

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

CVS/PHARMACY
(Permit No. 6727)

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**CONSENT ORDER OF
DISCIPLINE**

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 October 17, 2011 and, after appropriate notice, was heard on that day by Board member Gene W. Minton at the offices the Board. Respondent CVS/pharmacy (Permit No. 6727) (hereinafter, "Respondent" or "CVS") was present and was represented by Counsel George G. Hearn. Counsel Joseph A. Ponzi 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 his 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 and was, at all relevant times referred to herein, the holder of Permit No. 6727 from the Board, and located 2501 West Roosevelt Boulevard, Monroe, North Carolina. 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. Respondent's pharmacist-manager was at all relevant times referred to herein, J. Donald Helms (License No. 8104).

4. Respondent's district supervisor is, and was at all relevant times referred to herein, Sepideh Manafi (License No. 14666).

5. On October 22, 2009, during a routine visit to the store, Manafi noticed that a pharmacist working at the store appeared, to be impaired. Manafi removed the pharmacist from duty and notified CVS Loss Prevention Manager B.K. Sanders. That same day, Sanders and Manafi interviewed the pharmacist, who admitted to diverting 526 tablets of Hydrocodone 5/500 mg and 30 tablets of Zolpidem for personal use.

6. The pharmacist admitted to diverting medications from CVS beginning April 2009. An initial audit conducted by the Board's investigative staff (for the period 5/01/07 through 1/20/10) based on data provided by Respondent, showed that the medications diverted included more than 54,000 dosage units of Schedule II, Schedule III and Schedule IV controlled substances, specifically Oxycodone, Hydrocodone, Zolpidem, Alprazolam, and Phentermine in varying strengths. In preparation for the prehearing conference, Respondent conducted a separate audit reflecting additional data. The new audit showed that substantially fewer medications had been diverted. Although the two audits could not be totally reconciled at the

prehearing conference, the Board's investigative staff did not discount the information in Respondent's audit.

7. As above, Respondent, Helms, and Manafi discovered by October 22, 2009 that drugs had been diverted from the store. However, the diversion was not reported to the Board until Sanders informed the Board of the diversion on December 15, 2009.

8. On December 28, 2009, Respondent reported the diversion to the Drug Enforcement Administration via form DEA 106, a copy of which was concurrently sent to the Board. However, Respondent failed to file a Drug Disaster and Loss Report with the Board until January 25, 2010.

9. Respondent continued to monitor the store for potential diversions, and in early April 2010 discovered a pharmacy technician diverting controlled substances. On April 16, 2010, Respondent and Sanders obtained an admission of the diversions from the technician, whose employment was then terminated. Respondent filed with the Board both a DEA 106 and a Drug Disaster and Loss Report on April 20, 2010, regarding the technician's diversions.

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 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38 because Respondent's acts were in violation of N.C. Gen. Stat. §§ 90-85.25(b), 90-85.38(b), 90-85.40(b) and (f), 90-106, 90-108, 106-122, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1804(a), 46 .1805, 46 .2502(a), (d) and (e); and 21 U.S.C. §§ 331, 352, 353, 829 and 842.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit of Respondent CVS/pharmacy is hereby SUSPENDED for seven (7) days, which suspension shall be stayed for two years from the date that this Consent Order is accepted by the Board, upon the following conditions:

1. Respondent shall violate no laws governing the practice of pharmacy;
2. Respondent shall violate no rules and regulations of the Board; and

If Respondent fails to comply with any terms or conditions of this Order, Respondent may be subject to additional disciplinary action by the Board.

This the 17th day of January, 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jay W. Campbell, IV
Executive Director

CVS/pharmacy 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, it certifies that it has read the foregoing Final 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 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 it 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 CVS/pharmacy, and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

CVS/pharmacy (Permit No. 6727)

Richard B. Mazzone Date 1/27/2012

By: Richard B. Mazzone
Title: Director, Regulatory Compliance

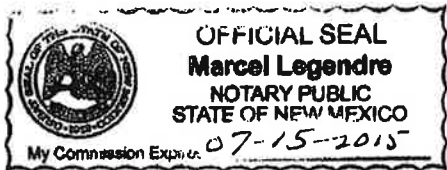
STATE OF NEW MEXICO

SANTA FE 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: MARCEL LEGENDRE

Date: 1-27-2012

Marcel Legendre
Notary Public



My commission expires: 07-15-2015

REJECTED BY:

_____ Date _____
CVS/pharmacy (Permit No. 6727)