

STATE OF NORTH CAROLINA  
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF )  
 )  
WAL-MART STORES EAST, INC. ) **CONSENT ORDER**  
d/b/a Wal-Mart Pharmacy )  
 )  
Permit No. 7964 )

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THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the "Board") on September 21, 2010, on the consent of the parties. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. By its consent, the permit holder, Wal-Mart Stores East, Inc. d/b/a Wal-Mart Pharmacy #10-1385, Permit No. 7964 ("Respondent Wal-Mart") waives its right to appeal this Consent Order. Respondent Wal-Mart also stipulates that the findings of fact and conclusions of law are legally sufficient to support this Consent Order and agrees not to challenge the legal adequacy of the findings and conclusions in any potential future proceeding regarding this Consent Order. With the consent of the parties, the Board hereby enters the following:

**FINDINGS OF FACT**

1. Respondent Wal-Mart is located at 3000 East Franklin Boulevard, Gastonia, North Carolina, and holds permit number 7964.
2. Respondent Wal-Mart is and was, at all relevant times referred 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. On or about March 19, 2008, Respondent Wal-Mart accepted a Consent Order to resolve disciplinary charges against it. That Consent Order was approved by the Board and is incorporated herein by reference.

4. By the terms of the Consent Order, Respondent Wal-Mart's North Carolina pharmacy permit was suspended for one (1) day. That suspension was stayed for one year from the date that the Consent Order was accepted by the Board, so long as Respondent Wal-Mart complied with a number of conditions during the one-year stay of the suspension. Those conditions included that Respondent Wal-Mart should violate no laws governing the practice of pharmacy or the distribution of drugs.

5. These conditions were material terms of the Consent Order. The Board would have imposed additional and harsher discipline, including but not limited to an active suspension of Respondent Wal-Mart's permit, without the conditions on the stay of the suspension. The Consent Order provided, "If Respondent fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and Respondent may be subject to additional disciplinary action by the Board." The Board also has the statutory authority to discipline permit holders who violate the terms of the Board's Orders.

6. On June 8, 2009, the Board received a complaint that, on February 23, 2009, Respondent Wal-Mart had erroneously dispensed Lipitor to a patient who had not been prescribed that drug. The investigation revealed that, on the date of the alleged error, Respondent Wal-Mart and its pharmacist-manager had permitted one pharmacist to supervise four technicians, in violation of the Pharmacy Practice Act.

7. The Board subsequently requested Respondent Wal-Mart's records of pharmacist and technician schedules for the time period from January 1, 2009 to March 25, 2009 – when

Respondent Wal-Mart was operating under the one-year period during which its suspension was stayed. On forty-five (45) days during that period of less than three months, Respondent Wal-Mart and its pharmacist-manager permitted one pharmacist to supervise more than two technicians.

8. Respondent Wal-Mart had not requested, and the Board had not granted, any request to allow Respondent Wal-Mart's pharmacists to supervise more than two pharmacy technicians.

### CONCLUSIONS OF LAW

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

1. Respondent Wal-Mart violated N.C. Gen. Stat. §§ 90-85.15A(c).
2. Respondent Wal-Mart admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under N.C. Gen. Stat. § 90-85.38(b).

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit of Respondent Wal-Mart, Permit No. 7964, is hereby SUSPENDED for four (4) days. That suspension shall be served as follows:

1. The permit of Respondent Wal-Mart is hereby actively suspended for one (1) day, consisting of a normal working day upon which Respondent Wal-Mart's store is open and its pharmacy was otherwise scheduled to be open, to be served within ninety (90) days following the date that the Consent Order is entered by the Board.

- a. In advance of service of the suspension, Respondent Wal-Mart shall notify the Executive Director in writing of the day on which it will serve the

suspension and shall return its permit to the Executive Director in advance of the suspension.

- b. During the term of its suspension, the pharmacy at Respondent Wal-Mart must be closed. During the term of its suspension, Respondent Wal-Mart may not dispense any prescription drugs (as defined in N.C. Gen. Stat. § 90-85.3(s)), devices (as defined in N.C. Gen. Stat. § 90-85.3(e)) or medical equipment (as defined in N.C. Gen. Stat. § 90-85.3(1 1)). During the term of its suspension, Respondent Wal-Mart may not provide any prescription drugs, devices or medical equipment to any person, even if the prescriptions were presented before the term of the suspension and/or the drugs were prepared, packaged and/or labeled before the term of the suspension.
- c. During the term of its suspension, the only person who may be present in the pharmacy at Respondent Wal-Mart is either one pharmacist or one certified technician, who may be present solely to transfer prescriptions to other pharmacies pursuant to 21 N.C.A.C. 46 .1806. Prior to service of the suspension, Respondent Wal-Mart shall notify the Executive Director, in writing, of the person designated to be present in the pharmacy for the purposes of the transfers set forth in this subparagraph.
- d. During the term of its suspension, signs will be placed at the entrance to both the store and the pharmacy area of Respondent Wal-Mart, in a format in the discretion of the North Carolina Board of Pharmacy, informing the

public that the pharmacy is closed by order of the North Carolina Board of Pharmacy and informing the public of the dates of suspension.

2. The remaining three (3) days of the suspension are stayed for two (2) years from the date that the Consent Order is entered by the Board, upon the following conditions:

- a. Respondent Wal-Mart shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- b. Respondent Wal-Mart shall violate no rules and regulations of the Board; and
- c. Respondent Wal-Mart shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order.

If, during such two (2) year period, Respondent Wal-Mart fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and Respondent Wal-Mart may be subject to additional disciplinary action by the Board.

This, the 21<sup>st</sup> day of September, 2010.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jay W. Campbell, IV  
Executive Director

Wal-Mart Stores East, Inc. d/b/a Wal-Mart Pharmacy, the holder of permit number 7964, has full knowledge that it has the right to a hearing, at which it would have the right to be represented at its 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 or she certifies that he has read the foregoing Consent Order and that Respondent Wal-Mart Pharmacy 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 Respondent Wal-Mart Pharmacy 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 Respondent Wal-Mart Pharmacy has the right to have counsel of its choice review and advise it with respect to its rights and this Consent Order, and represents that it enters this Consent Order after consultation with its counsel or after knowingly and voluntarily choosing not to consult with counsel.

The undersigned certifies that its agent executing this Consent Order is duly authorized to execute the Consent Order on behalf of Respondent Wal-Mart Pharmacy and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

WAL-MART STORES EAST, INC. d/b/a Wal-Mart Pharmacy  
#10-1385 (Permit No. 7964)

[Signature] Date 9/17/10

By: Timothy R. Koch, RPh  
Title: Director, Pharmacy Regulatory Affairs

STATE OF Arkansas

Signed Per Corporate  
Delegation of Authority

Benton 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: Timothy R. Koch, RPh

Date: 9-17-10

Brenda Glenn  
Notary Public  
Brenda Glenn

**BRENDA GLENN**  
**NOTARY PUBLIC-STATE OF ARKANSAS**  
**BENTON COUNTY**  
My Commission Expires 05-01-2015

My commission expires: 05-01-2015