

**STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY**

IN THE MATTER OF)
) **FINAL ORDER**
ROBERT R. BROYLES, III)
License Number 11951)

THIS MATTER was heard on September 15, 2009, by the North Carolina Board of Pharmacy ("Board") located at 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina, pursuant to both (a) a request by Broyles for reinstatement of his license, which Broyles voluntarily surrendered on August 5, 2008, and (b) a Notice of Hearing, dated August 27, 2009. Board members McLaughlin, Chater, Chesson, Dennis and Nelson conducted this hearing. After hearing the testimony of witnesses, adjudging the credibility of the witnesses, and receiving evidence, the Board makes the following:

FINDINGS OF FACT

1. At various times since February 24, 1993, Broyles has been the holder of license number 11951, issued by the Board.
2. Broyles is and was, at all relevant times referred to herein, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the United States of America and the State of North Carolina.

SUBSTANCE ABUSE AND DISCIPLINARY HISTORY

3. Broyles has a long history of substance abuse and addiction and repeated relapses in his treatment for those problems.
4. In Broyles' initial application for licensure with the Board, he disclosed that he had pled guilty to driving while impaired on both November 23, 1988 and January 31, 1991.

5. Broyles underwent treatment at Renew Counseling in Dunn, NC. And, in January 1991, he entered into a 30-month monitoring and advocacy contract with the North Carolina Pharmacist Recovery Network ("PRN").

6. After a hearing, on August 8, 1992, the Board entered a Final Order concluding that Broyles was eligible to be issued a license, subject to passage of the examination for licensure and a number of conditions. Those conditions included the requirement that Broyles report to the Board office any criminal charges lodged against him involving alcohol or controlled substances within 10 days of those charges, and that Broyles violate no laws governing the practice of pharmacy or the distribution of drugs and violate no rules and regulations of the Board. Broyles received and read the August 1992 Final Order.

7. Broyles ultimately passed the examination for licensure and was licensed on February 24, 1993.

8. Beginning no later than June 1994, Broyles started diverting hydrocodone/APAP combination product (a schedule III controlled substance) from the pharmacy where he worked and started consuming it. He continued diverting and consuming hydrocodone until at least March 1997.

9. On March 17, 1997, the Board accepted a Consent Order with Broyles in which his license to practice pharmacy was indefinitely suspended due to his diversion and consumption of hydrocodone from June 1994 to March 1997.

10. Broyles entered in-patient treatment at the Farley Center, and he completed that treatment in June 1997. Also, in June 1997, Broyles entered into his second PRN contract.

11. After a hearing, on November 20, 1997, the Board entered an Order Reinstating License, in which Broyles' license was reinstated on a number of conditions. Those conditions

included that Broyles comply with and complete his PRN contract, and that Broyles violate no laws governing the practice of pharmacy or distribution of drugs and violate no rules and regulations of the Board. Broyles received and read the November 1997 Order Reinstating License.

12. On May 22, 1999, Broyles was arrested for driving while impaired. He was convicted of that offense on July 13, 1999, his third conviction for driving while impaired.

13. The Board did not receive information about the May 1999 arrest until July 28, 1999, in violation of Broyles' August 1992 Order from the Board, which required him to inform the Board of any such arrests within 10 days.

14. In July 1999, because of the incident of driving while impaired, Broyles' contract with PRN was extended for 5 additional years, to July 2004.

15. After a hearing, on October 15, 1999, the Board entered a Final Decision, which indefinitely suspended Broyles' license, with an active suspension until January 29, 2000, and the remainder of the suspension stayed for a period of five years based on a number of conditions. Those conditions included that Broyles comply with his PRN contract and that Broyles not consume any alcohol-containing substance. Broyles received and read the October 1999 Final Decision.

16. On July 4, 2002, Broyles was arrested for driving while impaired and for hit and run, involving property damage. In August 2002, Broyles was convicted of these offenses – his fourth conviction for driving while impaired. As a result of this conviction, Broyles spent seven days in jail and had the remainder of his six month prison term stayed for a period of three years, upon certain conditions.

17. Broyles did not report this July 2002 incident to PRN. Furthermore, Broyles did not report the arrest to the Board, in violation of the terms of his August 1992 Order. Moreover, the incident itself violated the Board's October 1999 Order because it involved the consumption of alcohol. The Board learned of the arrest and conviction only in September 2009. Broyles did not report the incident to the Board because of his concern about protecting his license. Because of his violation in failing report the arrest, the Board did not take action against Broyles' license in 2002.

18. Beginning no later than 2005, Broyles again began regularly consuming alcohol. On at least two occasions in 2005, Broyles received and consumed a cough syrup containing a schedule III controlled substance through a legitimate prescription. Furthermore, between 2005 and 2008, Broyles received and consumed Tramadol on a number of occasions, through legitimate prescriptions.

19. Beginning no later than September 2007, Broyles began consuming Hydrocodone/APAP combination products (schedule III controlled substances) without a prescription. He purchased these controlled substances illegally from a flea market.

