

STATE OF NORTH CAROLINA  
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF )  
 )  
JAMES T. COWART, ) **FINAL ORDER**  
License Number 9387 )

THIS MATTER was heard on April 21, 2015, 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 James T. Cowart (“Cowart”) for reinstatement of his license, which Cowart voluntarily surrendered on November 27, 2013, and (b) a Notice of Hearing, dated April 6, 2015. Board members McLaughlin, Chesson, Day, Minton, and Mixon conducted this hearing. Cowart was present at the hearing and represented by counsel. After hearing the testimony of witnesses, adjudging the credibility of the witnesses, and receiving evidence, the Board makes the following:

**FINDINGS OF FACT**

1. All parties are properly before the Board, the Board has jurisdiction of the parties and of the subject matter, and Cowart received all required notice of the hearing and waived any additional notice.
2. Since July 29, 1986, Cowart has been licensed by the Board to practice pharmacy in the State of North Carolina and has been the holder of license number 9387, except for periods of voluntary surrender described herein.
3. On November 23, 1998, Cowart was arrested for driving while impaired (“DWI”) in Pender County, North Carolina. On April 1, 1999, Cowart pled guilty to level five DWI. Level 5 is the lowest DWI infraction level on a scale of 1 to 5, with a level 1 being the most severe DWI infraction. The Court found that Cowart had an alcohol concentration of at least 0.16

within a relevant time after driving. Cowart was sentenced to 60 days imprisonment, of which one day was served actively, with the remainder suspended.

4. As a condition of probation, Cowart was required to complete a substance abuse assessment. On November 25, 1998, Cowart completed his court-ordered substance abuse assessment with CDTEG Inc.

5. Since September 16, 2002, Cowart has been a part-owner or owner of Jabez Home Infusion Company (the "Pharmacy") (former Permit No. 8132), located at 2495 Hemby Lane, Suite B, Greenville, North Carolina. Cowart served as pharmacist-manager of the Pharmacy between September 16, 2002 and November 4, 2003, and between July 23, 2004 and November 17, 2013.

6. On November 4, 2003, Cowart voluntarily surrendered his license to practice pharmacy. In the voluntary surrender, Cowart admitted "to the use of controlled substances without authorization of a lawful order."

7. On November 19, 2003, Cowart terminated an assessment at the William J. Farley Center, against the medical advice of Farley Center staff, after one day. Cowart later returned to the Farley Center and finished the assessment in February 2005, which did not include a recommendation for further inpatient treatment.

8. As a result of the events leading to Cowart's November 2003 voluntary surrender, Cowart entered a treatment and monitoring contract with the North Carolina Pharmacist Recovery Network ("NCPRN"). In February 2005, Cowart completed that contract.

9. On July 20, 2004, the Board accepted a Consent Order with Cowart (the "2004 Consent Order"). In the 2004 Consent Order, Cowart acknowledged his previous consumption of marijuana and other controlled substances that were not prescribed for him. The 2004

Consent Order suspended Cowart's license to practice pharmacy in North Carolina for a period of one year, but stayed such suspension and placed Cowart on probation for a period of five years, subject to various conditions.

10. On August 17, 2005, Cowart was arrested for DWI in Pitt County, North Carolina. Approximately one hour after the arrest, his blood alcohol content tested at .18. On May 4, 2006, Cowart pled guilty to level two DWI. Cowart was sentenced to twelve months imprisonment, of which seven days were served actively, with the remainder suspended.

11. The Board did not learn of Cowart's 2005 DWI arrest and subsequent 2006 DWI conviction until February 2012.

12. On January 30, 2012, Cowart was arrested for DWI outside his Pharmacy in Pitt County, North Carolina. Cowart was not scheduled to work at the Pharmacy after the time of the incident on January 30, 2012. His blood alcohol content tested at .22 within a relevant time after driving. On May 1, 2013, Cowart was convicted of a level two DWI. Cowart was sentenced to one year imprisonment, of which seven days were served actively, with the remainder suspended.

