

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

CIVIC CENTER PHARMACY, INC.
(Permit No. 9155)

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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 May 12, 2014 and, after appropriate notice, was heard on that day by Board member Dr. J. Parker Chesson, Jr. at the offices the Board. Respondent Civic Center Pharmacy, Inc. (Permit No. 9155) (hereinafter, "Respondent" or "Civic Center") was present and was represented by Counsel Brenda M. Maloney Shafer. Counsel Clinton R. Pinyan represented the Board. Members of the Board's investigative staff 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. By its consent, Respondent also stipulates that it waives its 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 the holder of Permit No. 9155 from the Board and is located at 7331 East Osborn Drive, Suite 208, Scottsdale, Arizona. Respondent's out-of-state permit was issued on September 19, 2005. 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 January 2010 and August 2012, Civic Center filled approximately 4,700 prescriptions written by William Shuler and Thom Lobe, physicians with HCG Medical of Tulsa, Oklahoma. Approximately half of the prescriptions were for human chorionic gonadotropin (HCG), and the other half were for syringes for administering the HCG. Civic Center never filled any prescriptions written by either Dr. Shuler or Dr. Lobe for anything other than HCG or associated syringes. Civic Center filled HCG prescriptions issued by HCG Medical for patients in 48 states (every state but Hawaii and Maine), as well as the District of Columbia and British Columbia. At the time these prescriptions were compounded, Civic Center had received an increased volume of HCG prescriptions due to its particular compounding methods. Although HCG Medical was located in Tulsa, Oklahoma and all of the prescriptions were issued from that office, many of the prescriptions written by Dr. Lobe listed his address as Beverly Hills, California.

4. Between approximately September 2010 and July 2012, Civic Center dispensed approximately 180 of these prescriptions to patients in North Carolina, including approximately 90 prescriptions for HCG, which is a schedule III controlled substance in North Carolina.

5. Under the circumstances, Civic Center knew or reasonably should have known that the prescriptions were issued without a physical examination of the patients and in the absence of prior prescriber-patient relationships.

6. Civic Center's current pharmacist-manager, Tenille Davis, testified that, when Civic Center began filling the prescriptions, she had concerns that the prescriptions were invalid. She raised those concerns with Ari Schafer, who was then the pharmacist-manager, and who told Davis that Schafer had contacted HCG Medical and was informed that the physicians had requested the primary care provider's records, had ordered laboratory tests and were performing physical examinations. Notwithstanding that explanation, Davis testified that she did not believe that the physicians were performing in-person physical examinations on all of the patients and that it was not reasonable for any pharmacist to believe that they were. She testified that, at the time, she believed that the physicians may have had remote encounters with the patients, which she acknowledged that she incorrectly believed were lawful and satisfied the physical examination requirements. Davis filled more than half of the prescriptions dispensed to North Carolina patients.

7. On August 8, 2011, Dr. Shuler was disciplined by the State of Utah for, on multiple occasions, issuing online prescriptions for prescription medications to Utah residents. Thereafter, numerous other states disciplined Dr. Shuler for the same behavior, including but not limited to California, Illinois, Minnesota, Ohio, Tennessee, Texas and Wisconsin. Civic Center was not aware of these disciplinary actions, and Civic Center continued filling prescriptions issued by HCG Medical, including 54 prescriptions written by Dr. Shuler and hundreds of prescriptions written by Dr. Lobe after August 8, 2011. Civic Center filled the majority of the prescriptions from HCG Medical prior to August 8, 2011, when there were no disciplinary orders against Dr. Shuler related to his online prescribing.

8. On December 7, 2012, the Board requested certain patient records from Civic Center Pharmacy that it is required to maintain and provide upon Board request. The Board sent

the request by certified mail, to the correct address for Civic Center, and the Board received a return receipt showing that the request was received. Nevertheless, Civic Center's representative testified that Civic Center's pharmacist-manager did not personally receive the correspondence. Civic Center did not provide the requested records until March 2013, after the Board sent a notice that a prehearing conference would be held due to the failure to provide the records. Schafer was not aware of the December 7, 2012 request until he received the prehearing conference notice. Upon receiving the notice, Civic Center immediately responded and thereafter fully cooperated with the Board's investigation.

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(b) because Respondent's acts were in violation of N.C. Gen. Stat. §§ 90-85.26, 90-85.40(b) and (f), 90-106(c), 90-108(a)(2), 106-122(1), 106-134 and 106-134.1(a); 21 N.C.A.C. 46 .1601(b)(3) and (4), 46 .1607(b)(2), (c) and (d), 46 .1801 and 46 .1805; and Arizona Administrative Code R4-23-404(E) and (F).

3. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under N.C. Gen. Stat. § 90-85.38(b).

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit of Respondent Civic Center Pharmacy, Inc., Permit No. 9155, is hereby SUSPENDED indefinitely. The suspension is stayed INDEFINITELY upon the following conditions:

1. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs; and
2. Respondent shall violate no rules or regulations of the Board, including but not limited to 21 N.C.A.C. 46 .1801.

If Respondent fails to comply with any terms or conditions of this Order, the stay of Respondent's suspension shall be terminated and Respondent may be subject to additional disciplinary action by the Board.

This the 10 day of June, 2014.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jay W. Campbell, IV
Executive Director

Civic Center Pharmacy, Inc. has full knowledge that it has the right to a formal hearing, at which it would have the right to be represented at its expense by counsel, in this matter. The undersigned freely, knowingly and voluntarily waives such right by entering into this Final Consent Order. The undersigned understands and agrees that by entering into this Final Consent Order, she certifies that she has read the foregoing Final Consent Order and that Civic Center Pharmacy, Inc. 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 Civic Center Pharmacy, Inc. violate the terms and conditions of this Final Consent Order, the Board may take additional disciplinary action. The undersigned understands and agrees that this Final Consent Order will not become effective unless and until approved by the Board. The undersigned understands that Civic Center Pharmacy, Inc. has the right to have counsel of its choice review and advise it with respect to its rights and this Final Consent Order, and represents that it enters this Final Consent Order after consultation with its counsel or after knowingly and voluntarily choosing not to consult with counsel.

The undersigned certifies that its agent executing this Final Consent Order is duly authorized to accept the Final Consent Order on behalf of Civic Center Pharmacy, Inc., and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

CIVIC CENTER PHARMACY, INC.
(Permit No. 9155)

Tenille Davis Date 6/10/14
By: Tenille Davis
Title: Pharmacy Manager

STATE OF Arizona

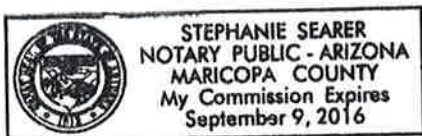
Maricopa COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that personally appeared before me this day, and each acknowledged the due execution of the foregoing document: Consent Order.

Date: 6/10/14

Stephanie Seaver
Notary Public
Stephanie Seaver

My commission expires: 09/09/16



REJECTED BY:

CIVIC CENTER PHARMACY, INC.
(Permit No. 9155)

_____ Date _____

By: _____

Title: _____