

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Dennis P. Faircloth
(License No. 7235)

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**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 April 16, 2007 and, after appropriate notice, was heard on that day by Board member Rebecca Chater at the office the Board. The Respondent Dennis P. Faircloth (hereinafter "Respondent" or "Faircloth") was present and was not represented by counsel. Counsel Alexander Elkan 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 he waives his right to appeal this Consent Order or challenge in any way the sufficiency of the findings of this Order by his 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, Dennis P. Faircloth, License No. 7235 is, and was at all relevant times referred to herein, a pharmacist licensed to practice pharmacy in the State of North Carolina and the pharmacist manager of Eckerd Drugs, Permit. No. 8555, located at 1909 N. Church St., Burlington, North Carolina (the "Pharmacy"). The Respondent and the Pharmacy are and were, at all relevant times referenced to herein, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Briana Strickland, a pharmacist technician, Tech. License No. 2137 ("Strickland"), who was employed at the Pharmacy, diverted controlled substances from the Pharmacy during an approximately seven (7) month period from January through August 2006.

4. As admitted by Strickland, she diverted the controlled substances by concealing them in her pockets, clothing, and underclothing, and then later sold the drugs. The drugs diverted by Strickland included the following:

- a. Hydrocodone 10/650 [5600 tabs];
- b. Hydrocodone 10/325 [3500 tabs];
- c. Hydrocodone 10/500 [1500 tabs];
- d. Alprazolam 1mg [3000 tabs];
- e. Tussionex [3 bottles].

5. Strickland's diversion as set forth above was discovered by loss prevention personnel of Eckerd Drugs.

6. Respondent testified that he was not aware of the diversion until he was informed of Strickland's diversion by Eckerd Drugs, after Strickland was identified by Eckerd Drugs and had admitted to the diversion.

7. Respondent testified and presented documents tending to demonstrate that he undertook efforts to implement security and inventory control and record-keeping measures to detect diversions of controlled substances.

8. Respondent's inventory control efforts were inadequate and ineffective in that the inventory system was inaccurate, and Respondent did not take sufficient action to correct the system, and in that he did not detect or prevent Strickland's diversion of controlled substances.

9. Respondent testified that he accepted full responsibility for failing to prevent or detect Strickland's diversion of controlled substances, and that the errors in the inventory control and record keeping system have been corrected and that he has increased the frequency of his inventory assessments for controlled substances to once per week.

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 constitute grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38 as follows:

- a. Respondent pharmacist-manager failed to assure that controlled substances were safe and secure within the Pharmacy in violation of 21 NCAC 46.2502(a);
- b. Respondent pharmacist-manager failed to sufficiently develop and implement a system of inventory record-keeping and control which would enable him to detect any shortage or discrepancy in the inventories of controlled substances at the Pharmacy at the earliest practicable time in violation of 21 NCAC 46.2502(d) and (e).

FINDINGS OF FACT REGARDING DISCIPLINE

1. Respondent Faircloth's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Absence of dishonest or selfish motive;
 - c. Full and free disclosure and cooperative attitude toward the Board investigation and proceedings;
 - d. Acceptance of responsibility for the circumstances and full acknowledgement of his duties as pharmacist-manager;
 - e. Testimonial and evidentiary demonstration of Respondent's efforts to implement an adequate inventory security, control, and record-keeping system and, subsequent to the discovery of the diversion, Respondent's good faith, diligent, and successful efforts to correct the errors in the inventory security, control, and record-keeping system and implement an adequate system.

2. There are no aggravating factors.

CONCLUSIONS REGARDING DISCIPLINE

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

ORDER OF DISCIPLINE

1. The License to Practice Pharmacy of Respondent Dennis P. Faircloth (License No. 7235) is hereby suspended for a period of three (3) days, which suspension shall be served as follows:

a. Respondent Faircloth's license to practice pharmacy shall be actively suspended for a period of three (3) consecutive days, which active suspension shall commence at a time to be selected by the Respondent, but in any event, shall be served and completed by Respondent within ninety (90) days of the date of acceptance of this Consent Order by the Board. The Respondent shall notify the Executive Director of the Board, in writing, at least ten (10) days prior to serving such active suspension of his intention to do so, and shall notify the Executive Director of the Board, in writing, within ten (10) days after completion of service of such active suspension. Respondent shall not be present in any pharmacy except as a customer during the active suspension of his license; and

b. The three (3) day suspension of Respondent Faircloth's license shall be stayed. The stay shall continue in force only as long as Respondent Faircloth complies with the following conditions, within one (1) year of the date of acceptance of this Consent Order by the Board:

i. Faircloth shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation and comply with the provisions of this Consent Order;

ii. Faircloth shall violate no laws governing the practice of pharmacy or the distribution of drugs; and

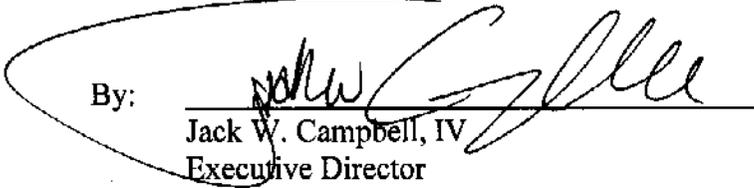
iii. Faircloth shall violate no rules and regulations of the Board;

2. 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 May, 2007.

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director

Dennis P. Faircloth, the holder of license number 7235 has full knowledge that he has the right to a formal hearing in this matter, at which he would have the right to be represented at his expense by counsel. The undersigned freely, knowingly and voluntarily waives such right by entering into this Consent Order.

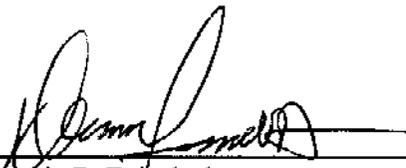
The undersigned understands and agrees that by entering into this Consent Order, he certifies that he has read the foregoing Consent Order and that he voluntarily consents to the terms and conditions set forth therein and relinquishes any right to judicial review of Board actions which may be taken concerning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

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

CONSENTED TO BY:



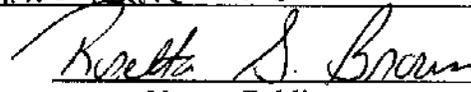
Dennis P. Faircloth
(License No. 7235) Date 5/2/07

NORTH CAROLINA

Rockingham COUNTY

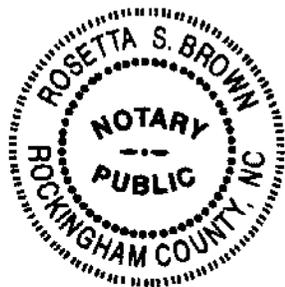
I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person(s) personally appeared before me this day, and each acknowledged the due execution of the foregoing document: Dennis Faircloth

Date: May 2, 2007



Notary Public

My commission expires: November 6, 2008



OBJECTED TO BY:

Date _____

Dennis P. Faircloth
(License No. 7235)