13. As a condition of probation, Cowart was required to complete a substance abuse assessment and all recommended education or treatment. Cowart's court-ordered substance abuse assessment was conducted by CHOICES SA/MH INC.

14. On November 4, 2013, Cowart was admitted to a rehabilitation program at Fellowship Hall in Greensboro, North Carolina. Fellowship Hall terminated Cowart's participation in its treatment program early and discharged him due to inappropriate comments

15. On November 27, 2013, Cowart voluntarily surrendered his license to practice pharmacy. In that voluntary surrender, Cowart admitted that, while employed at the Pharmacy,

“he has committed acts that give the North Carolina Board [of] Pharmacy sufficient cause to revoke his pharmacist license.” By the terms of the voluntary surrender, Cowart agreed that he “understands and accepts that he is not to be present in a pharmacy setting unless he has a valid prescription from a treating physician.”

16. Contrary to Cowart’s agreement, at various times between November 27, 2013 and March 5, 2014, Cowart was present in the Pharmacy to perform business and administrative tasks.

17. On February 27, 2014, representatives of the Accreditation Commission for Health Care (“ACHC”) visited the Pharmacy because the Pharmacy was seeking accreditation. This was ACHC’s second visit to survey the Pharmacy, as their representatives had previously inspected the Pharmacy on November 11, 2013. As a result of that November 2013 survey, the Pharmacy’s accreditation application was placed in “dependent status,” which meant that the Pharmacy could not be accredited without satisfactorily correcting deficiencies found in the November 2013 survey.

18. When representatives of ACHC entered the Pharmacy on February 27, 2014, they observed that Cowart was present and working in the Pharmacy, making repairs. No pharmacist was on site, although it was during the Pharmacy’s normal operating hours.

19. During the February 27, 2014 visit, the representatives of ACHC found a number of conditions that, in their opinion, posed potential hazards to the public safety, health and welfare, including but not limited to:

- a. The cleanroom suite did not meet USP <797> standards because of a lack of proper ventilation;
- b. Lack of adequate air sampling and surface sampling programs;

- c. Lack of any calibration record of the balance used to weigh ingredients for certain compounding;
- d. Lack of appropriate incident reporting and investigation practices;
- e. Lack of required media fill testing; and
- f. The pharmacy being open without a licensed pharmacist present.

20. Each of the items listed in the foregoing paragraph as being identified in ACHC's February 27, 2014 visit had also been among those deficiencies identified during ACHC's November 11, 2013 survey, including the Pharmacy being open without a licensed pharmacist present. Cowart was the pharmacist-manager of the Pharmacy at the time of the November 11, 2013 survey.

21. On March 3, 2014, an ACHC representative reported his concerns to the Board.

22. Todd Ahrens, an officer and a clean room certification specialist for Precision Air Technology, Inc., testified that all testing before and immediately after ACHC's visits showed environmental testing within acceptable ranges. Precision Air Technology certifies Duke Hospital, UNC Memorial Hospital, MD Anderson and other prestigious medical institutions.

23. On March 6, 2014, Board representatives traveled to the Pharmacy to perform an inspection. Cowart appeared at the Pharmacy and, after a verbal exchange, both Cowart and the Board representatives left the Pharmacy. Although a complete inspection was not performed at that time, the Board representatives observed violations, being a lack of orderly conditions in the office area.

24. On March 7, 2014, the Board issued an Order Summarily Suspending the Permit for the Pharmacy.

25. Shortly after this visit, the pharmacist-manager of record for the Pharmacy resigned. In late April 2014, the Pharmacy hired Darrin Sismour to serve as the proposed pharmacist-manager of the Pharmacy. Once R. Ph. Sismour was in place and had an opportunity to attempt to remedy violations caused by earlier pharmacist-managers, the Pharmacy was inspected by representatives of the Board on May 14, 2014. Those representatives found a number of continued violations, including but not limited to:

- a. Compounding records were not readily accessible to pharmacy employees and investigators, though a software update was subsequently performed that made them accessible;
- b. Inadequate documentation of testing, and policies and procedures regarding testing; and
- c. Lack of adequate ventilation to ensure compliance with USP <797>.