CURRENT VIOLATIONS AND STATUS

20. Between December 2007 and April 2008, Broyles was employed as a pharmacist at CVS/Pharmacy, located at 204 West Main Street, Pilot Mountain, NC 27041. During that time period, Broyles diverted about 3,000 dosage units of Hydrocodone/APAP combination product in various strengths, about five pints of Tussionex and about five pints of generic Hycodan, all of which are schedule III controlled substances. Broyles consumed all of the controlled substances that he diverted. Broyles testified that he consumed 80 percent of the

diverted controlled substances while he was on duty as a pharmacist. His actions were negligent and posed a significant risk to the health, safety and welfare of his patients.

21. On April 9, 2008, voluntarily executed a statement admitting the violations between December 2007 and April 2008.

22. Between April 14, 2008 and July 15, 2008, Broyles underwent treatment at the Center for Professional Excellence ("CPE"). Broyles subsequently has received treatment and evaluation under the monitoring of PRN, pursuant to a May 2008 contract (which was subsequently amended).

23. On August 5, 2008, Broyles voluntarily surrendered his license to practice pharmacy.

24. On April 8, 2009, Broyles pleaded guilty to a misdemeanor charge of embezzlement of a schedule III controlled substance. He was sentenced to 45 days of confinement, stayed for a period of 2 years on a number of conditions set forth in the judgment. This was his fifth conviction for substance-related criminal offenses.

25. Broyles' therapist, Margaret Graves, and the Executive Director of PRN both testified about Broyles' treatment progress, his compliance with the requirements of his May 2008 PRN contract, and his prognosis, which they testified was good. Broyles further offered testimony on his own behalf, the testimony of live character witnesses, and written character references and treatment reports, all of which were offered without objection. Broyles also demonstrated that he has made full restitution for his diversion from CVS. The Board has considered all of that testimony and evidence in determining the appropriate resolution in this case. Broyles' current progress, compliance and prognosis have been credited as mitigating factors in determining the appropriate resolution of the case, as against the aggravating

circumstances of both Broyles' long disciplinary, criminal and substance abuse history, as well as the nature of Broyles' violations of the Pharmacy Practice Act, its rules and regulations and federal law from December 2007 to April 2008.

CONCLUSIONS OF LAW

1. By virtue of the facts found above, Broyles has violated the following statutes, rules and decisional authority:

- a. North Carolina General Statutes § 90-85.38(a)(3), (5), (6), (7) & (9);
- e. North Carolina General Statutes § 90-85.40(f);
- f. North Carolina General Statutes § 90-106(c), (f) and (h);
- g. North Carolina General Statutes § 90-108(a)(2), (4), (10), and (14);
- h. North Carolina General Statutes § 106-122;
- i. North Carolina General Statutes § 106-134;
- j. North Carolina General Statutes § 106-134.1;
- k. 21 N.C.A.C. 46 .1805;
- l. 21 U.S.C. § 331;
- m. 21 U.S.C. § 352;
- n. 21 U.S.C. § 353;
- o. 21 U.S.C. § 841;
- p. 21 U.S.C. § 842;
- q. 21 U.S.C. § 843;
- r. The Final Order adopted by the Board on August 8, 1992; and
- s. The Order Reinstating License adopted by the Board on November 20, 1997.

2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that the discipline set forth in this Final Order is appropriate.

WHEREFORE, it is hereby **ORDERED, ADJUDGED and DECREED** that the request for reinstatement of the license of ROBERT R. BROYLES, III, License Number 11951, is hereby DENIED.

WHEREFORE, it is further **ORDERED, ADJUDGED and DECREED** that the license of ROBERT R. BROYLES, III, License Number 11951, is hereby INDEFINITELY SUSPENDED. During the period of the suspension, Respondent may not be present in a pharmacy, except as a customer with a valid prescription. Respondent may not petition for reinstatement or to have the suspended lifted until July 1, 2011, at the earliest.

If a petition or application is submitted that does not satisfy the time limits set forth in this policy, the Executive Director is instructed to deny the petition or application and not to schedule any hearing on the petition or application before the Board until the time limits set forth in this policy are satisfied.

The ability to petition for reinstatement or to submit a new application under this policy does not indicate that the Board will grant any such petition or application. A license, registration, permit or other privilege will be granted or reinstated only upon order of the Board and only after a finding that the grant of reinstatement is appropriate under the Pharmacy Practice Act and its rules and regulations. In making that decision, the Board will consider, among other things, the gravity of the misconduct that caused the denial, suspension or revocation, the applicant's history, the applicant's current ability to practice pharmacy with

reasonable skill, competence and safety to the public, and the petitioner's conduct since the order of denial, suspension or revocation.

This the 15th day of September, 2009.

NORTH CAROLINA BOARD OF PHARMACY

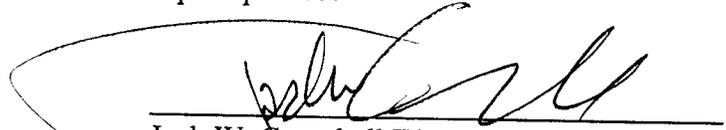
By:



Jack W. Campbell, IV
Executive Director

CERTIFICATE OF SERVICE

I certify that on September 17, 2009, I caused a copy of this Order Reinstating License to be served on Petitioner by registered mail, return-receipt requested.



Jack W. Campbell IV
Executive Director

cc: Broyles License File

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