

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
ASA GENE PICKENS, JR.) **FINAL ORDER**
License Number 5790)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the "Board") on March 9, 2010, pursuant to an Amended Notice of Hearing, dated February 18, 2010, and was heard by Board President Robert McLaughlin, Jr. and Board Members Dr. J. Parker Chesson, Jr., Dr. Betty H. Dennis, L. Stan Haywood and Wallace E. Nelson at the offices of the Board. Board staff was represented by Clinton R. Pinyan, and Respondent Asa Gene Pickens, Jr. ("Pickens") was present and represented himself. The Board received evidence offered without objection, and heard the testimony of witnesses. Considering the testimony and evidence, the Board hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Board is a body duly organized under the laws of the State of North Carolina and is the proper body for this proceeding under the authority granted to it in Chapter 90 of the General Statutes of North Carolina, and the rules and regulations promulgated thereunder. This matter came on for hearing pursuant to the Amended Notice of Hearing, dated February 18, 2010. All Parties were properly before the Board, the Board has jurisdiction of the parties and of the subject matter, and Pickens received all required notice of the hearing.

2. At various times since July 18, 1972, Pickens has been licensed by the Board to practice pharmacy in the State of North Carolina and has been the holder of license number 5790.

3. In 1981, Pickens' license in the State of North Carolina lapsed. Pickens moved to Florida and engaged in the practice of pharmacy there.

The 1986 Felonies and Application

4. In 1986, Pickens sought to reinstate his North Carolina license. On December 9, 1986, Pickens completed an "Application for Reinstatement of Pharmacy License" with the Board (the "1986 Application").

5. Question number eight on the 1986 Application asked, "Have you been convicted of a violation of any law since you were last registered or are any charges now pending." Pickens answered "No" to question number eight.

6. The Board received the 1986 Application on December 11, 1986 and subsequently reinstated Pickens' license to practice pharmacy.

7. Pickens' response to question number eight on the 1986 Application was false, and Pickens withheld material information in connection with securing the reinstatement of his license to practice pharmacy in North Carolina.

8. Contrary to Pickens' representations, on December 3, 1986, in the Circuit Court of Palm Beach County, Florida, Pickens entered a guilty plea to two felony counts (grand theft and possession of diazepam). Pickens was placed on two years probation and ordered to pay restitution.

9. Based on the erroneous and incomplete information contained in the 1986 Application, the Board reinstated Pickens' license. Pickens' misrepresentations and/or omissions were material to the Board's decision to reinstate Pickens' North Carolina license.

10. As a result of the 1986 felony plea, the Florida Board of Pharmacy actively suspended Pickens' Florida license for a period of one year and placed him on probation for a period of three years, commencing upon the conclusion of his active suspension.

The 1991 Felonies and Application

11. On April 3, 1989, Pickens' North Carolina license was placed in an inactive status. Pickens' Florida suspension had concluded and he had returned to practice in Florida.

12. In 1991, Pickens sought to reinstate his North Carolina license. On August 15, 1991, Pickens completed an "Application for Reinstatement of Pharmacy License" with the Board (the "1991 Application").

13. Question number eight on the 1991 Application asked, "Have you been charged with a violation of any law or are any charges now pending?" Pickens answered "No" to question number eight.

14. Pickens' response to question number eight on the 1991 Application was false, and Pickens withheld material information in connection with securing the reinstatement of his license to practice pharmacy in North Carolina.

15. Contrary to Pickens' representations on the 1991 Application, Pickens again failed to disclose the charges that led to his 1986 guilty plea, although they were responsive to question number eight on the 1991 Application.

16. In addition, on April 18, 1991, Pickens again had been arrested on controlled substances charges. On April 24, 1991, Pickens was indicted in the United States District Court for the Southern District of Florida on five (5) felony counts of unlawful distribution of controlled substances. As a condition of Pickens' release on bond, Pickens was prohibited from being employed in the field of pharmaceuticals.

