

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
ROBERT BYRON JOHNSON) **CONSENT ORDER**
)
License No. 5833)

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 April 14, 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 Robert Byron Johnson ("Johnson") was present at the conference. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were also present at this conference.

FINDINGS OF FACT

1. Respondent Johnson holds license number 5833. At all relevant times, Respondent Johnson was a pharmacist employed by Greensboro Discount Drug, 1050 Alamance Church Road, Greensboro, North Carolina and served as its pharmacist-manager.

2. On June 6, 2007, Respondent Johnson dispensed Norvasc to a patient with a prescription for Ambien 10 mg. Respondent Johnson labeled the drugs as Ambien 10 mg but mistakenly filled the prescription with Norvasc. Respondent Johnson acknowledged the dispensing error and explained that the bottles for the two drugs look similar and that he failed to review the labels or National Drug Control numbers when filling the prescription.

3. When the Board's Investigator investigated the dispensing error, he reviewed a number of days of the counseling log maintained by Respondent Johnson. Virtually none of the

patients on those days had made any recorded decision about whether to accept or reject counseling.

4. From April 2007 until September 2007, Greensboro Discount Drug employed, and Respondent Johnson supervised, a technician who was not registered with the Board. On August 1, 2007, the Board's Investigator alerted Respondent Johnson to the need to register the employee as a technician with the Board. However, Respondent Johnson continued to supervise the technician without ensuring that she was ever registered. Her employment terminated only when the store closed in September 2007.

5. Respondent Johnson acknowledged that he supervised the technician without ensuring that she was registered with the Board. He stated that her principal job was as a cashier, although she was called on to perform technician duties at times. He therefore asserted that he did not know that she needed to be registered as a technician until the Board's Investigator told him that she should be registered. He acknowledged, however, that she was never registered after this discussion with the Board's Investigator.

6. On multiple days, Respondent Johnson supervised more technicians than are permitted to be supervised by any one pharmacist. The prescribed ratio was exceeded on both June 6, 2007 (the date of the dispensing error) and August 1, 2007 (the date that the Board's Investigator visited the permit).

7. Respondent Johnson acknowledged that, if the unregistered technician was included in the technician ratio, he had violated the regulation requiring that no more than two technicians may be supervised by one pharmacist at any given time. He asserted that the violations were a result of his not including the unregistered technician in his consideration of the technician-to-pharmacist ratio.

8. The Board has taken into consideration Respondent Johnson's history with the Board, which includes a Consent Order that was accepted by the Board on January 17, 2006.

CONCLUSIONS OF LAW

Based on the above findings, the Board concludes as a matter of law:

1. Respondent Johnson violated N.C. Gen. Stat. §§ 90-85.15A, 90-85.29, 90-85.30, 90-85.38(a)(6), (7) and (9), 90-85.40(f) and 106-122; and 21 N.C.A.C. 46 .1804, 46 .1805, 46 .1818, 46 .2501 and 46 .2504.

2. Respondent Johnson admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his 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 Johnson, License No. 5833, is hereby SUSPENDED for seven (7) days. That suspension is stayed for one (1) year from the date of this Order upon the following conditions:

- i. Respondent Johnson shall not serve as pharmacist manager of any pharmacy;
- ii. Respondent Johnson shall not serve as a preceptor of pharmacy students;
- iii. Respondent Johnson shall attend a "live" error reduction continuing education class no later than one year from the date of this Order. Respondent Johnson is advised that such courses are offered by the Campbell University School of Pharmacy and other institutions.
- iv. Within thirty (30) days from the date of completion of the above-referenced course, Respondent Johnson shall provide written documentation to the Board's Executive Director regarding his completion of the course.

- v. Respondent Johnson shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- vi. Respondent Johnson shall violate no rules and regulations of the Board; and
- vii. Respondent Johnson 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.

The conditions set forth in subparagraphs i and ii above shall survive the period of one year from the date of this license and shall remain restrictions on Respondent Johnson's license to practice pharmacy.

This the 17th day of ~~May~~^{June}, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jay W. Campbell, IV
Executive Director

Robert Byron Johnson, the holder of license number 5833, has full knowledge that he has the right to a hearing, at which he would have the right to be represented at his 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 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:

Robert Byron Johnson Date 4-22-08
Robert Byron Johnson
(License No. 5833)

NORTH CAROLINA

Randolph 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: Kurt Lupton

Date: 4-22-2008



Patricia S. Kyles
Notary Public
ARE DONO, NC

My commission expires: 12-14-2008