

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
DESIREE HENSLEY) **FINAL ORDER**
Technician Registration Number 12395)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the "Board") on November 18, 2008, pursuant to an Amended Notice of Hearing, dated October 7, 2008, and was heard by Board President L. Stan Haywood and Board Members Rebecca W. Chater, Dr. J. Parker Chesson, Jr., Dr. Betty H. Dennis, Robert McLaughlin, Jr. and Wallace E. Nelson at the offices of the North Carolina Board of Pharmacy. Board staff was represented by Clinton R. Pinyan. Although Ms. Hensley was provided notice of the hearing, she did not attend. The Board received evidence offered without objection by the Board staff, which included transcripts of the deposition testimony of Dr. Kristy Schleder, Dr. Paul Dempsey and Chris Buckner. The Board further received and considered a written submission that was provided by Ms. Hensley and offered without objection. Considering the testimony and evidence, the Board hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This matter came on for hearing pursuant to the Amended Notice of Hearing, dated October 7, 2008. Technician Desiree Hensley received the required notice of this hearing, as evidenced by a U.S. mail return receipt card dated October 8, 2008.
2. The Board has received and considered transcripts of the deposition testimony of Dr. Kristy Schleder, Dr. Paul Dempsey and Chris Buckner. The Board finds and concludes that Ms. Hensley had reasonable notice of the depositions of each of these witnesses and that each of

these witnesses was unavailable to testify and, consequently, the deposition transcripts are admissible under North Carolina Rule of Civil Procedure 32(a)(4) because, inter alia, the witnesses were each at a greater distance than 100 miles from the place of the hearing and their absence was not procured by the party offering the deposition.

3. From November 16, 2004 through April 15, 2008, Desiree Hensley held technician registration number 12395 from the Board.

4. During the relevant time period, Ms. Hensley was employed as a pharmacy technician with the Hot Springs Health Program, which includes multiple health care facilities, including Mashburn Medical Center Pharmacy, 590 Medical Park Drive, Marshall, North Carolina (Permit Number 3008) ("Mashburn").

5. During the relevant period, a patient who is referred to herein as Patient A had a close personal relationship with Ms. Hensley.

6. Mashburn dispensed Alprazolam 0.5 mg #90, which is a schedule IV controlled substance, to Patient A on August 6, 2007; August 27, 2007; September 25, 2007; October 14, 2007; November 5, 2007; November 6, 2007; December 5, 2007; December 21, 2007; January 14, 2008; and January 31, 2008.

7. Dr. Schleder was Patient A's treating physician. Dr. Dempsey is Mashburn's pharmacy manager. Both Dr. Schleder and Dr. Dempsey testified, and the Board finds, that two of the instances of refill dispensing described in paragraph 6 were not authorized by any valid prescription.

8. Moreover, each refill of the prescription was intended to provide a thirty-day supply of the subject drug and was to be refilled no sooner than every thirty days. Each and every dispensing of the subject drug between August 27, 2007 and January 31, 2008 occurred

sooner than thirty days following the prior prescription, including at least one instance on which two full thirty-day prescriptions for the subject drug were filled one day apart (November 5, 2007 and November 6, 2007). None of those early refills after August 6, 2007, were authorized by Dr. Schleder.

9. The Board finds and concludes that Ms. Hensley was the technician who was involved in filling each of the prescriptions early and involved in the instances of refill dispensing that were not authorized by any valid prescription. Dr. Dempsey testified that his investigation at Mashburn determined that Ms. Hensley filled all of Patient A's prescriptions for the subject drugs. Furthermore, the Board makes this inference based upon all of the facts of record in this case, including but not limited to Ms. Hensley's relationship to Patient A, which provided her with a motivation to provide Patient A with unauthorized and/or early refills, as well as the fact that Ms. Hensley was observed by witnesses filling the prescription early on one or more occasions.

10. On January 31, 2008, Ms. Hensley came to Mashburn on a day that she was not scheduled to work. She sent an e-mail to Dr. Schleder, the prescribing physician, requesting an early refill, in part because Patient A had been arrested and the sheriff's department had seized some of his Alprazolam. Dr. Schleder denied the early refill. However, Ms. Hensley filled the prescription for thirty tablets anyway and did not disclose to the dispensing pharmacist that the early refill had not been authorized by the prescribing physician.

11. On April 15, 2008, the Board issued an order summarily suspending Ms. Hensley's technician registration.

CONCLUSIONS OF LAW

1 The evidence demonstrates that Ms. Hensley violated one or more of the following statutes and rules:

- b. North Carolina General Statutes § 90-85.15A(d)(5);
- c. North Carolina General Statutes § 90-106;
- d. North Carolina General Statutes § 90-108;
- e. North Carolina General Statutes § 106-122;
- f. North Carolina General Statutes § 106-134;
- g. North Carolina General Statutes § 106-134.1;
- h. 21 N.C.A.C. 46 .1802;
- i. 21 N.C.A.C. 46 .1805;
- j. 21 U.S.C. § 331;
- k. 21 U.S.C. § 352;
- l. 21 U.S.C. § 353;
- m. 21 U.S.C. § 841;
- n. 21 U.S.C. § 842; and
- o. 21 U.S.C. § 843.

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.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that Ms. Hensley's request that her summary suspension be terminated and her technician registration be reinstated is hereby DENIED, and

It is further hereby ORDERED, ADJUDGED AND DECREED that Board staff's request for discipline is hereby GRANTED, and Ms. Hensley's technician registration is hereby REVOKED.

This, the 18th day of November, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

CERTIFICATE OF SERVICE

I certify that on November 21, 2008, I caused a copy of this Final Order to be served on Desiree Hensley by registered mail, return receipt requested:

A handwritten signature in black ink, appearing to read "Jack W. Campbell IV", is written over a horizontal line. The signature is stylized and cursive.

Jack W. Campbell IV
Executive Director