

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

GENE HERRING  
(License No. 5202)

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**CONSENT ORDER OF  
DISCIPLINE**

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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 September 19, 2011 and, after appropriate notice, was heard on that day by Board member E. Lazelle Marks at the offices the Board. Respondent Gene Herring (License No. 5202) (hereinafter, "Respondent" or "Herring") was present and was represented by Counsel George L. Collins. Counsel Clinton R. Pinyan 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 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, the holder of License No. 5202 from the Board and the pharmacist-manager of Northwoods Drug Company (“Northwoods”), which is located at 344 Henderson Drive, Jacksonville, North Carolina and which is the holder of Permit No. 3028 issued by the Board. 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. In 2010, as pharmacist-manager for Northwoods, Respondent failed to maintain accurate and adequate records related to controlled substances, as required by state and federal law, and filled prescriptions for schedule II controlled substances in a fashion prohibited by state and federal law, as set forth more specifically herein.

4. On June 24, 2010, Board investigators performed an inspection at Northwoods (the “June 2010” inspection).

5. During the June 2010 inspection, Respondent and Northwoods could not produce any prior records of required biennial invoices of controlled substances.

6. In addition, during that June 2010 inspection, Board investigators located two prescriptions for schedule II controlled substances that Respondent had partially filled more than 72 hours previously and that Respondent acknowledged that he was planning to complete filling upon receipt of his next shipment of those medications. Those two prescriptions were as follows:

a. A prescription for 120 dosage units of Nucynta 50 mg (Rx # 784652). On June 11, 2010, Respondent dispensed 105 dosage units of the prescribed drug. At the time of the June 2010 inspection, Respondent maintained a printout of the label for this prescription on his counter with the handwritten notation “due 15.” Respondent acknowledged to Board

investigators that, at the time of the inspection, he had intended to fill the remainder of the prescription, even though it had been partially filled thirteen days before the inspection.

b. A prescription for 30 dosage units of Concerta 54 mg (Rx # 784930). On June 17, 2010, Northwoods dispensed 28 dosage units of the prescribed drug. At the time of the June 2010 inspection, Respondent maintained a printout of the label for this prescription on his counter with the handwritten notation "due 2." Respondent acknowledged to Board investigators that, at the time of the inspection, he had intended to fill the remainder of the prescription, even though it had been partially filled seven days before the inspection.

7. During the June 2010 inspection, Respondent told the Board investigators that, on multiple occasions in the past, he had dispensed partial fills of schedule II controlled substances and had subsequently filled the remainder of the prescription more than 72 hours after the original partial fill. Respondent informed the Board investigators that, because of financial problems, he often did not have adequate stock on hand to dispense the full amount of prescribed schedule II controlled substances and other drugs.

8. During the June 2010 inspection, the Board investigators warned Respondent that, regardless of his financial circumstances, state and federal law did not permit him to dispense partial fills of schedule II controlled substances and subsequently fill the remainder of the prescription more than 72 hours after the original partial fill. The Board investigators told Respondent that, in the future, if he dispensed partial fills of schedule II controlled substances and could not fill the remainder of the prescription within 72 hours, his legal alternative would be to refuse to fill the remainder of the prescription and to have the patient secure from the physician a new written prescription for any additional schedule II controlled substances to be dispensed.

9. On November 22, 2010, Board investigators performed another inspection of Northwoods (the "November 2010" inspection).

10. During the November 2010 inspection, Respondent initially stated that, since the June 2010 inspection, Respondent had not dispensed partial fills of schedule II controlled substances and then subsequently filled the remainder of the prescription more than 72 hours after the original partial fill.

10. Upon review of Respondent's records, the Board investigators determined that, after the June 2010 inspection, Respondent in fact had continued to dispense partial fills of schedule II controlled substances and then to subsequently fill the remainder of the prescription more than 72 hours after the original partial fill. After further questioning from the Board investigators, Respondent acknowledged that, after the June 2010 inspection, he had continued to do so on multiple occasions.

