

3. Upon investigation, the Board's Investigator learned that employees at Respondent Facility had access to the pharmacy key and at times would enter the pharmacy and pull medications and orders that need to be filled. Afterwards, the staff would bag them for delivery techs to take to the Medicine Shoppe Pharmacy to be filled. Savannah Swartout, Pharmacist Manager of Respondent Pharmacy, also owns the Medicine Shoppe Pharmacy.
4. Ruth Harris, a registered technician employed at Respondent Pharmacy, told the Board's investigator that when Respondent Pharmacy runs out of compounding respiratory medications, she will take compounding medications from the Medicine Shoppe to Respondent Pharmacy and fill the plastic vials and put the vials in boxes with the drug item labels on them. She stated that the boxes she fills are for stock and are not patient specific. She also stated that the only time she performs these tasks is when RPh. Swartout is too busy and the Medicine Shoppe and when Respondent Pharmacy is out of stock.
5. The Board's investigator was unable to substantiate allegations that a respiratory therapist was compounding medications without supervision from a pharmacist.
6. The Board's investigator learned that Respondent Pharmacy keys were available to all staff. The investigator also learned that the staff's use of the pharmacy was contrary to the stated policy.

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

CONCLUSIONS OF LAW

1. Respondent Facility admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under G.S. 90-85.38.

2. Respondent Permit admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under G.S. 90-85.38.
3. Respondent Facility violated the following statutes and rules when it failed to comply with requirements of the Pharmacy Practice Act:
 - a. G.S. 90-85.38(6) and (7),
 - b. 21 N.C.A.C. 46 .2601; and
 - c. 21 N.C.A.C. 46 .2610.
4. Respondent Permit violated the following statutes and rules when it failed to comply with the requirements of the Pharmacy Practice Act:
 - a. G.S. 90-85.38(6) and (7),
 - b. G.S. 90-85.40.
 - c. 21 N.C.A.C. 46 .1804, and
 - d. 21 N.C.A.C. 46 2502.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE,

ORDERED, as follows:

1. The permit of Respondent Facility, DME permit number 188, is suspended for seven (7) business days.
2. The permit of Respondent Pharmacy, pharmacy permit number 7176, is suspended for seven (7) business days.
3. The suspensions described above are stayed for three (3) years upon the following conditions:

- a. Respondents Facility and Pharmacy shall develop and submit plans on how the Pharmacist Manager will properly supervise technicians and secure the facility/pharmacy.
 - b. These plans shall be submitted to the Board's Executive Director within thirty (30) days after the Consent Orders are signed.
4. Respondents Facility and Pharmacy shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of their practice and compliance with the provisions of this Consent Order.
 5. Respondents Facility and Pharmacy shall violate no laws governing the practice of pharmacy or the distribution of devices and medical equipment.
 6. Respondents Facility and Pharmacy shall violate no rules and regulations of the Board.
 7. If Respondents Facility and Pharmacy fails to comply with any terms or conditions of this Consent Order, Respondents may be subject to additional disciplinary action by the Board.

This the 17th day of January, 2006.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

David R. Work
Executive Director

I, Janice Ivey Faircloth, (name), the undersigned, am CCO (title) for the holder of DME permit #0188 and am authorized to sign this Consent Order. I have full knowledge that the permit holder has the right to a hearing and to be represented by counsel in this matter. I freely, knowingly, and voluntarily waive such right by entering into this Consent Order on behalf of DME permit #0188. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and that that the permit holder voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. I further understand that should the permit holder violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. I understand and agree that this Consent Order will not become effective unless and until approved by the Board.

Janice Ivey Faircloth, CCO, PC on behalf of DME permit #0188, **accepts** the Board member's proposal in this matter.

CONSENTED TO BY: Janice Ivey Faircloth, PC 11/18/05
Name: _____ Date: _____
Title: _____

State of NC
Cumberland County

I, Yvette Horne, a Notary Public for the above-named County and State, do hereby certify that Janice Ivey Faircloth personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 18th day of November, 2005.

Yvette I Horne
Notary Public

My Commission Expires 6-12-2008

_____ on behalf of DME permit #0188, **does not accept** the proposed Consent Order in this matter.

By: _____
Name: _____ Date: _____
Title: _____