17. Pickens submitted the 1991 Application while he was awaiting trial on the five (5) felony counts charged in the indictment and at a time when he was prohibited from being employed in the field of pharmaceuticals by the terms of his release bond.

18. Furthermore, question number 3 on the 1991 Application asked, "In what occupation have you been engaged since your license lapsed?" Pickens responded, "Pharmacist Florida." Pickens made misrepresentations and/or omissions by reporting that he had been engaged as a pharmacist in Florida when, in fact, at the time that he submitted the 1991 Application, he was prohibited from being employed as a pharmacist by the terms of his release bond.

19. Based on the information contained in the 1991 Application, the Board reinstated Pickens' license on August 22, 1991. Pickens' misrepresentations and/or omissions were material to the Board's decision to reinstate Pickens' North Carolina license.

20. As a result of the 1991 charges and conviction, the Florida Board of Pharmacy revoked Pickens' Florida license.

21. On September 26, 1991, Pickens plead guilty to the felony charges in the 1991 indictment. Pursuant to the guilty plea, on December 13, 1991, Pickens was convicted of all five (5) felony counts charged in the indictment and was sentenced to 60 days active confinement in prison, followed by two years of supervised release. As a special condition of his supervised release, Pickens was prohibited from any employment in the pharmaceutical field, either directly or indirectly, including any employment as a pharmacist, or at a facility that contained a pharmacy or a pharmaceutical distribution center.

Pickens' False and Fraudulent Statements on Employment Applications

22. In 2006, 2008 and 2009, Pickens made false representations in connection with the practice of pharmacy that were intended to, and did, defraud his employers.

Harris Teeter

23. In or around August 2006, Pickens applied for employment as a pharmacist with Harris Teeter, Inc. In connection with his prospective employment, on August 8, 2006, Pickens submitted an Application for Employment (the "Harris Teeter Application"). The Harris Teeter Application contained multiple material misrepresentations and/or omissions.

24. The Harris Teeter Application asked the following question: **"Have you ever been convicted of any crime (including DUI and DWI), submitted a plea of Guilty, No Contest, Prayer for Judgment, or similar plea, or served probation as a result of deferred prosecution, pretrial, intervention, or other similar agreement?"** Pickens answered "No" to that question.

25. Pickens' response in the Harris Teeter Application was intentionally false in that Pickens failed to disclose his 1986 felony plea and the subsequent probation and his 1991 felony plea and the subsequent conviction, active jail time and probation.

26. The Harris Teeter Application further asked Pickens to list his prior employment for the past ten years, along with the reason for leaving. In response to those questions, Pickens did not disclose that he had been fired from any prior employment.

27. Pickens responded that he had worked for Eckerd Drugs from November 1992 to December 2002. In response to the question "Please Explain Why You Are No Longer Employed By This Company," Pickens responded "want to move to Statesville where children

live.” The Harris Teeter Application further asked “Did This Company Terminate Your Employment.” Pickens responded “no.”

28. Pickens’ response in the Harris Teeter Application was intentionally false in that Pickens had been terminated by Eckerd Drugs for cause in or around December 2002.

29. Pickens’ responses were material to Harris Teeter’s decision to hire Pickens. Because of Pickens’ convictions of felony offenses relating to controlled substances, Pickens was ineligible to be employed by a controlled substance registrant, such as a Harris Teeter pharmacy, without a waiver from the DEA. Harris Teeter did not secure a waiver to employ Pickens because it did not know that he was a convicted felon. Moreover, Pickens failed to disclose serious employment matters. Pickens response was intended to, and did, defraud Harris Teeter into employing Pickens, as well as subjecting Harris Teeter to potential jeopardy, including but not limited to the suspension or revocation of its DEA registration.

30. While working at Harris Teeter Pharmacy, Permit No. 9376, located at 112 South Sharon Amity Road, Charlotte, North Carolina, Pickens dispensed a prescription for Axid to an infant patient with a medicine dropper that was incorrectly marked, so that the patient received approximately 4 ½ times the prescribed dose of the medication. A technician had hand-marked the medicine dropper and requested that Pickens confirm the marking. Without visually inspecting the medicine dropper, Pickens approved the marking. Furthermore, Pickens failed to counsel the patient, instead improperly allowing the technician to counsel the patient.