11. The Board investigators could not definitely determine the number of times, prior to the November 2010 inspection, that Respondent had dispensed partial fills of schedule II controlled substances and then subsequently filled the remainder of the prescription more than 72 hours after the original partial fill. That difficulty arose from Respondent's maintenance of dispensing records for controlled substances and other drugs that were inaccurate, inadequate and did not comply with state and federal law. More specifically, on each instance when Northwoods dispensed a partial fill of any drug, Respondent maintained a record showing incorrectly that the full prescribed amount of dispensed drugs had been dispensed upon the initial partial fill. For example, on July 9, 2010, Respondent was presented with a prescription (Rx# 785848) for 360 dosage units of Oxycodone 5 mg. Respondent partially filled the prescription with 318 dosage units on July 9, 2010. Nevertheless, Respondent incorrectly recorded in the

patient records and on the drug label that he had dispensed all 360 dosage units on July 9, 2010. When Respondent later dispensed the remaining 42 dosage units, he did not record that fact in the patient records and did not create and/or maintain a new drug label when he dispensed the remaining dosage units. This example of improper recordkeeping was repeated with each partial fill of both controlled substances and other drugs.

12. At a minimum, between the June 2010 inspection and the November 2010 inspection, on at least eight (8) occasions, Respondent and Northwoods dispensed partial fills of schedule II controlled substances and then subsequently filled the remainder of the prescription more than 72 hours after the original partial fill. The Board is able to determine that these prescriptions were filled more than 72 hours after the original partial fill because invoices reveal that Respondent and Northwoods did not receive additional shipments of these drugs from their wholesaler until more than 72 hours after the original partial fill. Those prescriptions were Rx numbers 783978, 785848, 786388, 786918, 790678, 791001, 791703 and 791712.

### **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. §§ 90-85.38(a)(4), (6), (7) and (9), 90-85.40(b) and (f), 90-106 and 90-108; 21 N.C.A.C. 46 .1804, 46 .2302, and 46 .2502(a); 21 U.S.C. §§ 331, 827, 828, 829, 842 and 843; and 21 C.F.R. §§ 1304.03, 1304.04, 1304.11, 1304.21, 1304.22 and 1306.13.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the license of Respondent Gene Herring is hereby SUSPENDED for thirty (30) 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 take an inventory of all stocks of controlled substances on hand at least every year at any pharmacy for which Respondent serves as pharmacy manager. The first annual inventory may be taken on any date which is within one year of the previous biennial inventory taken pursuant to 21 C.F.R. § 1304.11, and future annual inventories may be taken on any date which is within one year of the previous annual inventory. All inventories shall be taken consistent with the requirements of 21 C.F.R. § 1304.11 and other federal laws governing biennial inventories. Each annual inventory shall be provided to the Executive Director of the Board and shall be received by the Executive Director within ten (10) business days of the date that the annual inventory is conducted;

2. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order, and any pharmacy in which Respondent is employed will be subject to random inspection by the investigators from the Board;

3. Respondent shall violate no laws governing the practice of pharmacy or the distribution of devices or medical equipment;

4. Respondent shall violate no rules and regulations of the Board; and

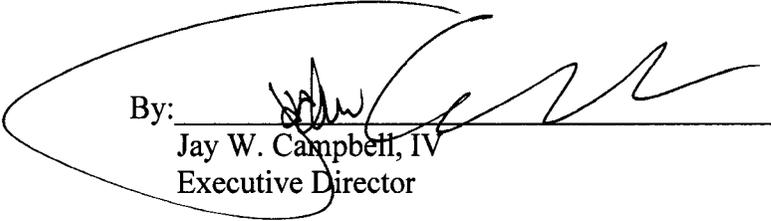
5. Respondent shall promptly advise the Board of any changes in address, employer or practice status, as well as any other factors affecting compliance with this Consent Order.

If Respondent fails to comply with any terms or conditions of this Order, Respondent may be subject to additional disciplinary action by the Board. The requirement for an annual inventory shall survive the expiration of the two-year period of the stay of the suspension provided in this Consent Order.

This the 13<sup>th</sup> day of October, 2011.

NORTH CAROLINA BOARD OF PHARMACY

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

  
Jay W. Campbell, IV  
Executive Director

Gene Herring, the holder of license number 5202, has full knowledge that he has the right to a formal 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:

Gene Herring Date 9-26-2011  
GENE HERRING (License No. 5202)

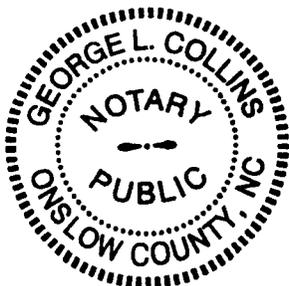
NORTH CAROLINA

ONSLOW COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person(s) personally appeared before me this day, and each acknowledged the due execution of the foregoing document: **Gene Herring**.

Date: 9-26-11

George L. Collins  
Notary Public



My commission expires: 4-19-14

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REJECTED BY:

\_\_\_\_\_ Date \_\_\_\_\_  
GENE HERRING (License No. 5202)