

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)

ALBERT J. RACHIDE)
License No. 6925)
_____)

CONSENT ORDER

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 March 14, 2016 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Robert J. McLaughlin. Albert J. Rachide (License No. 6925) was present at the conference. Board Counsel Clinton R. Pinyan and members of the Board's investigative staff were present at this 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. By his consent, 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. 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 is and was, at all relevant times referred to herein, a pharmacist licensed to practice pharmacy in the State of North Carolina with License No. 6925. During the relevant time period, Respondent was the pharmacist-manager of Pink Hill Pharmacy, Permit No. 4576, located at 100 South Central Avenue, Pink Hill, North Carolina ("Pink Hill"). Respondent is and was, at all relevant times referenced to herein, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Between approximately July 2 and 16, 2014, Patient A presented to Pink Hill a total of four (4) forged prescriptions for oxycodone/APAP 5/325 mg (a schedule II controlled substance), that had purportedly been written for Patient A and another individual, Patient B.

4. Each of these prescriptions had purportedly been written by physicians at Kinston Head & Neck Physicians and Surgeons, P.A. ("Kinston Head & Neck"). Physicians at Kinston Head & Neck did not write the prescriptions presented, and Kinston Head & Neck reported to the Board that Patient A had stolen prescription pads from Kinston Head & Neck during previous visits to the practice.

5. Respondent was the dispensing pharmacist for three (3) of the forged prescriptions. In total, Pink Hill dispensed 150 dosage units of oxycodone/APAP 5/325 mg and provided them to Patient A over a period of two weeks.

6. The Board finds that the circumstances surrounding the dispensing of the forged prescriptions were such that a reasonable pharmacist in Respondent's position would have concluded that the prescriptions could have been fraudulent, and thus would not have filled them without confirmation from the physician.

7. Pink Hill had previously dispensed numerous prescriptions for oxycodone/APAP 5/325 mg to Patient A. Respondent testified that Pink Hill had filled dozens of oxycodone

prescriptions for Patient A over a period of years. However, at least since January 1, 2013, Patient A had not presented any prescription from a physician at Kinston Head & Neck. At least since January 1, 2013, Patient B had never presented any prescription of any sort to Pink Hill. Then, four separate prescriptions from Kinston Head & Neck were presented for 150 dosage units total, over the course of two weeks. Respondent dispensed the controlled substances without confirming the prescriptions with the purported prescribers, notwithstanding this red flag.

8. Patient A also presented, and Pink Hill accepted, a photocopy of what was purportedly Patient A's driver's license as identification to receive the oxycodone/APAP. Respondent accepted this photocopy in lieu of an actual, valid photographic identification card. Respondent further dispensed the controlled substances without confirming the prescriptions with the purported prescribers, notwithstanding this red flag.

9. The forged prescriptions presented by Patient A lacked complete instructions. The first of the prescriptions, on July 2, 2014, lacked any instructions for administration at all. Subsequent prescriptions lacked complete directions. Rather than contacting the physician to receive complete directions for administration, Respondent testified that he presumed that he should use the same directions on Patient A's previous prescriptions for oxycodone. He did so, even though (a) Patient A had not received any prescriptions from prescribers at Kinston Head & Neck (at least since January 1, 2013) and it was unreasonable to expect that the same directions would be given by a different practice, (b) Patient A had previous oxycodone prescriptions with varying directions for administration, not only the directions that Respondent presumed, and (c) Patient B had not previously presented a prescription for oxycodone to Pink Hill. Respondent

dispensed the controlled substances without confirming the prescriptions with the purported prescribers, notwithstanding the red flag of lack of complete directions for administration.

10. Two (2) of the prescriptions filled by Respondent were purportedly written for brand name Percocet and were written to be dispensed as written. Respondent substituted generic oxycodone/APAP without contacting the purported prescribing physician to authorize the substitution. Respondent testified that he did so because he understood that Medicaid would not cover the brand name, and he believed that – if he had contacted the purported prescribing physician – the physician would have allowed substitution of generic. However, if Respondent had, in fact, contacted the purported prescribing physician as required, the physician could have alerted Respondent to the fact that the prescriptions were forged.

11. Notwithstanding the aforementioned red flags, Respondent did not receive confirmation from the purported prescribing physician of the validity of the prescriptions. Respondent testified that he tried to contact Kinston Head & Neck when Patient A presented the first prescription on July 2, 2014, but that he was not successful in talking with the practice. He further testified that he did not attempt to contact the purported prescribers about the subsequent prescriptions.

12. As a mitigating factor, the Board has considered that Respondent testified that, after Pink Hill filled the four prescriptions, the pharmacy did recognize the potential invalidity of the prescriptions and did not fill further prescriptions for Patients A or B.

13. As aggravating factors, the Board has considered that Respondent has twice received letters of warning from the Board for violations of the North Carolina Pharmacy Practice Act and its regulations, related to Respondent's service as pharmacist-manager at Pink Hill. Those letters of warning were dated September 11, 2001, and March 21, 2011. Further, the

letter dated March 21, 2011 was related to violations of the federal and state controlled substances laws.

CONCLUSIONS OF LAW

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

1. Respondent violated N.C. Gen. Stat. §§ 90-85.28, 90-85.38(a)(6), (7) and (9), 90-85.40(b) and (f), 90-106, 90-106.1, 90-108, 106-122, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1801, 46 .1804 and 46 .1805; and 21 U.S.C. §§ 331, 829 and 842.
2. Respondent 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 on the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that:

1. Respondent Rachide's license (License No. 6925) is hereby SUSPENDED for THREE (3) DAYS, which suspension is STAYED for ONE (1) YEAR from the date that this Order is accepted by the Board, upon the following conditions:
 - a. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs; and
 - b. Respondent shall violate no rules or regulations of the Board.
2. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation of compliance with the provisions of this Consent Order.

3. If Respondent fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and, in addition, Respondent may be subject to additional disciplinary action by the Board.

This the 19th day of April 2016.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

Albert J. Rachide, the holder of License Number 6925, 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.

ACCEPTED AND CONSENTED TO BY:

ALBERT J. RACHIDE (License Number 6925)

Albert J. Rachide Date 3-29-16

STATE OF NC

Lenoir 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: **Albert J. Rachide.**

Date: 3/30/2016

Cynthia M. Batchelor
Notary Public
Cynthia M. Batchelor

My commission expires: 4-15-19



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REJECTED BY:

ALBERT J. RACHIDE (License Number 6925)

_____ Date _____