

STATE OF NORTH CAROLINA  
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF )  
 )  
PERMIT APPLICATION OF ) FINAL ORDER  
ENCOMPASS HEALTH CARE, INC. )

This matter came on for consideration by the North Carolina Board of Pharmacy (the "Board") at its meeting of November 17, 2009. The matter was heard at the office of the Board by Board President Robert McLaughlin, Jr. and Board Members Rebecca W. Chater; J. Parker Chesson, Jr.; Betty H. Dennis; L. Stan Haywood; and Wallace E. Nelson. Respondent appeared at the hearing, represented by its owners, William McMillan and Joseph Sugar, its proposed person-in-charge, Tanisha Bryant, and its counsel, James A. Wilson. Board counsel Clinton R. Pinyan was present at the hearing. Based upon the record in this proceeding and the stipulations, evidence and testimony presented at the hearing, and in the exercise of its discretion, the Board makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. At various times since December 15, 2003, Encompass has been the holder of DME permit number 875, issued by the Board. Encompass is located at 108 West Broad Street, St. Pauls, North Carolina 28384.
2. Encompass is and was, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.
3. For all years between 2004 and 2008, Encompass timely renewed its permit with the Board.

4. When Encompass's 2008 permit was issued in February 2008, the person-in-charge at Encompass was Gregory Lowery. In May 2008, Mr. Lowery informed the Board that he would no longer serve as the person-in-charge at Encompass after May 16, 2008.

5. Shortly after Mr. Lowery left Encompass, Tanisha Bryant became the person-in-charge at Encompass.

6. At no time until July 2009 did Tanisha Bryant inform the Board that she had become the person-in-charge at Encompass.

7. Encompass did not submit any renewal application by April 1, 2009. Accordingly, its permit became closed by operation of law.

8. Notwithstanding lacking a valid permit, Encompass continued to operate between April 1, 2009 and September 14, 2009 and to dispense prescription devices and medical equipment.

9. On July 22, 2009, the Board received Encompass's expired 2008 permit with a notice of the change to Ms. Bryant as the person-in-charge. Within a week after receipt of Encompass's 2008 permit, Board Permitting Specialist Wendy Watson contacted Ms. Bryant by telephone. Ms. Watson informed Ms. Bryant that Encompass's permit had been closed on April 1, 2009, and that Encompass had been unlawfully operating without a permit since that date. Ms. Watson informed Ms. Bryant that Encompass was required to apply for and obtain a new permit.

10. Notwithstanding Ms. Bryant's knowledge that Encompass had been unlawfully operating without a permit, Encompass continued to operate without a permit until September 14, 2009. Encompass waited approximately seven weeks after the phone call with Ms. Watson before it submitted a DME permit application.

11. On September 14, 2009, Board Investigator Krystal Brashears visited Encompass. On that date, Encompass was still open and dispensing prescription devices and medical equipment. Ms. Brashears told Ms. Bryant that Encompass was required to immediately cease dispensing prescription devices and medical equipment until the issuance of a 2009 permit.

12. On September 16, 2009, the Board received (for the first time) a 2009 permit application from Encompass.

### CONCLUSIONS OF LAW

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

1. The evidence demonstrated that Encompass, acting by and through its agents and representatives, violated the following statutes and rules:

- a. N.C. Gen. Stat. § 90-85.22;
- b. N.C. Gen. Stat. § 90-85.23;
- c. N.C. Gen. Stat. § 90-85.40(d), (d1) and (f); and
- d. 21 N.C.A.C. 46 .2601(a).

2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that, pursuant to N.C. Gen. Stat. § 90-85.38(b), it is appropriate for the Board to refuse to grant the 2009 permit application of Encompass and that the discipline set forth in this Final Order is appropriate.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the permit application of Encompass Health Care, Inc. is DENIED.

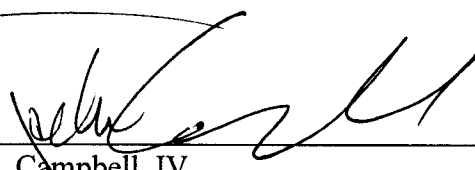
It is further ORDERED that Encompass Health Care, Inc. not submit another application for a permit until on or after July 1, 2010. This Order incorporates the Board's Reapplication

and Reconsideration Policy by reference, as modified only by the July 1, 2010 date before which Encompass Health Care, Inc. may not submit another application for a permit.

This the 17<sup>th</sup> day of November, 2009.

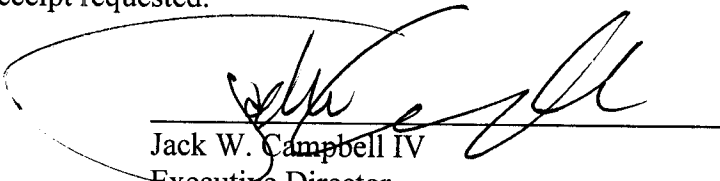
NORTH CAROLINA BOARD OF PHARMACY

By: \_\_\_\_\_

  
Jack W. Campbell, IV  
Executive Director

## CERTIFICATE OF SERVICE

I certify that on November 19, 2009, I caused a copy of this Final Order to be served on Respondents by registered mail, return-receipt requested.



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Jack W. Campbell IV  
Executive Director