

FINDINGS OF FACT

1. Respondent Morton is, and was at all relevant times referred to herein, a pharmacist licensed to practice pharmacy in the State of North Carolina with license number 6962.

2. Respondent Pharmacy is a pharmacy that is, and was at all relevant times referred to herein, permitted with the State of North Carolina with permit number 3631. Respondent Pharmacy is located at 421 Farm Life Avenue, Vanceboro, North Carolina. Respondent Morton is, and was at all relevant times referred to herein, the pharmacist-manager at Respondent Pharmacy.

3. Both Respondent Morton and Respondent Pharmacy are and were, 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.

4. Between July 2005 and May 2007, more than 20,000 dosage units of controlled substances were diverted from Respondent Pharmacy as described more fully below.

5. On May 13, 2006, Respondent Morton and Respondent Pharmacy became aware of diversion occurring in the pharmacy. On May 2, 2006, Respondent Morton and the Pharmacy had received a large shipment consisting of 600 dosage units of Endocet, a schedule II controlled substance. On May 13, 2006, Respondent Morton and Respondent Pharmacy became aware that the shipment had quickly been depleted although relatively few prescriptions for Endocet had been filled.

6. An audit revealed that a total of approximately 12,300 dosage units of Endocet were diverted between July 2005 and July 2006.

7. Notwithstanding Respondent Morton and Respondent Pharmacy's awareness of diversion at Respondent Pharmacy and of potential security and inventory-keeping issues with respect to controlled substances, Respondent Morton and Respondent Pharmacy failed to take additional actions sufficient to prevent further diversion.

8. On May 21, 2007, Pharmacy technician Julie Harris was caught attempting to steal three tablets of Hydrocodone 10/650 mg, a schedule III controlled substance.

9. In response to the above incident, an audit was conducted, revealing that from May 2006 to May 2007, medications were diverted from the Pharmacy, including but not limited to approximately 10,900 dosage units of Schedule III and Schedule IV controlled substances, specifically Hydrocodone and Ambien in varying strengths.

10. Respondents failed to assure the safe, lawful and secure delivery of prescription drugs. Respondents further failed to assure that prescription legend drugs and controlled substances were safe and secure within the pharmacy and failed to maintain the security of the pharmacy. Among other things, Respondents failed to develop and implement a system of inventory record-keeping and control that would enable Respondents to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time. Respondents' actions in this respect were negligent.

11. As a result of Respondents' actions and omissions, controlled substances left the Pharmacy through means other than by being dispensed pursuant to valid prescriptions.

CONCLUSIONS OF LAW

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

1. The evidence demonstrated that Respondents violated the following statutes and rules:
 - a. N.C. Gen. Stat. § 90-85.38(a)(6), (7) and (9) (Respondent Morton only);
 - b. N.C. Gen. Stat. § 90-85.38(b) (Respondent Pharmacy only);
 - c. N.C. Gen. Stat. § 90-85.40(f);
 - d. N.C. Gen. Stat. § 90-106;
 - e. N.C. Gen. Stat. § 90-108;
 - f. N.C. Gen. Stat. § 106-122;
 - g. N.C. Gen. Stat. § 106-134;
 - h. N.C. Gen. Stat. § 106-134.1;
 - i. 21 N.C. Admin. Code 46 .1804(a);
 - j. 21 N.C. Admin. Code 46 .1805;
 - k. 21 N.C. Admin Code 46 .2502(a) and (d);
 - l. 21 U.S.C. § 331;
 - m. 21 U.S.C. § 352; and
 - n. 21 U.S.C. § 353.

2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that the discipline set forth in this Final Order is appropriate.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the license of Respondent James M. Morton, License No. 6962, is hereby SUSPENDED for twelve (12) days, to be served as follows:

1. Five (5) days of the suspension must be served as an active suspension. These five days shall be served consecutively on normal working days between Monday and Saturday, within 45 days of the date of this Order, with Respondent to notify the Executive Director in writing and return his wallet card and license in advance of service of the suspension.

2. The remaining seven (7) days of the suspension shall be stayed for five (5) years from the date of this hearing, upon the following conditions:

- i. Respondent Morton shall take and pass the Multistate Pharmacy Jurisprudence Examination within one (1) year of the date of this Order and provide documentation to the Board of the same;
- ii. Respondent Morton shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- iii. Respondent Morton shall violate no rules and regulations of the Board;
- iv. If Respondent Morton fails to comply with any terms or conditions of this Final Order, Respondent may be subject to additional disciplinary action by the Board.

It is further ORDERED, ADJUDGED and DECREED that the permit of Vanceboro Pharmacy, Permit No. 3631, is hereby SUSPENDED for twelve (12) days. That suspension is stayed for five (5) years from the date of this hearing, upon the following conditions:

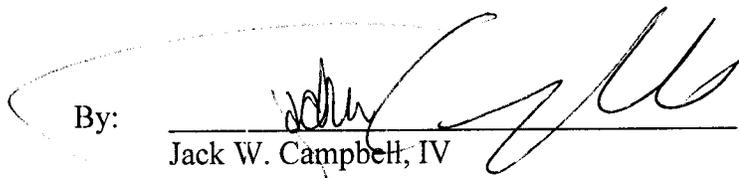
- v. Respondent Pharmacy shall maintain a Perpetual Inventory of Schedule II, III, IV and V controlled substances, and is subject to random annual (or more frequent) inspections by the Board to ensure compliance.
- vi. Respondent Pharmacy shall conduct four (4) quarterly audits of controlled substances, which are to be reported to and signed by Karen Matthew, Director of Investigations and Inspections for the Board of Pharmacy, or her successor in that position as designated by the Executive Director of the Board of Pharmacy. In the event that the position is vacant, the audits shall be reported to and signed by the Executive Director of the Board of Pharmacy.
- vii. Respondent Pharmacy shall conduct, record and maintain an annual inventory of Schedule II, III, IV and V controlled substances. The date of that inventory shall run from the anniversary that Respondent is required to complete the biennial inventory required by the Drug Enforcement Agency.
- viii. Respondent Pharmacy shall develop, implement and follow a comprehensive written policy with respect to the accountability of controlled substances, including security measures to detect and prevent the diversion of controlled substances. Such policy shall be sent to Karen Matthew, Director of Investigations and Inspections for the Board of Pharmacy, for her approval and signature within 90 days after the date of this Order.

- ix. Respondent Pharmacy shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- x. Respondent Pharmacy shall violate no rules and regulations of the Board;
- xi. If Respondent Pharmacy fails to comply with any terms or conditions of this Final Order, Respondent may be subject to additional disciplinary action by the Board.

This the 18th day of November, 2008. *John* *Nunc Pro Tunc*

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director