

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:)

Medicap Pharmacy)
(Permit No. 4631))
)
)
)

**CONSENT ORDER OF
DISCIPLINE**

THIS MATTER came on to be considered at a prehearing conference (hereinafter, "Conference") before a member of the North Carolina Board of Pharmacy (hereinafter, "Board") pursuant to 21 N.C.A.C. 46.2008. This Conference was scheduled for March 24, 2008 and, after appropriate notice, was heard on that day by Board member Rebecca Chater, at the offices the Board. The Respondent Medicap Pharmacy (Permit No. 4631) (hereinafter, "Respondent" or "the Pharmacy") was present and was represented by Counsel James Wilson. Counsel John Duberstein represented the Board. Members of the Board's investigative staff and other Board counsel were also present at the Conference.

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 its consent, Respondent also stipulates that it waives its 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.

1. Respondent is, and was at all relevant times referred to herein, the holder of Pharmacy Permit No. 4631, which pharmacy is located at 317 1st St. East, Conover, North Carolina. The Pharmacy and its employees were subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Pharmacist Manager Ronald Harwell, testifying on behalf of Respondent, reported that between about November 2006 and March 2007, approximately 80,548 dosage units of Schedule III and IV medications were diverted from the store.

4. Pharmacist Manger Harwell testified that, as pharmacy manager, he was responsible for the failure to take all steps necessary to ensure that these controlled substances were safe and secure within the Pharmacy or to maintain an adequate system of inventory record-keeping and control.

5. Pharmacist Manger Harwell also testified that, upon discovery of the diversion, he took measures to determine the source and prevent further loss, including installation of video cameras and coordination of his surveillance with State and Board investigators and initiation of a monthly inventory of controlled substances on schedules III, IV and V. Respondent's actions to prevent future diversions have been considered as mitigating factors in determining the appropriate discipline in this case.

CONCLUSIONS OF LAW

1. All parties are properly before the Board, and the Board has jurisdiction over Respondent and the subject matter of this proceeding.

2. Respondent's conduct, as set out in the findings of fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38(b) because Respondent's acts were in violation of N.C. Gen. Stat. §§ 90-106, 90-108, 106-134.1 and 21 N.C.A.C. 46.1805.

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of Respondent, the Board enters the following:

CONSENT ORDER OF DISCIPLINE

1. Respondent Medicap Pharmacy's Permit (Permit No. 4631) is hereby suspended for three days. The suspension shall be stayed for a period of one (1) year. The stay is conditioned upon Respondent's compliance with the terms of this Consent Order. If at the end of the one (1) year period, Respondent has violated no terms of this Consent Order, Respondent shall not be required to serve the three-day suspension;

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

3. Respondent shall violate no rules and regulations of the Board;

4. Respondent shall report to the Board investigator assigned to this case (Holly Price-Hunt) on the effectiveness of the diversion preventive measures already implemented as well as any additional measures taken over the coming year. Such reports should be made every four months during the course of the one-year stayed suspension. The reports should reflect any losses that may be due to diversion. A report reflecting a loss will not trigger the activation of

the suspension by itself, the mere fact of reporting being sufficient to comply with this order. However, if the Respondent's preventive measures prove insufficient to prevent future loss, the Board may take or require further action.

5. If Respondent fails to comply with any terms or conditions of this Consent Order, Respondent may be subject to additional disciplinary action by the Board.

This the 15th day of April, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director

Medicap Pharmacy, the holder of permit number 4631, has full knowledge that it has the right to a formal 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, it certifies that he has read the foregoing Consent Order and that it 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 it 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 it has the right to have counsel of his choice review and advise it with respect to his rights and this Consent Order, and represents that it enters this Consent Order after consultation with his 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 Medicap Pharmacy and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

MEDICAP PHARMACY (Permit No. 7636)

Medicap Pharmacy ^{Permit # 7636} Date 04-07-08

By: Ron Harwell

Title: owner / mgt

NORTH CAROLINA

Wake COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person(s) personally appeared before me this day, and each acknowledged the due execution of the foregoing document: Ron Harwell

Date: 4-7-08

Kay F. Deal
Notary Public
Kay F. Deal

My commission expires: 6-17-2012