

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Edward Ray Holder
(License Number 6733)

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FINAL DECISION

This matter came on for hearing upon a Notice of Hearing issued March 30, 2006 to determine whether or not Edward Ray Holder (Respondent) violated North Carolina General Statute §90-85.38(a)(6) and (7), which provides that the Board may issue a letter of reprimand or suspend, restrict, revoke or refuse to grant or renew a license or require a licensee to complete remedial education if the licensee has:

- “(6) Failed to comply with the laws governing the practice of pharmacy and the distribution of drugs;
- (7) Failed to comply with any provision of this Article or rules adopted by the Board.”

The Notice set forth specific factual allegations and scheduled a hearing for April 21, 2006. The hearing was conducted at the Board office before Board members Dennis, Chater, Crocker, Nelson, Chesson, and Haywood. At the hearing, counsel for the Board presented evidence in the form of testimony and exhibits; Respondent presented evidence in the form of testimony. Having heard the testimony presented, considered the exhibits offered, and judged the credibility of the testifying witnesses, the Board makes the following:

FINDINGS OF FACT

1. At all relevant times, Respondent was the holder of license number 6733 which was issued on June 21, 1977. Respondent’s license was last renewed on June 21, 2004. Respondent’s license became inactive on March 7, 2005.

2. On or about December 22, 2005, the Board received information alleging that Respondent was practicing pharmacy with an invalid license.

3. Based upon the information received, Board Investigator Josh Kohler commenced an investigation.

4. On December 22, 2005, Investigator Kohler traveled to Barbee Pharmacy Mart, Permit no. 4406, located at 415 Harris Avenue, Raeford, North Carolina to determine whether Respondent was practicing pharmacy at this location.

5. Investigator Kohler obtained documents from Barbee Pharmacy Mart which reflect that Respondent was employed by Barbee Pharmacy Mart and practiced pharmacy on multiple dates in October, November, and December of 2005.

6. Investigator Kohler subsequently traveled to Eckerd Pharmacy, permit no. 8631, located at 2605 Raeford Road, Fayetteville, North Carolina to determine whether Respondent was practicing pharmacy at this location.

7. Investigator Kohler was informed by Elizabeth McDonald, the Pharmacist Manager, that Respondent was hired on July 19, 2004 as a full-time pharmacist and was employed as a pharmacist as of the date of the interview, December 22, 2005.

8. Investigator Kohler obtained documentation from Eckerd Pharmacy which reflected that Respondent was employed by Eckerd Pharmacy and practiced pharmacy on multiple dates in October, November and December of 2005.

9. During Investigator Kohler's interview with Respondent on December 22, 2005, Respondent acknowledged that he failed to renew his license for 2005. Respondent also informed Investigator Kohler that as of the date of the interview, he was no longer under a PRN contract

10. George Barbee, owner of Barbee Pharmacy Mart, testified that Respondent had been employed as a relief pharmacist at Barbee Pharmacy Mart during all of 2005. Mr. Barbee also testified that he requested a copy of Respondent's 2005 renewal from Respondent on at least two occasions but was never provided with the original or a copy of the document.

11. Elisabeth McDonald testified that Respondent was employed as a full-time pharmacist at Eckerd Pharmacy, permit no. 9631, during all of 2005.

12. Elisabeth McDonald testified that in mid-2005, she left written instructions at Respondent's work station, instructing him to provide Eckerd Pharmacy with a copy of his 2005 renewal. Ms. McDonald testified that these instructions were left in plain sight of the pharmacist's computer terminal in the pharmacy for approximately one week and that she and Respondent were the only pharmacists working in the pharmacy at that time. Ms. McDonald testified that Respondent never posted or provided a copy of his 2005 renewal.

PRIOR HISTORY

13. Respondent practiced pharmacy without a license for most of 1994. Also in 1994, Respondent engaged in the unauthorized use of prescription drugs including controlled substances.

14. On May 19, 1995, the Board accepted a Consent Order in which Respondent's license was suspended for 90 days, stayed for five years upon the following conditions:

- Respondent shall not consume prescription drugs without having a valid prescription;
- Respondent shall obtain five additional C.E. hours in 1996, two of which must address substance abuse; and
- Other standard conditions.

The findings of fact in the Order reflect that Respondent practiced pharmacy without a valid license for most of 1995.