31. When Harris Teeter learned of this incident, it performed an investigation of the incident and other activities of Pickens. Following the investigation, on or about August 31, 2008, Harris Teeter fired Pickens for violation of company policies on counseling and determined that he was ineligible to be rehired by Harris Teeter in the future.

Rite Aid

32. In November 2008, Pickens applied for employment as a pharmacist with Rite Aid Corporation. In connection with his prospective employment, on November 16, 2008, Pickens submitted an Application for Employment (the "Rite Aid Application").

33. The Rite Aid Application asked the following question: "HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR WHICH HAS NOT SINCE BEEN PLACED UNDER SEAL OR EXPUNGED?" Pickens answered "No" to that question.

34. Pickens' response in the Rite Aid Application was intentionally false in that Pickens failed to disclose his 1991 felony plea and the subsequent conviction, active jail time and probation.

35. The Rite Aid Application further asked the following question: "Have you ever been discharged or forced to resign from any employment?" Pickens answered "No" to that question.

36. Pickens' response in the Rite Aid Application was intentionally false in that Pickens failed to disclose that he had been discharged or forced to resign from Eckerd Drugs in or around December 2002, and from Harris Teeter in or around August 2008.

37. The Rite Aid Application further asked Pickens to list his prior employment, along with the reason for leaving. In response to those questions, Pickens did not disclose that he had been fired from any prior employment.

38. Pickens responded that he had worked for Harris Teeter from July 2006 to August 30, 2008 and that his reason for leaving was "to retire and bonus money." Pickens' response in the Rite Aid Application was intentionally false in that Pickens had previously been fired from Harris Teeter for violations of company policy.

39. Also in connection with his prospective employment, on November 17, 2008, Pickens submitted a Pharmacy Department Applicant Screening Form (the "Rite Aid Screening Form").

40. The Rite Aid Screening Form asked the following question: "Are you now or have you ever been precluded by the Drug Enforcement Administration from dispensing controlled substances because of a felony conviction related to the handling of these drug products?" Pickens checked the box marked "no" in response to this question.

41. Pickens' response in the Rite Aid Application was intentionally false in that Pickens failed to disclose that, because of Pickens' convictions of felony offenses relating to controlled substances, Pickens was ineligible to be employed by a controlled substance registrant, such as a Rite Aid pharmacy.

42. The Rite Aid Screening Form further asked the following question: "Have you ever entered into a consent decree or been found guilty by a State Board of Pharmacy for offenses to the practice of pharmacy?" Pickens checked the box marked "no" in response to this question.

43. Pickens' response in the Rite Aid Application was intentionally false in that Pickens failed to disclose that his Florida license was suspended in October 1987 and then was revoked by a Final Order dated December 10, 1993.

44. Pickens' responses were material to Rite Aid's decision to hire Pickens. Because of Pickens' convictions of felony offenses relating to controlled substances, Pickens was ineligible to be employed by a controlled substance registrant, such as a Rite Aid pharmacy, without a waiver from the DEA. Rite Aid did not secure a waiver to employ Pickens because it did not know that he was a convicted felon. Moreover, Pickens failed to disclose serious

disciplinary and employment matters. Pickens response was intended to, and did, defraud Rite Aid into employing Pickens, as well as subjecting Rite Aid to potential jeopardy, including but not limited to the suspension or revocation of its DEA registration.

45. Upon information and belief, in May 2009, Rite Aid discovered that certain information on Pickens' employment application had been falsified. On or about May 22, 2009, Rite Aid terminated Pickens as a result of the falsification and determined that he was ineligible to be rehired.

Kerr Drug

46. In July 2009, Pickens applied for employment as a pharmacist with Kerr Drug, Inc. In connection with his prospective employment, Pickens submitted an application for employment (the "Kerr Application"). The Kerr Application contained numerous material misrepresentations and/or omissions.

