

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)

JOSEPH BLACK)
License No. 7113)

CONSENT ORDER

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 May 14, 2012 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Dr. J. Parker Chesson, Jr. Joseph Black (License No. 7113) was present at the conference. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were present at this conference, as were related respondents.

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 he waives his 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, a pharmacist licensed to practice pharmacy in the State of North Carolina with License No. 7113. During the relevant time period, Respondent worked for Franklin Street Pharmacy, Permit No. 4012, located at 610 East Franklin Street, Monroe, North Carolina (“Franklin Street”). 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 May 7, 2008 and July 14, 2011, Patient A presented to Franklin Street Pharmacy a total of 152 forged prescriptions for Oxycodone and Adderall in various strengths (schedule II controlled substances), Hydrocodone/APAP in various strengths (a schedule III controlled substance), and Alprazolam 2 mg and Clonazepam 1 mg (schedule IV controlled substances) that had purportedly been written for Patient A and his wife, Patient B.

4. Each of these prescriptions had purportedly been written by Dr. Sara Beyer, a physician at Steele Creek Family Practice. Patients A and B had never been patients of Dr. Beyer, and Dr. Beyer had left Steele Creek Family Practice in January 2011. Patient A had previously passed forged prescriptions in Dr. Beyer’s name to other pharmacies and had been arrested for prescription forgery.

5. Franklin Street’s records reflect that Respondent was responsible for dispensing drugs pursuant to 138 of the forged prescriptions. The evidence suggests that Franklin Street and its pharmacists frequently dispensed prescriptions with the incorrect pharmacist initials on the labels and pharmacy records. Franklin Street did not require staff and pharmacists to log off of computers when the pharmacists left a work station, and Franklin Street improperly permitted staff to log in to computers using pharmacist log-in information, even when the pharmacists were not present in the store. These operations by Franklin Street and its pharmacists made it

impossible to determine the exact number of prescriptions that Respondent filled, however Respondent acknowledged that he had filled the vast majority of the 152 prescriptions that were dispensed to Patients A and B.

6. In addition, Patient A frequently presented these forged prescriptions for Patients A and B well before an earlier dispensed prescription for the same drug should have run out, and Respondent filled those prescriptions early anyway, resulting in the dispensing of controlled substances in significant excess of normal therapeutic use. Franklin Street's records reflect that, on at least 46 occasions, Respondent was responsible for dispensing controlled substances more than two days early (even if the prescriptions had been legitimate). Indeed, on at least 34 occasions, Respondent dispensed controlled substances one week or more early (even if the prescriptions had been legitimate). And, on at least 13 occasions, Respondent dispensed controlled substances two weeks or more early (even if the prescriptions had been legitimate).

7. The circumstances surrounding the dispensing of the forged prescriptions were such that a reasonable pharmacist in Respondent's position would have concluded that the prescriptions were fraudulent. Respondent acknowledged that Patient A would come into the pharmacy and specifically request to talk with Respondent. Respondent would then come out from behind the pharmacy counter and personally take the prescriptions from Patient A, and Respondent would personally perform the data entry and filling of the prescriptions. Patient A would come into the pharmacy at busy times, in circumstances in which Respondent would be rushed. Respondent was aware that Patient A was coming into Franklin Street to fill controlled substance prescriptions with great frequency and was regularly presenting prescriptions for multiple controlled substances.

8. Respondent further failed to take reasonable steps to ascertain whether the prescriptions were forged. Respondent never called Dr. Beyer or her practice to question the legitimacy of the prescriptions, notwithstanding the number of the prescriptions and the frequency with which they were presented. Respondent further never accessed or reviewed the patient profile of either Patient A or Patient B, which would have confirmed that the prescriptions were being presented with questionable frequency resulting in distribution in significant excess of normal therapeutic use.

