

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
AIRWAY MEDICAL SUPPLIES, INC.) **CONSENT ORDER**
)
DME Permit No. 1358)

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 June 16, 2008 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 McLaughlin, Jr. Respondent was represented at the conference by its counsel, James A. Wilson. Board Counsel and members of the Board's investigative and legal staff were also present at this conference.

FINDINGS OF FACT

1. Respondent Airway Medical Supplies, Inc., 1115 North Logan Street, Gaffney, South Carolina, holds North Carolina DME permit number 1358 to operate from its Gaffney, South Carolina location.
2. Respondent's principal owner and person-in-charge is Melanie Baker.
3. Ms. Baker's brother, Edwin Roberts, was the principal owner and person-in-charge of Piedmont Medical Sales ("Piedmont"), 525 North Justice Street, Hendersonville, North Carolina, which formerly held North Carolina DME permit number 804.
4. Piedmont's DME permit expired on December 31, 2006, and Piedmont did not renew its permit.

5. After Piedmont lost its DME permit, in late 2007, it sold certain assets to Respondent, including but not limited to assigning its existing patients to Respondent. Mr. Roberts became an employee of Respondent.

6. Respondent thereafter assumed the rent on Piedmont's location in Hendersonville and operated from that location. On behalf of Respondent, Mr. Roberts continued to service Piedmont's former patients (who were located in North Carolina) from that location in Hendersonville.

7. Respondent unlawfully operated between late 2007 and January 2008 from the location in Hendersonville without having a permit to operate from that location.

8. On January 15, 2008, the Board summarily suspended Respondent's North Carolina DME permit.

CONCLUSIONS OF LAW

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

1. Respondent Airway Medical Supplies, Inc. violated N.C. Gen. Stat. §§ 90-85.22, 90-85.38(b) and 90-85.40(d) and (d1).

2. 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.

3. The Board concludes, and Respondent agrees, that in light of Respondent's previous unlawful dispensing from Hendersonville as a successor to Piedmont, it is appropriate for the Board to adopt remedial measures that sever that relationship. Respondent agrees that the conditions of this Consent Order are necessary and reasonable.

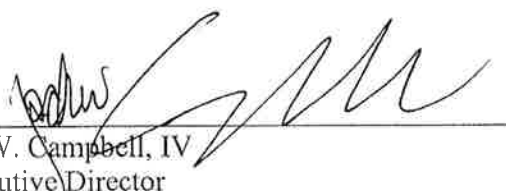
Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit of Respondent Airway Medical Supplies, Inc., is hereby SUSPENDED for five (5) months, which suspension shall be treated as having been served during the period in which Respondent's permit was summarily suspended. Respondent's permit is hereby REINSTATED, upon the following conditions:

- i. Respondent may dispense devices or medical equipment into North Carolina only from its permitted location in Gaffney, South Carolina, unless and until it secures a separate permit for any other physical location from which it dispenses devices or medical equipment.
- ii. For a period of five (5) years, Edwin Roberts may not have any business affiliation with Respondent, including but not limited to any affiliation as an employee, independent contractor, officer, director or owner of Respondent.
- iii. For a period of five (5) years, Respondent shall not dispense devices or medical equipment to any patient whom Respondent served from the location in Hendersonville, North Carolina, including but not limited to anyone who has been a patient of both Piedmont and Respondent. Before the entry of this Consent Order, Respondent has provided a list of all such patients and it has certified that the list is accurate and complete. Notwithstanding the provisions of this subparagraph, Respondent may dispense devices or medical equipment to one patient, whose name is omitted herein for privacy reasons but whose identity is set forth in an accompanying letter from the Executive Director.

- iv. For a period of five (5) years, Respondent shall not operate from any location within 10 miles of Piedmont's former location at 525 North Justice Street, Hendersonville, North Carolina
- v. Respondent shall violate no laws governing the practice of pharmacy or the distribution of devices or medical equipment;
- vi. Respondent shall violate no rules and regulations of the Board; and
- vii. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order.

This the 13th day of June, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jay W. Campbell, IV
Executive Director

Airway Medical Supplies, Inc., the holder of DME permit number 1358, 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 Consent Order. The undersigned understands and agrees that by entering into this Consent Order, it certifies that it has read the foregoing Consent Order and that it 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 it 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 it has the right to have counsel of its choice review and advise it with respect to its rights and this Consent Order, and represents that it enters this 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 Consent Order is duly authorized to accept the Consent Order on behalf of Airway Medical Supplies, Inc. and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

AIRWAY MEDICAL SUPPLIES, INC. (DME Permit No. 1358)

Airway Medical Supplies, Inc. Date 6/17/08

By: Melanie Baker

Title: Owner

STATE OF _____

_____ 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: _____

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: _____

Notary Public

My commission expires: _____