47. The Kerr Application asked the following question: "Have you ever been convicted of a crime?" Pickens answered "No" to that question. In addition, in connection with his application, Pickens completed and signed an additional form that called for the following certification: "I further certify that I have never been convicted of any crime related to or in any way involving illegal use, consumption or dispensing of drugs, nor is any legal action pending regarding such conduct. I understand that falsification of this statement may be grounds for termination." Pickens signed this certification.

48. Pickens' response to the question in the Kerr Application and his certification were both intentionally false in that Pickens failed to disclose his 1991 felony plea and the subsequent conviction, active jail time and probation.

49. The Kerr Application further asked the following question: "Have you been discharged from any employment or asked to resign?" Pickens answered "No" to that question.

50. Pickens' response in the Kerr Application was intentionally false in that Pickens failed to disclose that he had been discharged or asked to resign from Eckerd Drugs in or around December 2002, from Harris Teeter in or around August 2008, and from Rite Aid in or around May 2009.

51. The Kerr Application further asked Pickens to list his prior employment, along with the reason for leaving, and any period of unemployment. In response to those questions, Pickens did not disclose that he had been fired from any prior employment.

52. Pickens responded that he had worked for Rite Aid from August 2008 to the present and that he wanted to leave because he "worked 50 to 60 hrs per week." Pickens' response in the Application for Employment was intentionally false in that Pickens, in fact, no longer worked for Rite Aid but instead had been fired from Rite Aid in May 2009 for falsifying information on his employment application.

53. In listing his reason for leaving Harris Teeter, Inc., Pickens responded: "increased sales & profit but reduce bonus & tech help." Pickens' response in the Kerr Application was intentionally false in that Pickens had been fired from Harris Teeter in August 2008 for violations of company policy.

54. Pickens' responses were material to Kerr Drug's decision to hire Pickens. Because of Pickens' convictions of felony offenses relating to controlled substances, Pickens was ineligible to be employed by a controlled substance registrant, such as a Kerr Drug pharmacy, without a waiver from the DEA. Kerr Drug did not secure a waiver to employ Pickens because it did not know that he was a convicted felon. Moreover, Pickens failed to

disclose serious employment matters. Pickens response was intended to, and did, defraud Kerr Drug into employing Pickens, as well as subjecting Kerr Drug to potential jeopardy, including but not limited to the suspension or revocation of its DEA registration.

CONCLUSIONS OF LAW

1. The evidence demonstrates that Pickens violated one or more of the following statutes related to licensure, the practice of pharmacy and the dispensing and delivery of prescription drugs:

- a. North Carolina General Statute § 90-85.38(a)(1);
- b. North Carolina General Statute § 90-85.38(a)(2); and
- c. North Carolina General Statute § 90-85.38(a)(4).

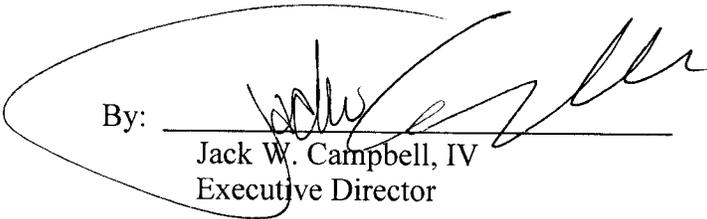
2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that the discipline set forth in this Final Order is appropriate.

It is hereby ORDERED, ADJUDGED AND DECREED that Board staff's request for discipline is hereby GRANTED, and Pickens' license is hereby REVOKED.

This, the 11th day of March, 2010.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director

CERTIFICATE OF SERVICE

I certify that on March 11, 2010, I caused a copy of this Order to be served on Asa Gene Pickens, Jr., by certified mail, return receipt requested, addressed to 2203 Downing Rd., Fayetteville, North Carolina 28312.



Jack W. Campbell IV
Executive Director