

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

DAVID BRIAN MOZINGO

(License No. 21356)

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CONSENT ORDER

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 June 20, 2016 and, after appropriate notice, was heard on that day by Board Member Carol Yates Day at the office of the Board. Respondent David Brian Mozingo (hereinafter "Respondent" or "Mozingo") was present and represented by counsel, Erika Ross Gee. Counsel Clinton R. Pinyan represented the Board. Members of the Board's investigative staff and related respondents 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 David Brian Mozingo is, and has since July 22, 2010, been the holder of License No. 21356.

3. As a result of prior issues with alcohol use, before his licensure, Mozingo was required to appear before the Board to request permission to proceed with licensure. On May 18, 2010, the Board ordered that Mozingo could proceed with the licensure under a number of conditions, including that he was to successfully complete his monitoring agreement with the North Carolina Pharmacist Recovery Network (“PRN”) and could not serve as pharmacist-manager of any pharmacy during the first year of his licensure (i.e., until July 22, 2011).

4. Before the first anniversary of his licensure, Mozingo had been referred to PRN’s compliance committee three times for material, repeated violations of his monitoring agreement with PRN, which therefore violated the terms of his May 18, 2010 Board order. As a result, on September 20, 2011, the Board ordered Mozingo’s license suspended indefinitely, of which all but five days of that suspension was stayed indefinitely. Further, the Board ordered a permanent restriction on Mozingo ever serving as pharmacist-manager of any pharmacy.

5. With the support and advocacy of PRN, Mozingo subsequently petitioned for the September 20, 2011 Board order to be modified to permit him to serve as pharmacist-manager. On July 15, 2014, the Board modified the September 20, 2011 order to allow Mozingo to serve as a pharmacist-manager.

6. On August 3, 2014, Mozingo became pharmacist-manager at North Carolina CVS Pharmacy, LLC (Permit No. 10878), located at 3001 Fayetteville Road, Lumberton, North Carolina (“Fayetteville Road CVS”).

7. On December 29, 2014, Mozingo discovered diversion of zolpidem tablets from the Fayetteville Road CVS, and a pharmacist subsequently admitted to diverting three (3) tablets on that date. On January 9, 2015, Mozingo discovered diversion of a bottle of 120 tablets of hydrocodone/APAP 7.5/325 mg. A Board investigator learned of the diversions during an unrelated inspection on February 9, 2015. However, Mozingo failed to submit reports of either loss to either the Board or the DEA until March 2, 2015, beyond the time for submitting such reports, and despite the Board investigator’s warning to Mozingo about the required time for submitting reports.

8. An inspection conducted at the Fayetteville Road CVS on February 9, 2015 revealed a number of significant organizational and recordkeeping problems at the Fayetteville Road CVS under Mozingo’s management. The Board required Mozingo to complete a corrective action plan, and Board investigators informed Mozingo that they would reinspect the Fayetteville Road CVS. On April 23, 2015, Board investigators reinspected the Fayetteville Road CVS and found that virtually all of the violations found on February 9, 2015 were still present on April 23, 2015 under Mozingo’s management.

9. On May 25, 2015, Mozingo became the pharmacist-manager at North Carolina CVS Pharmacy, LLC (Permit No. 10856), located at 2771 West 5th Street, Lumberton, North Carolina (“5th Street CVS”). Mozingo and CVS representatives testified that Mozingo moved to the 5th Street CVS because it was a lower volume store, and Mozingo and CVS hoped that Mozingo could better manage a less busy store.

10. On September 30, 2015, Board investigators inspected the 5th Street CVS to determine if Mozingo was better able to manage that pharmacy. That inspection revealed a number of significant organizational and recordkeeping problems at the 5th Street CVS, including many of the same types of violations that had been present at the Fayetteville Road CVS under Mozingo's management. At the same time, Board investigators also inspected the Fayetteville Road CVS and determined that the new pharmacist-manager there had remedied the problems that had been formerly been present in the Fayetteville Road CVS under Mozingo's management.

11. On November 12, 2015, Board investigators reinspected the 5th Street CVS. They found some continuing violations, though they testified that the 5th Street CVS had far fewer violations than were present on September 30, 2015. In March 2016, the Board investigator was present in the 5th Street CVS and noticed that the pharmacy under Mozingo's management had continued its improvement, although she did not complete an inspection at that time.

12. As an aggravating factor in this case, the Board has considered the Board orders of May 18, 2010 and September 20, 2011, and the violations at issue in those orders, as well as the fact that the orders put prior long-term restrictions on Mozingo's service as pharmacist-manager, and Mozingo was required to appear before the Board to get specific permission to serve as pharmacist-manager. As an aggravating factor, the Board has also considered the persistence of Mozingo's organizational and recordkeeping violations over multiple inspections.

13. As a mitigating factor in this case, the Board has considered that the most recent inspection showed a reduced number of violations under Mozingo's management.

In determining whether to activate Mozingo's stayed indefinite suspension, the Board further considered whether Mozingo could practice safely if relieved from the additional responsibilities of serving as a pharmacist-manager and determined that he likely could do so.

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 and conclusions of law above, constitutes grounds for discipline pursuant to North Carolina General Statutes § 90-85.38(a)(6) and (7) because Respondent's acts were in violation of North Carolina General Statutes §§ 90-85.23, 90-85.25(b), 90-640(b), 106-122, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1601(a)(5), 46 .1804(a), 46 .2502(a), (c), (d), (e) and (k), 46 .2801, and 46 .3001; 21 U.S.C. §§ 351 and 352; and 21 C.F.R., 201.17, 201.18, 1301.75, 1304.04, 1304.11, and 1306.22.

3. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under North Carolina General Statutes § 90-85.38(a).

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the Respondent, IT IS THEREFORE ORDERED that:

1. The license of Respondent David Brian Mozingo (License No. 21356) is hereby REPRIMANDED; and

2. The license of Respondent Mozingo is further restricted in that he consents that he shall not hereinafter serve as pharmacist-manager of any pharmacy, and it is so ordered. Although this restriction is intended to be permanent and to continue for the remainder of

Mozingo's licensure, Mozingo shall have the ability to petition for modification of this restriction no sooner than five (5) years from the date this order is adopted by the Board.

This the 9th day of September, 2016.

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director

David Brian Mozingo, the holder of license number 21356, has full knowledge that he has the right to a formal 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.

ACCEPTED AND CONSENTED TO BY:

[Signature] Date 11-18-16
DAVID BRIAN MOZINGO (License No. 21356)

STATE OF N.C.
Cumberland COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person personally appeared before me this day and acknowledged the due execution of the foregoing document: David Brian Mozingo.

Date: 11-18-2016

[Signature]
Notary Public
My commission expires: 09-21-19



REJECTED BY:

_____ Date _____

DAVID BRIAN MOZINGO (License No. 21356)