

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:)

Brenda Fonville)
(License No. 7986))

and)

Medicap Pharmacy, Inc.)
(Permit No. 5638))

CONSENT ORDER

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 March 26, 2007 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Robert McLaughlin, Jr. Respondent Brenda Fonville and her counsel, R. Jonathan Charleston and Jose A. Coker, Board Counsel Clint Pinyan and Sarah Phillips, and members of the Board's investigative and legal staff were present at this conference.

At this conference, Board Investigator Joshua Kohler outlined the findings of the Board investigation into allegations that, between approximately October 2002 and September 2004, over 60,000 dosage units of Schedule II controlled substances were diverted from Respondent Medicap Pharmacy by unregistered technicians under the supervision of Respondent Fonville as pharmacist-manager, and that Respondents Fonville and Medicap Pharmacy did not maintain adequate security measures to prevent the diversion of the Schedule II controlled substances. Investigator Kohler alleged the following:

1. At all relevant times, Respondent Fonville, License No. 7986, was the pharmacy-manager of Medicap Pharmacy, Permit No. 5638.
2. On September 14, 2004, Respondent Fonville reported a loss of 25,000 to 30,000 Schedule II controlled substances from Respondent Medicap Pharmacy and reported her suspicions that a registered technician was responsible for diverting the medications.
3. On September 15, 2004, when interviewed about the allegations, Respondent Fonville stated that, after thinking about the losses, she believed that the diversion began in October 2002, when Respondent Fonville was on medical leave for approximately three weeks.
4. Respondent Fonville stated that in addition to the registered technician whom she suspected in the diversion, she employed three other technicians. None of those three technicians had been registered with the Board, as required by its regulations.
5. Respondent Fonville advised that she does all of the ordering of Schedule II controlled substances. She completed inventories of the Schedule II controlled substances on December 31, 2003, and April 5, 2003.
6. On September 22, 2004, Investigator Kohler and DEA Investigator Stephanie Evans conducted an audit of twelve Schedule II controlled substances at Respondent Medicap Pharmacy. The audit determined there were losses in eleven of the twelve medications, with a total loss of 67,604 dosage units of Schedule II controlled substances over a seventeen-month period.

7. On December 17, 2004, Investigator Kohler met with Respondent Fonville for a second interview. At that interview, Respondent Fonville stated there were times when she thought she was ordering a lot of Percocet, but she assumed she was ordering such large quantities of Schedule II medications because of a Hospice contract. Respondent Fonville advised that since learning of the diversion, she had taken steps to prevent a recurrence of the diversion, including relocating nearly every strength and brand of Percocet in one bay, installing internal hidden cameras, and printing a weekly Drug Movement Report to compare with her on-hand inventory.
8. Investigator Kohler acknowledged that there was no evidence that Respondent Fonville was involved in the diversion.

At the conference, Respondent Fonville provided information on her behalf and on behalf of Respondent Medicap Pharmacy through her counsel. At the conference:

1. Respondents acknowledged that there had been diversion of Schedule II controlled substances at Respondent Medicap Pharmacy while Respondent Fonville was pharmacist-manager. Respondents disputed the audit results determining there had been diversion of 67,604 dosage units, and instead determined the total loss of Schedule II controlled substances to be closer to 40,000 dosage units over a two-year period.
2. Respondents stated that they understood the seriousness of the matter and took swift steps to address the problem. Shortly after the diversion was discovered, Respondents reported the loss to the Board and the DEA, installed additional

internal hidden cameras and began to regularly review the tapes for suspicious activity.

3. Respondents were not aware that their technicians were unregistered. Following a Board inspection on May 1, 2006 that revealed a technician working at Medicap Pharmacy was not registered, Respondents immediately suspended the technician until the technician registered with the Board.
4. Respondents have been cooperative with the Board and the DEA in this and other matters investigated by the Board.
5. In the two-and-a-half years following the investigation, there have been no further reports of diversion of controlled substances at Respondent Medicap Pharmacy.

Neither the Board staff nor the Respondents admit the facts alleged by the other at the conference. But they each enter into this Consent Order in order to resolve the investigation.

