

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

THORNE DISCOUNT DRUGS

(Permit No. 4293)

)  
)  
)  
)  
)  
)

**CONSENT ORDER**

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 January 5, 2016 and, after appropriate notice, was heard on that day by Board Member Robert A. Graves at the office of the Board. Respondent Thorne Discount Drugs (hereinafter "Respondent" or "the Pharmacy") was present through its pharmacist-manager, Jeanette Davenport, and its owner, William Thorne. Counsel Clinton R. Pinyan represented the Board. Members of the Board's investigative staff 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. 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 by its consent. 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.

2. Respondent Thorne Discount Drugs, located at 1900 Main Street, Tarboro, North Carolina, is, and was at all relevant times referred to herein, the holder of Pharmacy Permit No. 4293. The Pharmacy and its employees are, and were at all relevant times, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Between July 2014 and February 2015, the Pharmacy engaged in less than a dozen wholesale shipments into the states of Arizona, Kentucky, Michigan, New Jersey, Texas, Washington and Wisconsin, without having the required non-resident permits. In addition, the Pharmacy shipped some of these drugs in opened, partial packages, which was not permitted by some or all of these states. The Pharmacy made these shipments by using services provided by MatchRx to pair interested buying and selling pharmacies for overstocked prescription drugs. Similar services are provided by other companies, including RxCherryPick, RxTrade and ExchangeMeds. In using the MatchRx service, the Pharmacy relied upon representations that the Pharmacy could lawfully ship to other states using the service. The Pharmacy's representatives acknowledged that they should have researched permitting requirements in other states before shipping there, rather than relying upon MatchRx's representations. Although the Board finds that it was not reasonable for the Pharmacy to rely on the representations of a third-party with a profit motive to cause the Pharmacy to use the service, rather than researching legal requirements on its own, the Board finds that the Pharmacy acted in good faith in its reliance.

4. On April 27, 2015, the Arizona Board of Pharmacy sent a cease and desist letter to the Pharmacy, requesting that the Pharmacy cease shipments into Arizona without a permit.

The Arizona Board of Pharmacy sent similar letters to a number of other North Carolina pharmacies. Some of the other states into which the Pharmacy had shipped (Kentucky, Michigan, New Jersey, Texas, Washington and Wisconsin) had similar permitting requirements with which the Pharmacy had not complied. Upon receipt of this letter, the Pharmacy immediately stopped using the MatchRx service and fully cooperated with the Board's investigation of MatchRx shipments.

5. Although the Pharmacy cooperated completely with the Board's investigation of its shipments through MatchRx, the Board is unable to accurately find the full scope of shipments made to other states because MatchRx refused to cooperate fully with the Board's investigation.

6. As substantial mitigating factors in this case, the Board has considered the Pharmacy's cooperation with the investigation and its immediate compliance with its obligations not to ship without wholesale permits (once it was alerted to those requirements).

### **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 and conclusions of law above, constitutes grounds for discipline pursuant to North Carolina General Statutes § 90-85.38(b) because Respondent's acts were in violation of 21 U.S.C. § 353(e); 21 C.F.R., Part 205; Ariz. Rev. Stat. §§ 32-1929 and 32-1982; Ariz. Admin. Code § R4-23-607; Ky. Rev. Stat. Ann. § 315.402; 201 Ky. Admin. Regs. 2:105, Mich. Comp. Laws § 333.17748; Mich. Admin. Code r. 338.493a; N.J. Stat. Ann. § 24:6B-1; N.J. Admin. Code §§8:21-3A.4, 8:21-3A.5

and 8:21-3A.12; Tex. Health & Safety Code §§ 431.402, 431.406; 25 Tex. Admin. Code § 229.424; Wash. Rev. Stat. § 18.64.046; Wash, Admin. Code § 246-879-070; Wis. Stat. § 450.071; and Wis. Admin. Code Phar. 13.13.

3. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under North Carolina General Statutes § 90-85.38(b).

### CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the Respondent, IT IS THEREFORE ORDERED that the permit of Respondent Thorne Discount Drugs (Permit No. 5304) is hereby REPRIMANDED.

This the 16<sup>th</sup> day of February, 2016.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV  
Executive Director

Thorne Discount Drugs, the holder of permit number 4293, 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 it 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 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 accept the Consent Order on behalf of Thorne Discount Drugs and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

THORNE DISCOUNT DRUGS (Permit No. 4293)

Jeanette H. Davenport Date 1/18/16

By: Jeanette Davenport

Title: Pharmacist-Manager

STATE OF North Carolina

Edgecombe 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: Jeanette Davenport.

Date: January 18 2016

Sophia B. Hardy  
Notary Public  
Sophia B. Hardy

My commission expires: 9/27/2018

\*\*\*\*\*

REJECTED BY:

THORNE DISCOUNT DRUGS (Permit No. 4293)

\_\_\_\_\_ Date \_\_\_\_\_

By: Jeanette Davenport

Title: Pharmacist-Manager