15. On or about July 16, 1998, Respondent voluntarily surrendered his license pursuant to his admission to removing schedule IV controlled substances from a pharmacy without authorization.

16. On November 24, 1998, the Board accepted a Consent Order in which Respondent's license was suspended for 90 days pursuant to the 1995 Order. Additionally, the Order suspended Respondent's license for five years, stayed indefinitely upon the following conditions:

- Respondent shall pass the Board's jurisprudence exam within 60 days of the Board's acceptance of the Order;
- Respondent shall not serve as a Pharmacist Manager during the period of stay;
- Respondent shall obtain prior approval from the Board's Executive Director of any future employment as a pharmacist;
- Respondent shall consume no alcohol or prescription drugs without written authorization, and copies of all prescriptions for controlled substances shall be forwarded to the Board office within 36 hours of filling; and
- Other standard conditions.

The findings of fact in the Order reflect that Respondent removed controlled substances from a pharmacy without the authorization of a legal prescriber.

17. On January 10, 2000, Respondent voluntarily surrendered his license pursuant to his admission that he unlawfully obtained and used prescription drugs.

18. On February 19, 2002, the Board accepted a Consent Order in which Respondent's license was suspended indefinitely. Respondent was required to meet the following conditions prior to the lifting of his suspension:

- Respondent shall pass the Board's practical pharmacy examination no later than February 1, 2003;
- Respondent shall provide proof of compliance with CE requirements from 1998 to present [February 19, 2002], including credits for the 2002 renewal; and
- Respondent shall undergo a full cognitive assessment and submit a full report of the assessment and recommendations for treatment to the Board.

After fulfillment of the conditions described above, Respondent's license was to remain under an

indefinite suspension, stayed for five years under the following conditions:

- Respondent serve a ten-day active suspension;
- Prior to the renewal of his license for 2003, Respondent shall complete an additional four contact hours of C.E. in patient counseling;
- Respondent shall successfully complete a five-year contract with NC PRN;
- Respondent shall obtain prior approval from both the NC PRN Executive Director and the Board's Director of Investigations and Inspections before returning to practice;
- Respondent shall gain prior approval from both the NC PRN Executive Director and the Board's Director of Investigations and Inspections of any proposed work site;
- Respondent shall not routinely work more than 40 hours on average per week;
- Respondent shall not work as a "floater" pharmacist;
- Respondent shall not serve as a Pharmacist Manager at any location; and
- Other standard conditions.

The findings of fact in the Order reflect that Respondent violated the October 10, 1998 Order by working at Eckerd Drugs without prior approval by the Board's Executive Director and ingesting controlled substances without a legal prescription.

19. On or about November 7, 2001, Respondent entered into a five-year PRN contract pursuant to the November 6, 2001 prehearing conference that gave rise to the February 19, 2002 Order described above.

20. On or about January 24, 2005, Paul Peterson, Executive Director of the N.C. Pharmacist Recovery Network (PRN), notified Respondent via a certified letter of his failure to comply with the terms of his PRN contract. Respondent responded via letter dated January 31, 2005 in which he stated he would begin complying with this PRN contract.

21. During 2005, Respondent missed thirty-one call-ins and at least one drug test as required by his PRN contract. During 2005, Respondent failed to timely pay PRN fees and failed to submit reports of recovery meetings he attended, all of which were required under his

PRN contract.

22. On January 3, 2006, Mr. Peterson terminated Respondent from testing and membership in the PRN program due to Respondent's willful failure to comply with the terms of his PRN contract.

CONCLUSIONS OF LAW

Respondent willfully disregarded the Board's February 19, 2002 Order and violated the following statutes and rules when he practiced pharmacy in 2005 with an inactive license and failed to comply with the terms of his PRN contract:

- a. G.S. 90-85.38(a)(6) and (7);
- b. G.S. 90-85.17;
- c. G.S. 90-85.21B;
- d. G.S. 90-85.23; and
- e. G.S. 90-85.40.

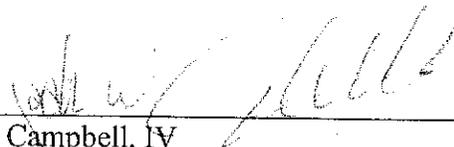
IT IS THEREFORE, ORDERED that:

The license of Respondent Edward Ray Holder, license no. 6733, is hereby
revoked.

This the 2nd day of May, 2006.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director