commission Expires 6.28.09

_____, _____ on behalf of permit #4012, does not accept the proposed Consent Order in this matter.

By: _____
Name: _____ Date _____
Title: _____