

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)

THIS MATTER came on for consideration at a prehearing conference (hereinafter, "conference") pursuant to 21 N.C.A.C. 46.2008. This conference was scheduled for February 18, 2008 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Wallace E. Nelson. Respondent Wal-Mart Stores East, Inc., d/b/a Wal-Mart Pharmacy ("Wal-Mart") was present at the conference through its corporate representatives. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were present at this conference, as were related respondents.

FINDINGS OF FACT

1. Respondent Wal-Mart is located at 3000 East Franklin Boulevard, Gastonia, North Carolina, and holds permit number 7964.
2. In June 2006, Respondent Wal-Mart hired Christopher Breese. Mr. Breese was a recent pharmacy school graduate, and, the previous month, he had applied for a North Carolina pharmacy license. Respondent Wal-Mart hired Mr. Breese as a graduate intern, but it anticipated that he would soon be licensed as a pharmacist and would serve as pharmacist-manager at the store. Mr. Breese's license application was delayed, and he was never licensed as a pharmacist before he left Respondent Wal-Mart in January 2007.



3. Respondent Wal-Mart identified Mr. Breese in its computer system as a graduate intern. Respondent Wal-Mart permits graduate interns in some states (where permitted by law) to visually four-point verify prescriptions and to be identified as the dispensing pharmacist on the labels of dispensed medications and in Wal-Mart's records. On various dates between June 27, 2006 and November 8, 2006, 454 different prescriptions were dispensed with labels showing that the drugs were dispensed by "Christopher J Breese, RPH." Wal-Mart's records further identify Mr. Breese as the dispensing pharmacist for those 454 prescriptions. Those prescriptions included controlled substances on schedules II, III, IV and V. While Wal-Mart denies that Mr. Breese visually four-point verified the prescriptions and asserts that a licensed pharmacist always actually verified the prescriptions and served as dispensing pharmacist, Wal-Mart acknowledges that there were labeling and recordkeeping violations resulting from listing Mr. Breese as the dispensing pharmacist on the prescriptions. Wal-Mart further admits that none of the pharmacists who were purportedly supervising Mr. Breese and verifying the prescriptions ever noticed that prescriptions were being dispensed with Mr. Breese listed as the dispensing pharmacist.

4. Beginning on or about September 23, 2007, Respondent Wal-Mart replaced Jeffrey Chodrow as pharmacist-manager with Kurt Lupton. When Respondent Wal-Mart placed Mr. Lupton in the position of pharmacist-manager, it told him that he would not have to be present at the store for a minimum of 32 hours a week, as required by North Carolina law, but that he could continue to work as a floater. Respondent Wal-Mart further neglected to instruct Mr. Lupton to perform the other supervisory and security functions of a pharmacist-manager, or to ensure that he was doing so. In sum, Respondent Wal-Mart installed Mr. Lupton as a



pharmacist-manager in name only and disregarded North Carolina law with respect to the obligations of a pharmacist-manager.

5. During the fifteen (15) weeks that Mr. Lupton was purportedly the pharmacist-manager for Respondent Wal-Mart, he was present at the store for 32 hours for only one (1) of those weeks.

6. At the same time, Respondent Wal-Mart permitted, encouraged and/or aided and abetted Mr. Breese in performing supervisory and security functions that should have been performed by Mr. Lupton as pharmacist-manager.

7. Mr. Breese had keys and access codes to the pharmacy and routinely entered the pharmacy before a pharmacist was present. Representatives of Respondent Wal-Mart, including Mr. Lupton, were aware of this but permitted it to continue.

8. Respondent Wal-Mart issued Mr. Breese a badge that identified him as a pharmacist, and Mr. Breese wore this badge during the course of his employment. At some point during 2006, Mr. Breese further acquired a badge that identified him as the pharmacy manager. Respondent Wal-Mart's representatives observed or should have observed Mr. Breese wearing this pharmacy manager badge, and they did not stop Mr. Breese from wearing this badge.

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. §§ 90-85.21B, 90-85.38(b), 90-85.40(b) and (f), 90-108(a)(11), 90-640, 106-134 and 106-134.1; and 21 N.C.A.C. 46 .1601(e), 46 .1804(a), 46 .2302(a), 46 .2303, 46 .2304 and 46 .2502(a), (b) and (e).

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.

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 one (1) day. That suspension is stayed for one (1) year upon the following conditions:

i. Within 60 days of the date that the Board accepts this Order, Respondent Wal-Mart must provide a report to the Executive Director of satisfactory policies and procedures to ensure that graduate interns in North Carolina are not permitted or allowed (a) to represent themselves as pharmacists, (b) to perform the dispensing duties of pharmacists, (c) to perform the supervisory and security duties of pharmacist-managers and (d) to be entered on labels or in Wal-Mart records as dispensing pharmacists.

ii. Respondent Wal-Mart shall violate no laws governing the practice of pharmacy or the distribution of drugs;

iii. Respondent Wal-Mart shall violate no rules and regulations of the Board; and

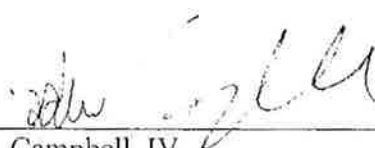
iv. Respondent Wal-Mart shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order.

If 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.



This the 25th day of March, 2008.

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 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 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 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 Wal-Mart Pharmacy and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

WAL-MART STORES EAST, INC. (Permit No. 7964)

[Signature] Date 3/19/08

By: Ron Chomink

Title: VP Pharmacy Ops



STATE OF Arkansas

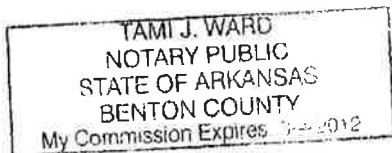
Benton COUNTY

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: _____

Date: 3/19/08

[Signature]
Notary Public

My commission expires: 3/4/12



REJECTED BY:

WAL-MART STORES EAST, INC. (Permit No. 7964)

_____ Date _____

By: _____

Title: _____