

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
TRACI JACOBS) **CONSENT ORDER**
)
License No. 15444)

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 Traci Jacobs ("Jacobs") was present at the conference. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were present at this conference, as were related respondents and their representatives.

FINDINGS OF FACT

1. Respondent Jacobs holds license number 15444. At all relevant times, Respondent Jacobs was the Pharmacy District Supervisor for Wal-Mart Stores East, Inc. d/b/a Wal-Mart Pharmacy, and her responsibilities included supervision of the Wal-Mart located at 3000 East Franklin Boulevard, Gastonia, North Carolina, which holds permit number 7964 ("Wal-Mart").

2. In June 2006, Respondent Jacobs was responsible for Wal-Mart hiring Christopher Breese. Mr. Breese was a recent pharmacy school graduate, and, the previous month, he had applied for a North Carolina pharmacy license. Respondent Jacobs hired Mr. Breese to work as a graduate intern at Wal-Mart, but she 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. At Respondent Jacobs' direction, Wal-Mart identified Mr. Breese in its computer system as a graduate intern. 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 Respondent Jacobs 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, Respondent Jacobs acknowledges that there were labeling and recordkeeping violations resulting from listing Mr. Breese as the dispensing pharmacist on the prescriptions. Respondent Jacobs 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 Jacobs replaced Jeffrey Chodrow with Kurt Lupton as pharmacist-manager at the subject Wal-Mart. When Respondent Jacobs placed Mr. Lupton in the position of pharmacist-manager, she 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 Jacobs 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 Jacobs installed Mr. Lupton as a pharmacist-manager in name only and encouraged, permitted and/or aided and abetted him in disregarding North Carolina law with respect to the obligations of a pharmacist-manager.

5. Respondent Jacobs was responsible for scheduling pharmacists to work at Wal-Mart. During the fifteen (15) weeks that Mr. Lupton was purportedly the pharmacist-manager for Wal-Mart, he was present at the store for 32 hours for only one (1) of those weeks. Respondent Jacobs was aware of this and permitted and encouraged Mr. Lupton not to be present at the store for 32 hours a week, as she had promised him that he could continue to work as a floater.

6. At the same time, Respondent Jacobs 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. Respondent Jacobs was aware, or should have been aware, of this but permitted it to continue.

8. Respondent Jacobs 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 Jacobs was aware, or should have been aware, of Mr. Breese wearing this pharmacy manager badge, and she 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 Jacobs violated N.C. Gen. Stat. §§ 90-85.21B, 90-85.38(a)(6), (7) and (9), 90-85.40(b) and (f), 90-108(a)(11), 90-640, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1601(c), 46 .1804(a), 46 .2302(a), 46 .2303, 46 .2304 and 46 .2502(a), (b) and (e); and 21 U.S.C. §§ 331 and 352.

2. Respondent Jacobs admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on her license 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 license of Respondent Jacobs, License No. 15444, is hereby SUSPENDED for two (2) days. That suspension is stayed for one (1) year upon the following conditions:

i. Respondent Jacobs must take and pass the MPJE within one year of the date that the Board accepts this Order;

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

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

iv. Respondent Jacobs 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 15th day of March, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jay W. Campbell, IV
Executive Director

Traci Jacobs, the holder of license number 15444, 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:

Traci Jacobs Date: 3-21-08
Traci Jacobs
(License No. 15444)

NORTH CAROLINA

Caldwell 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: Traci Jacobs

Date: 3/21/08

Kellie E. Vance
Notary Public

KELLIE E VANCE
Notary Public
CALDWELL COUNTY, NC
My commission Expires 01-31-2013

My commission expires: _____