Without admitting to having violated any of the statutes or rules allegedly violated, Respondents Fonville and Medicap Pharmacy agree there is a basis for discipline. The Board finds and concludes that there were a number of mitigating factors involved that have caused the Board to accept the level of discipline set forth in this Consent Order, including Respondents' acknowledgment of responsibility for supervising their inventory of controlled substances, Respondents' cooperation with the investigation, Respondents' reported response to change their systems and processes in managing their controlled substances, Respondents' reasonably prompt reporting of the loss to the Board and the DEA, and the long history since the initial investigation in which there have been no further reported diversions.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that:

1. The license of Respondent Brenda Fonville, License No. 7986, is hereby suspended for five (5) days. This five (5) day suspension is stayed for five (5) years upon the following conditions:
 - a. Within ninety (90) days of Respondent Fonville's receipt of this order, she shall take and pass the MPJE Examination administered by NABP. Within ten (10) days after Respondent Fonville is notified that she passed the MPJE Examination, she shall notify the Executive Director of the Board in writing;
 - b. Respondent Fonville shall violate no laws governing the practice of pharmacy or the distribution of drugs; and
 - c. Respondent Fonville shall violate no rules and regulations of the Board.
2. The permit of Respondent Medicap Pharmacy, Pharmacy Permit No. 5638, shall be suspended for five (5) days. This five (5) day suspension is stayed for five (5) years upon the following conditions:
 - a. Respondent Medicap Pharmacy shall comply with unannounced inspections and review of inventory and recordkeeping by Board staff;
 - b. Respondent Medicap Pharmacy shall develop written policies and procedures to ensure security and accountability of the controlled substance inventory. Respondent Medicap Pharmacy shall also develop written policies and procedures regarding inventory recordkeeping and

shall implement all such policies and procedures. Respondent Medicap Pharmacy shall inform and train all Pharmacy personnel regarding these policies and procedures, and within sixty (60) days of receipt of this Order, Respondent Medicap Pharmacy shall submit the following to the Executive Director of the Board:

- i. Copies of the policies and procedures described above; and
 - ii. Documentation that all pharmacy personnel have been informed of and trained on the policies and procedures described above;
 - c. Respondent Medicap Pharmacy shall violate no laws governing the practice of pharmacy or the distribution of drugs; and
 - d. Respondent Medicap Pharmacy shall violate no rules or regulations of the Board.
3. If Respondents fail to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and Respondents may be subject to additional disciplinary action by the Board.

This the 15th day of April, 2007.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jay W. Campbell, IV
Executive Director

Brenda Fonville, the holder of license number 7986 has full knowledge that she has the right to a hearing, at which she would have the right to be represented at her expense by counsel, in this matter. The undersigned freely, knowingly and voluntarily waives such right by entering into this Consent Order.

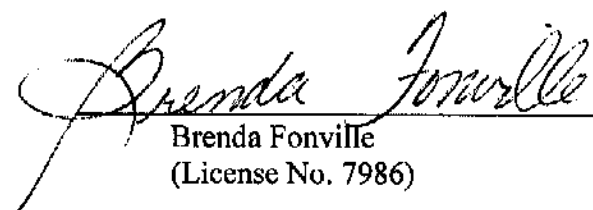
The undersigned understands and agrees that by entering into this Consent Order, she certifies that she has read the foregoing Consent Order and that she voluntarily consents to the terms and conditions set forth therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter.

The undersigned further understands that should she 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 she has the right to have counsel of her choice review and advise her with respect to her rights and this Consent Order, and represents that she enters this Consent Order after consultation with her counsel or after knowingly and voluntarily choosing not to consult with counsel.

CONSENTED TO BY:

 Date 4-17-2007
Brenda Fonville
(License No. 7986)

NORTH CAROLINA

Cumberland 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: Brenda F. Wille

Date: 17 Apr 07

Dorothy E. Garrison
Notary Public
DOROTHY E. GARRISON

My commission expires: 12/12/07

Medicap Pharmacy, Inc., permit number 5638, 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, it certifies that it has read the foregoing Consent Order and that it party 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.

CONSENTED TO BY:

MEDICAP PHARMACY, INC. (Permit No. 5638)

By:

Brenda Forville

Title: *R. Ph.*

Date *4-17-2007*

NORTH CAROLINA

Cumberland 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: Brenda Fonville

Date: 4/19/07

Dorothy E Green
Notary Public

My commission expires: 12/14/07

OBJECTED TO BY: _____ Date _____
Brenda Fonville
(License No. 7986)

OBJECTED TO BY: MEDICAP PHARMACY, INC.
(Permit No. 5638)

By: _____

Title: _____ Date _____