

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In The Matter Of:

**Licensure Application of
DONALD WAYNE THOMAS**

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**ORDER DENYING
LICENSURE APPLICATION**

THIS MATTER came before the North Carolina Board of Pharmacy (“Board”) at the request of Donald Wayne Thomas (“Petitioner”) for action on an application to obtain a North Carolina license to practice pharmacy. This matter was heard on March 15, 2016 by the Board located at 6015 Farrington Rd., Suite 201, Chapel Hill, North Carolina, before Board members Mixon, Day, McLaughlin, Minton, Graves, and Haywood. Having heard the evidence presented and assessed the credibility of the testifying witnesses, the Board makes the following:

FINDINGS OF FACT

1. On September 24, 2015, Petitioner applied for licensure as a pharmacist in North Carolina by examination. On that application, he disclosed that he was licensed as a pharmacist in Texas, and had been since November 2010. On that application, Petitioner answered “yes” to the question whether he had “ever been summoned, arrested, taken into custody, indicted, convicted or tried for, or charged with or pleaded guilty or nolo contendere to the violation of any law or ordinance or the commission of any felony or misdemeanor.” No further information concerning the criminal matters was provided at that time.

2. Upon receiving the application, a Board staff member contacted Petitioner to inquire why, as a licensed pharmacist, he was applying for licensure by exam rather than by application to reciprocate his Texas license to North Carolina. Petitioner stated his intent to

instead apply for licensure by reciprocity, and the Board staff member asked Petitioner to confirm by electronic mail.

3. Petitioner did not respond. Instead, on December 15, 2015, Petitioner filed a second application for licensure by examination that was materially identical to the one filed on September 24, 2015.

4. Subsequent to the December 15, 2015 application, Board staff discovered that Petitioner entered into an agreed order of discipline with the Texas Board of Pharmacy in 2010. The Texas Board of Pharmacy found that Petitioner submitted a fraudulent application for student pharmacist-intern registration in 2008. On that 2008 application, Petitioner falsely indicated that he had not previously been convicted of a criminal offense when, in fact, in 2006, he pleaded guilty to three misdemeanor criminal offenses and fined \$1,100. The Texas Board of Pharmacy fined Petitioner \$1,000, but allowed him to move forward with his application for licensure as a pharmacist.

5. On January 7, 2016, the Board's Executive Director contacted Petitioner to inquire about Petitioner's desire to attempt licensure by examination rather than by reciprocity. Petitioner confirmed that he wished to attempt licensure by examination.

6. The next day, at the Executive Director's instruction, a Board staff member contacted Petitioner and asked him to answer certain questions to assist the Board in ascertaining the history of Petitioner's practice of pharmacy in order to determine his fitness to practice.

7. On January 9, 2016, Petitioner disclosed to Board staff two disciplinary orders – the 2010 agreed order previously discovered by Board staff and an “8/19/2015 pending board order” from the Texas Board of Pharmacy.

8. Documents received from the Texas Board of Pharmacy show that on August 19, 2015 – one month before his initial application for licensure in North Carolina by examination – the Texas Board of Pharmacy notified Petitioner that disciplinary action had been initiated against him stemming from allegations that Petitioner had committed several dispensing errors as a staff pharmacist at Pharmacy Concepts in Arlington, TX. The notice set an October 7, 2015 informal conference date to explore a resolution of the charges.

9. After the October 7, 2015 informal conference, Petitioner entered into an agreed order, subsequently ratified by the full Texas Board of Pharmacy, to dispose of three dispensing error charges. Under the terms of the order, Petitioner's Texas license to practice pharmacy was placed on a two-year probationary period commencing March 2, 2016; he was ordered to pay a \$1,200 probation fee; and was ordered to obtain six hours of continuing education (over and above CE required for license renewal) within 120 days of entry of the order.

10. During his testimony, Petitioner gave a number of reasons why he had applied for licensure by examination rather than seeking to reciprocate his Texas license to North Carolina. Petitioner admitted that one reason was his belief that the application for licensure by examination did not require him to disclose his pending disciplinary action in Texas and his hope that he might be able to complete the licensure by examination process prior to the Texas Board of Pharmacy ratifying the agreed order of discipline.

CONCLUSIONS OF LAW

Petitioner's 2010 and 2016 disciplinary orders from the Texas Board of Pharmacy demonstrate failures "to comply with the laws governing the practice of pharmacy and the distribution of drugs." N.C.G.S. § 90-85.38(a)(6). Petitioner is, and until March 2, 2018, will be

practicing pharmacy in the State of Texas under probation, based on his failures to comply with the laws governing the practice of pharmacy and the distribution of drugs.

The Board's precedent is that it often disfavors licensure applications from applicants who are under current suspensions, probationary periods or other restrictions of license in other states for their failures to comply with the laws governing the practice of pharmacy and the distribution of drugs. In this case, taking into account all of the evidence presented, the Board concludes that it is appropriate in this case to deny Petitioner's application for his violations of the pharmacy laws of the State of Texas and to direct that he may not reapply for a North Carolina license until his Texas license is no longer restricted.

IT IS, THEREFORE, ORDERED that Petitioner's application to obtain a license by examination to practice pharmacy in North Carolina is **DENIED**.

Petitioner may reapply for licensure only if and when his Texas license to practice pharmacy is no longer encumbered by probationary status or other disciplinary action. The Board's Executive Director is instructed to reject any application that does not conform with this directive.

Moreover, this Order contains no promise or guarantee, express or implied, that any subsequent application for licensure will be approved. Any subsequent application will be assessed, when received, for compliance with North Carolina law.

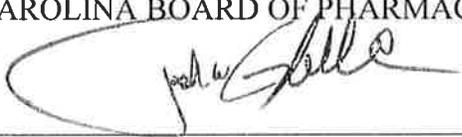
Pursuant to N.C.G.S. § 150B-45(a)(2), if Petitioner wishes to obtain judicial review of this final agency action, he must file a petition in the Durham County, North Carolina Superior Court, within 30 days of service of this Order. If Petitioner is dissatisfied with this final agency action, Petitioner is encouraged to review the North Carolina Administrative Procedures Act,

N.C.G.S., Chapter 150B, to determine the procedures governing any review of this action, and/or to contact counsel of your choice, at your expense.

This the 15th day of March, 2016.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell IV
Executive Director

CERTIFICATE OF SERVICE

I certify that on March 23, 2016, I caused a copy of this Order Denying Licensure Application to be served on Petitioner by certified mail, return receipt requested at the following address:

Donald Wayne Thomas

[REDACTED]



Jack W. Campbell IV
Executive Director

cc: Thomas file

Gay Dodson
Executive Director
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