

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
KURT LUPTON) **CONSENT ORDER**
)
License No. 17072)

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 Kurt Lupton ("Lupton") 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 Lupton holds license number 17072. At all relevant times, Respondent Lupton was a pharmacist employed by Wal-Mart Stores East, Inc. d/b/a Wal-Mart Pharmacy, and was the nominal pharmacist-manager of the Wal-Mart located at 3000 East Franklin Boulevard, Gastonia, North Carolina, which holds permit number 7964 ("Wal-Mart").

2. On or about September 23, 2007, Respondent Lupton became the pharmacist-manager at the subject Wal-Mart. When Respondent Lupton took the position of pharmacist-manager, Wal-Mart 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. In sum, Respondent Lupton became the pharmacist-manager in name only and disregarded North Carolina law with respect to the obligations of a pharmacist-manager.

3. 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.

4. Respondent Lupton accepted the position as pharmacist-manager as essentially a placeholder. In June 2006, Wal-Mart had hired Christopher Breese. Mr. Breese was a recent pharmacy school graduate who had applied for a North Carolina pharmacy license. Wal-Mart hired Mr. Breese to work as a graduate intern at Wal-Mart, but it 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 Wal-Mart in January 2007.

5. Respondent Lupton was not asked to, and did not, perform many of the supervisory and security functions of a pharmacist-manager. Respondent Lupton abdicated many of these responsibilities to Mr. Breese.

6. Mr. Breese had keys and access codes to the pharmacy and routinely entered the pharmacy before a pharmacist was present. Respondent Lupton was aware, or should have been aware, of this but permitted it to continue.

7. Wal-Mart issued Mr. Breese a badge that identified him as a pharmacist, and Mr. Breese wore this badge during the course of his employment. Mr. Lupton was aware of this but did not prevent Mr. Breese wearing a badge identifying him as a pharmacist. At some point during 2006, Mr. Breese further acquired a badge that identified him as the pharmacy manager. Respondent Lupton was aware, or should have been aware, of Mr. Breese wearing this pharmacy manager badge, and he did not stop Mr. Breese from wearing this badge.

8. Under Respondent Lupton's supervision as the nominal pharmacist-manager, 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 five (5) dates between September 27, 2006 and November 8, 2006, while Mr. Lupton was acting as the nominal pharmacist-manager, sixteen (16) 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 sixteen (16) prescriptions. Those prescriptions included controlled substances on schedules III, IV and V. While Respondent Lupton 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 Lupton acknowledges that there were labeling and recordkeeping violations resulting from listing Mr. Breese as the dispensing pharmacist on the prescriptions. Respondent Lupton 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.

CONCLUSIONS OF LAW

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

1. Respondent Lupton 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(e), 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 Lupton 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 Lupton, License No. 17072, is hereby SUSPENDED for two (2) days. That suspension is stayed for one (1) year upon the following conditions:

- i. Respondent Lupton must take and pass the MPJE within one year of the date that the Board accepts this Order;
- ii. Respondent Lupton shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- iii. Respondent Lupton shall violate no rules and regulations of the Board; and
- iv. Respondent Lupton 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

Kurt Lupton, the holder of license number 17072, 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:


Kurt Lupton
(License No. 17072) Date 4/2/08

NORTH CAROLINA

CASWELL 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: 4/2/08


Notary Public
Richard J. Blomquist

My commission expires: September 28, 2008

OBJECTED TO BY:

Date

Kurt Lupton
(License No. 17072)