26. These violations were continued from Cowart's time as pharmacist-manager. On June 4, 2014, Board representatives re-inspected the Pharmacy and found adequate correction of the violations noted.

27. On June 17, 2014, the Board accepted a Consent Order Terminating the Summary Suspension of the Pharmacy.

28. On July 8, 2014, Cowart completed treatment in the Recovering Professionals Program at Ridgeview Institute in Smyrna, Georgia.

29. On July 9, 2014, Cowart entered a treatment and monitoring contract with NCPRN. As part of the contract with NCPRN, Cowart has undergone regular counseling sessions to address his substance abuse and addiction problems. Pursuant to his NCPRN contract, Cowart has undergone extensive random urine testing and has not tested positive for

controlled substances or alcohol. NCPRN has found instances of non-compliance, limited to two missed calls and one dilute urine screen. The Executive Director of NCPRN testified that the dilute urine screen was not indicative of a relapse in this case, and the Board so finds.

30. On February 13, 2015, Cowart submitted his request for reinstatement of his license.

31. At the April 21, 2015 hearing, Cowart offered the live testimony of Valanda Nelson, Executive Director of NCPRN, and Todd Ahrens, Vice President of Precision Air Technology, each of which were offered and received without objection. Cowart further testified on his own behalf without objection, and offered various documentary exhibits for the Board's consideration without objection. Board staff offered without objection the testimony of various witnesses, including Cowart; Ms. Nelson; Jose Cabaleiro, formerly of ACHC; and Krystal Brashears, Associate Director of Investigations for the Board. Board staff also presented various documentary exhibits for the Board's consideration without objection. The Board has considered all of the testimony and exhibits offered at the April 21, 2015 hearing in determining the appropriate resolution in this case.

32. At the Board hearing on this matter, Cowart conceded that he is an alcoholic and has used unprescribed and illicit drugs, as confirmed by:

- a. Cowart's 1998 court-ordered substance abuse assessment with CDTEG, Inc.;
- b. Cowart's 2005 evaluation and treatment at the William J. Farley Center;
- c. Cowart's 2013 court-ordered assessment via CHOICES SA/MH Inc.;
- d. Documents related to Cowart's 2013 treatment at Fellowship Hall; and

- e. Various documents generated and received by NC PRN in 2013 and 2014, including Patient Progress Reports and Chart Notes;

Each of the aforementioned was considered by the Board in making its determination in this matter.

33. The Board has considered the length and persistence of Cowart's disciplinary and criminal history that has resulted from his substance abuse issues. In that respect, the Board has considered the relative speed of Cowart's relapse following his 2004 Consent Order and the 2005 completion of his first treatment and monitoring contract with NCPRN. The Board has also considered Cowart's violation of the terms of his November 27, 2013 voluntary surrender by his regular presence in the Pharmacy, as well as the nature of Cowart's violations of the Pharmacy Practice Act and its rules and regulations as found herein.

34. Cowart's successful completion of a residential substance abuse treatment program, consistent production of clean drug and alcohol screenings and compliance with his treatment and monitoring contract with NCPRN have all been credited as substantial mitigating factors in determining the appropriate resolution of the case.

#### CONCLUSIONS OF LAW

1. By virtue of the facts found above, Cowart has violated the following statutes, rules and agreements:

- a. North Carolina General Statutes § 90-85.38(a)(5), (6), (7) & (9);
- b. North Carolina General Statutes § 90-85.40(f);
- c. 21 N.C.A.C. 46 .1601(a)(3) and (5);
- d. 21 N.C.A.C. 46 .1810 (2013-14);
- e. 21 N.C.A.C. 46 .2803 (2013-14);

- f. 21 N.C.A.C. 46 .2804 (2013-14);
- g. 21 N.C.A.C. 46 .2806 (2013-14);
- h. 21 N.C.A.C. 46 .2808 (2013-14); and
- i. The Voluntary Surrender of Pharmacist License for Cause, dated November 27, 2013.

2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that the response to Cowart's request for reinstatement set forth in this Final Order is appropriate, as is the response to the Board staff's request for additional discipline.