9. Respondent testified that he did not verify the frequency of dispensing of the controlled substances because he assumed that Franklin Street's computer system would alert him to early fills of controlled substances and it did not. This assumption – that dispensing was permitted as long as there was not an alert from the computer system – was an unreasonable abdication of Respondent's responsibilities to ensure the safe and lawful distribution of controlled substances. Moreover, on or about May 11, 2011, Franklin Street's computer system was updated to automatically provide a pharmacist with information about the most recent dispensing of the same drug. Between May 11, 2011 and July 8, 2011 – a period of less than two months – Respondent filled controlled substance prescriptions early for Patients A and B on at least 12 occasions, notwithstanding this additional alert.

CONCLUSIONS OF LAW

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

1. Respondent violated N.C. Gen. Stat. §§ 90-85.38(a)(6), (7) and (9), 90-85.40(b) and (f), 90-104, 90-106, 90-108, 106-122, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1801, 46 .1802 and 46 .1805; and 21 U.S.C. §§ 331, 829 and 842.

2. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under N.C. Gen. Stat. § 90-85.38.

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

1. Respondent Black's license (License No. 7113) is hereby SUSPENDED for THIRTY (30) DAYS, as follows:
 - a. Respondent's license is ACTIVELY SUSPENDED for a period of TEN (10) DAYS. These ten days shall be served consecutively, commencing on a Monday at 12:01 a.m. and running for ten consecutive days, with the thirty-day active suspension to be served commencing within thirty (30) days of the date that this Order is accepted by the Board. Respondent shall notify the Executive Director in writing and return his wallet card, license and current renewal in advance of service of the suspension. During the term of the suspension, Respondent shall not be present in any pharmacy, except as a customer with a valid prescription.
 - b. The remaining TWENTY (20) DAY SUSPENSION of Respondent's license is hereby STAYED for TWO (2) YEARS from the date that this Order is accepted by the Board, upon the following conditions:
 - i. Respondent shall not serve as pharmacist-manager of any pharmacy;
 - ii. Respondent shall not serve as a preceptor of pharmacy students;

- iii. Respondent shall advise the Board promptly in writing of any change of address, change of employment, or change in practice status;
- iv. Respondent shall obtain prior written approval of all employment as a pharmacist from the Board's Executive Director;
- v. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs; and
- vi. Respondent shall violate no rules or regulations of the Board.

At no time during the period of the two-year stay may Respondent petition to have any of these conditions lifted. If a petition is filed, the Executive Director is instructed to deny the petition and not to schedule any hearing on the petition before the Board.

- 2. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation of compliance with the provisions of this Consent Order.
- 3. If Respondent fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and, in addition, Respondent may be subject to additional disciplinary action by the Board.

This the 19th day of June 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: 
Jay W. Campbell, IV
Executive Director

Joseph Black, the holder of License Number 7113, has full knowledge that he has the right to a hearing, at which he would have the right to be represented at his 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, he certifies that he has read the foregoing Consent Order and that he 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 he 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 he has the right to have counsel of his choice review and advise him with respect to his rights and this Consent Order, and represents that he enters this Consent Order after consultation with his counsel or after knowingly and voluntarily choosing not to consult with counsel.

ACCEPTED AND CONSENTED TO BY:

JOSEPH BLACK (License Number 7113)

Joseph Black # 7113 Date 5/29/12

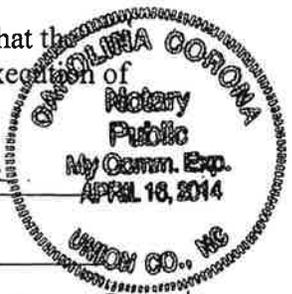
STATE OF North Carolina

Union COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person personally appeared before me this day and acknowledged the due execution of the foregoing document: **Joseph Black.**

Date: 5-29-2012

Carolina Corona
Notary Public
Carolina Corona



My commission expires: 04-16-2014

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REJECTED BY:

JOSEPH BLACK (License Number 7113)

_____ Date _____