

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

DAVID H. WHATTON,
(License No. 22141)

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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 January 19, 2015 and, after appropriate notice, was heard on that day by Board President Robert J. McLaughlin, Jr. at the office of the Board. Respondent David H. Whatton (hereinafter "Respondent" or "Whatton") was present and represented by counsel Michael C. Allen. 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 H. Whatton is, and was at all relevant times referred to herein, the holder of License No. 22141 and subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina. Between August 8, 2013 and March 31, 2014, he was pharmacist-manager of Aeroflow, Inc., located at 3165 Sweeten Creek Road, Suite 101, Asheville, North Carolina (Permit No. 12185, as successor to 11050) (“the Pharmacy” or “Aeroflow”).

3. At all relevant times, Aeroflow specialized primarily in mail order prescriptions and had a limited number of walk-in patients. Aeroflow did not stock or dispense controlled substances at any relevant time.

4. Between August 2013 and March 2014, Respondent regularly failed to maintain authority and control over the keys and security of the pharmacy and regularly permitted technicians to be present in the pharmacy without a pharmacist present. Respondent thus failed to exercise the required supervision over technicians and to assure that prescription drugs were safe and secure within the pharmacy. Respondent allowed this activity to continue between August 2013 and March 2014, even though a Board investigator specifically warned him of the legal requirements.

5. Between August 2013 and March 2014, Respondent regularly was not present for at least one-half the hours the pharmacy was open, or 32 hours per week, whichever is less. Respondent continued this activity between August 2013 and March 2014, even though a Board investigator specifically warned him of the legal requirements.

6. Between August 2013 and March 2014, Respondent failed to keep adequate records of dispensing and verification with respect to at least 134 prescriptions.

7. Between August 2013 and March 2014, under Respondent's supervision, Aeroflow dispensed approximately 110 prescriptions into the Commonwealth of Kentucky without a permit to ship into that state and without Respondent being licensed in the Commonwealth of Kentucky, as required by law.

8. Between September 2013 and March 2014, under Respondent's supervision, Aeroflow dispensed approximately 25 prescriptions into the State of Mississippi after Aeroflow lost its permit to dispense into that State because Respondent was not licensed in the State of Mississippi, as required by law.

9. In August 2013, Respondent permitted an employee to perform the functions of a technician without being registered with the Board.

10. Between August 2013 and March 2014, under Respondent's supervision, Aeroflow operated an internet pharmacy (fetchrx.com) that was not VIPPS certified.

11. Between September 2013 and March 2014, under Respondent's supervision, Aeroflow's website, fetchrx.com, represented to the public that Aeroflow was licensed to ship prescription medications to a number of states in which it did not hold out-of-state permits.

12. When inspections were conducted on August 30, 2013 and September 4, 2013, violations by Respondent, as pharmacist-manager, and Aeroflow were noted as follows:

- The pharmacy permit and technician registrations were not posted in the pharmacy.
- Products were dispensed in original containers on which labels obscured the expiration date and storage instructions.
- The pharmacy failed to adequately document errors.

- The pharmacy maintained misbranded drugs without expiration dates and lot numbers.
- The pharmacy did not post its hours of operations.
- The pharmacy violated labeling laws by failing to adequately list the name of the drug and the dispensing pharmacist.
- The pharmacy failed to maintain adequate dispensing records.
- The pharmacy could not produce a written quality assurance and disaster plan.
- The pharmacy failed to provide adequate patient counseling and/or documentation of counseling.

13. The Board of Pharmacy has not been presented with any evidence suggesting that any patient experienced harm, or sustained any injuries, as a result of the activities described in above Findings of Fact.

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)(4), (6), (7) and (9) because Respondent's acts were in violation of N.C. Gen. Stat. §§ 90-85.15A(b1) and (c), 90-85.23, 90-85.26, 90-85.29, 90-85.40(b) and (f), 90-85.47, 106-122 and 106-134; 21 N.C.A.C. 46 .1601(a)(1), (2) and (6), (b)(1), (3) and (4) and (d), 46 .1803, 46 .1804(a), 46 .1818, 46 .2302(a), 46 .2304, 46 .2502(a), (b), (e), and (j), 46 .2504, 46 .2505 and 46 .3301; 21 U.S.C. §§ 331 and 352; 21 C.F.R. §§ 201.17 and 201.18; Kentucky Rev. Stat.

§§ 315.030 and 315.0351; 201 KAR 2:205; Mississippi Code Ann. §§ 73 21-106 and 73-21-126; and Code of Mississippi Rules 50-018-301.

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 the license of Respondent David H. Whatton (License No. 22141) is hereby REPRIMANDED.

This the 17th day of March, 2015.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

David H. Whatton, the holder of license number 22141, 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 that 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:

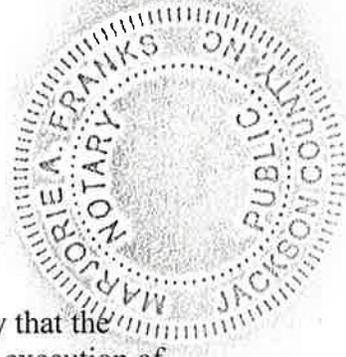
David H. Whatton

Date 03/05/2015

DAVID H. WHATTON (License No. 22141)

STATE OF North Carolina

Jackson 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 H. Whatton.

Date: March 5, 2015

Marjorie A. Franks
Notary Public
Marjorie A. Franks

My commission expires: August 25, 2019

REJECTED BY:

_____ Date _____

DAVID H. WHATTON (License No. 22141)