**WHEREFORE**, it is **ORDERED, ADJUDGED and DECREED** that the request for reinstatement of the license of JAMES T. COWART, License Number 9387, is hereby **GRANTED**.

**WHEREFORE**, it is further **ORDERED, ADJUDGED and DECREED** that Board staff's request for discipline is hereby **GRANTED** and the license is subject to discipline as follows: The license of JAMES T. COWART, License Number 9387, is hereby immediately **SUSPENDED** for **ONE YEAR**, the entirety of which shall be served as an active suspension to be served consecutively from the date of this Order. During the period of active suspension:

- 1) Cowart shall not be present in any pharmacy in North Carolina, except as a customer with a valid prescription;
- 2) Cowart shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- 3) Cowart shall violate no rules or regulations of the Board;

4) Cowart shall honor and abide by all terms of his treatment and monitoring contract with NCPRN;

5) Cowart shall promptly execute a renewal of such contract with PRN for a period of five years, which may be extended in the discretion of NCPRN;

6) Cowart and NCPRN shall report to the Board any instances of noncompliance with the NCPRN treatment and monitoring contract within five (5) days of that noncompliance;

7) Cowart and NCPRN shall report to the Board any use of alcohol or controlled substances by Cowart, or any arrests, citations, or convictions related to any use of any controlled substances or alcohol, within five (5) days of any such event;

8) Cowart shall advise the Board promptly in writing of any change of address; and

9) Cowart and NCPRN shall cooperate with the Board and its attorneys, investigators and other representatives in any investigation of compliance with the provisions of this Final Order.

If Cowart successfully complies with all foregoing conditions of his suspension, he shall be permitted to resume the practice of pharmacy at the conclusion of the suspension, without further order from the Board, subject to the following continuing conditions that shall extend beyond the end of the suspension:

1) Cowart shall first complete an Application for Reinstatement of Inactive Pharmacist License and pay the appropriate fee, however Board staff is directed that the application shall be granted if Cowart has successfully complied with all conditions of his suspension and has otherwise met all generally applicable standards for reinstatement of his license;

2) Cowart shall advise the Board promptly in writing of any change of address or change in practice status;

3) Cowart shall honor and abide by all terms of his treatment and monitoring contract with NCPRN which, even following the term of suspension, may be extended in the discretion of NCPRN;

4) During the term of his NCPRN contract, Cowart and NCPRN shall report to the Board any instances of noncompliance with the NCPRN treatment and monitoring contract within five (5) days of that noncompliance;

5) During the term of his NCPRN contract, Cowart and NCPRN shall report to the Board any use of alcohol or controlled substances by Cowart, or any arrests, citations, or convictions related to any use of any controlled substances or alcohol, within five (5) days of any such event;

6) During the term of his NCPRN contract, Cowart shall obtain prior written approval of all employment as a pharmacist from NCPRN;

7) During the term of his NCPRN contract, Cowart may not be employed as a pharmacist more than 40 hours per week, on average;

8) Cowart shall not serve as pharmacist-manager of any pharmacy;

9) Cowart shall not serve as a preceptor of pharmacy students;

10) Cowart shall violate no laws governing the practice of pharmacy or the distribution of drugs at any time;

11) Cowart shall violate no laws governing the practice of pharmacy or the distribution of drugs at any time;

12) Cowart shall violate no rules or regulations of the Board; and

13) Cowart and NCPRN shall cooperate with the Board and its attorneys, investigators and other representatives in any investigation of compliance with the provisions of this Final Order.

If Cowart fails to comply with any terms or conditions of this Final Order, his license will be subject to additional disciplinary action by the Board.

This the 21st day of April, 2015.

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NORTH CAROLINA BOARD OF PHARMACY

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

  
Jack W. Campbell, IV  
Executive Director

**CERTIFICATE OF SERVICE**

I certify that on the 29<sup>th</sup> day of May, 2015, I served a copy of the Final Order on both Respondent and his counsel of record, by certified mail, return receipt requested:

James T. Cowart

[REDACTED]

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Jack W. Campbell, IV  
Executive Director