

Common Questions about Prescription Drugs

Author : Jeff Welty

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I thought I'd take a minute to discuss three questions that I get about prescription drugs. [**Update:** Several people posted comments or emailed me about the relationship between prescription drugs and controlled substances. I discussed that issue in some detail in [this post](#), but briefly, some prescription drugs contain controlled substances and some don't. Certainly, if a prescription drug is also a controlled substance, the controlled substance laws will apply to it and will prohibit possession, sale, etc. of the substance absent legal authority. The discussion below focuses on the prescription drug laws, i.e., on prescription drugs that are not controlled substances.]

1. *Is it illegal to possess a prescription drug without a prescription?* No, at least under state law. It may be illegal to "recei[ve] in commerce" a prescription drug without a prescription under [G.S. 106-122\(3\)](#), but I'm not aware of any statute that criminalizes simple possession of a prescription drug without a prescription.
2. *Is it illegal to sell a prescription drug without a prescription?* Until recently, I thought that the answer to this question was yes under federal law but no under state law, and I said as much in an [earlier blog post](#). But then I came across the following language in [G.S. 106-134.1\(a\)](#), the statute that imposes the prescription requirement: "The act of dispensing a drug contrary to the provisions of this subdivision [i.e., without a prescription] shall be deemed to be an act which results in a drug being misbranded while held for sale." A person who holds a misbranded drug for sale commits a misdemeanor under G.S. 106-122(1) and G.S. 106-124. The term "dispense" doesn't seem to be defined in Chapter 106. There's a very narrow definition in Chapter 90, which, as explained in the prior post, is why G.S. 90-85.40(c) doesn't criminalize the sale of a prescription drug without a prescription, but it isn't obvious that the Chapter 90 definition must be imported into Chapter 106. So now I think this conduct may be a crime under state law. I've emailed the Board of Pharmacy to get its view, and I'll post an update here if and when I receive a response.
3. *Is it illegal to possess a prescription drug in an unlabeled container?* No. And that's a good thing for all the old folks with their Sunday-through-Saturday pill dispensers. I have heard about this being charged under G.S. 90-106(f), but that statute only requires the use of a labeled container when a controlled substance is "dispensed or distributed," not when it is merely possessed. Likewise, although I have heard about this being charged under [G.S. 106-122](#), the various provisions of that statute generally apply to items that are being sold or held for sale, not merely possessed.

As always, if you disagree with, care to add to, or wish to comment on the above, feel free. And if there are other recurrent questions about prescription drugs, let me know and I'll try to answer them.