

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
) ORDER OF DISCIPLINE
RICHARD S. MCKINNEY)
License No. 6370)

THIS MATTER came on to be considered at hearing before the North Carolina Board of Pharmacy on April 15, 2014. At this hearing, the Board considered both the disciplinary charges against Mr. Richard S. McKinney (Mr. McKinney) and his request for reinstatement of license to practice pharmacy in North Carolina. Thomas West and Jillian DeCamp appeared as counsel for Mr. McKinney. Ashley Brathwaite appeared as counsel for the Board.

The parties agreed to a series of stipulations and documentary exhibits. Each party then presented the testimony of live witnesses, which included representatives of the North Carolina State Bureau of Investigation, the North Carolina Board of Pharmacy Office of Investigations and Inspections, the North Carolina Pharmacist Recovery Network, Mr. McKinney, and witnesses related to his current treatment and recovery. At the conclusion of the hearing, the Board went into a closed session. The Board then entered the following on the record:

FINDINGS OF FACT

1. At all relevant times, Richard S. McKinney was the holder of North Carolina Board of Pharmacy License Number 6370.
2. At all relevant times, Mr. McKinney practiced as a licensed pharmacist employed by PSC MedSupply, LLC (PSC) and his place of business was in Greensboro, North Carolina.
3. On or about November 17, 2003, Mr. McKinney became the Pharmacist-Manager at PSC's pharmacy in Greensboro, NC. This was the only location able to fill prescriptions in 2003 and any other point in time when PSC was operating in North Carolina.

4. For the duration of Mr. McKinney's employment at PSC, PSC's business model included securing office space in mental health clinics where PSC employees would offer to take the prescription information for the respective clinic's patients and then send the prescriptions to the Greensboro office of PSC to be filled by a pharmacist. The PSC employees stationed in the mental health clinics were not pharmacists.

5. The prescriptions were then filled by pharmacists and pharmacy technicians in PSC's Greensboro office and mailed either to the patient directly or back to the clinic where they would be dispensed to the patients when they returned. If the patients had questions regarding their medications, PSC employees gave them a toll-free phone number to call and speak with a pharmacist. Mr. McKinney, as the Pharmacist-Manager, provided the counseling requested by the patients using PSC to fill their prescriptions.

6. Not long after PSC began filling prescriptions received from mental health clinics, the North Carolina Board of Pharmacy began to investigate complaints regarding PSC's practices. Some complaints suggested that PSC was receiving medications for patients signed up for various manufacturers' Patient Assistance Programs (PAP), and mixing these medications into their regular purchase inventory.

7. Mr. McKinney was initially interviewed regarding PSC in April 2004. At that time, Mr. McKinney and one other pharmacist oversaw all of the technicians filling the prescriptions received from the patients at the PSC sites within mental health facilities across North Carolina.

8. In 2005, while he was a Pharmacist-Manager for PSC, Mr. McKinney received a letter from the North Carolina Board of Pharmacy with a statement of caution regarding the large volume of prescriptions filled at the PSC location where Mr. McKinney worked. The average

number of prescriptions filled at Mr. McKinney's location in June 2005 was approximately 750 prescriptions filled per day.

9. Over the next few years, the Board continued to receive and investigate complaints made against Mr. McKinney's employer and Mr. McKinney was interviewed multiple times. The Board also worked with authorities at the state and federal level investigating PSC for alleged criminal acts including, but not limited to, alleged Medicare and Medicaid fraud.

10. On December 3, 2009, one of the owners of PSC contacted Jason Smith (Investigator Smith), a North Carolina Board of Pharmacy Investigator, to report that Mr. McKinney, the Pharmacist-Manager, and a technician were diverting medications. PSC's owners further reported the pharmacy did not dispense Nubain; yet the pharmacy's records indicated it had ordered 1,400 dosage units over the last three years. PSC's owners reported the pharmacy was short by 7,000 dosage units of hydrocodone.

11. Following the receipt of these allegations, PSC employees were given drug screens and Mr. McKinney tested positive for cocaine.

12. Mr. McKinney was fired by PSC on December 7, 2009.

13. Investigator Smith met with Mr. McKinney on December 7 and December 9, 2009. At both of these meetings, Mr. McKinney denied diverting hydrocodone from PSC.

14. Mr. McKinney executed a Voluntary Surrender of License for Cause on December 9, 2009.

15. Jason Smith's investigation of the PSC owner's report in December 2009 indicated evidence of violations of 21 C.F.R. 1304.11(c), 21 NCAC 46 .2502(d) and 21 NCAC 46 .2502(k), and 21 NCAC 46 .3001(a). Investigator Smith's investigation also contained

evidence showing Mr. McKinney diverted prescription medications for his own use and for at least one other PSC employee, and improperly used the no-charge medications designated for PAP participants to fill prescriptions for paying customers.

16. While the Board was conducting its own investigation, the North Carolina State Bureau of Investigation (SBI) began an investigation into allegations of diversion by Mr. McKinney. Special Agent J. G. Fullwood (SA Fullwood) participated in this investigation and was present during several interviews of Mr. McKinney where Investigator Smith was also present.

17. Mr. McKinney contacted the North Carolina Pharmacist Recovery Network (PRN) in December 2009. In January 2010, Mr. McKinney submitted himself for evaluation and treatment for abuse of illegal substances at Bradford Health Services in Warrior, Alabama.

18. Upon Mr. McKinney's successful completion of ten (10) weeks of inpatient treatment, Mr. McKinney returned to North Carolina.

19. Mr. McKinney entered into a Treatment Plan Agreement (Agreement) with PRN on March 15, 2010.

20. After two (2) months of treatment under the Agreement, Mr. McKinney met with Investigator Smith for an interview in May 2010.

21. Mr. McKinney told Investigator Smith during an interview in May 2010 that he had diverted hydrocodone for his own use beginning in March 2008. He further admitted to ordering one (1) box of ten (10) ampoules of Nubain for the benefit of a pharmacy technician he supervised. Finally, Mr. McKinney reported he was instructed by the owners of PSC to divert medications intended for PAP recipients. This was the first time Mr. McKinney admitted violating any of the statutes or rules governing the practice of pharmacy in North Carolina.

22. On December 20, 2011, Mr. McKinney was arrested and charged with one count of Embezzlement of Controlled Substances by an Employee of a Registrant.

23. On March 15, 2012, Mr. McKinney entered into an agreement with the State of North Carolina wherein the State agreed not to prosecute Mr. McKinney in exchange for Mr. McKinney's full cooperation with, "all state and federal agencies that may be investigating crimes committed by PSC MedSupply, LLC, their employees or agents."

24. Mr. McKinney entered into an agreement with the federal government in its investigation involving possible violations of Title 18, United States Code, Section 1347, wherein the federal government agreed to give Mr. McKinney use immunity in exchange for Mr. McKinney's cooperation, as evidenced in the May 3, 2010 letter from United States Attorney Anna Mills Wagoner.

25. Mr. McKinney remains in outpatient treatment as of the date of the hearing.

26. Mr. McKinney is required to attend three (3) abstinence based meetings per week and Mr. McKinney repeatedly exceeds this requirement.

27. Mr. McKinney is subject to 24 random drug screenings per year. Mr. McKinney has not tested positive since he entered the program.

28. Mr. McKinney began therapy with a licensed professional counselor and licensed clinical addictions specialist in March 2010. When Mr. McKinney began the program, he was required to attend three (3) individual and group sessions per month. Based on his progress in the program, his therapist, and NCPRN's recommendation, he currently is only required to attend one session per month. Records show Mr. McKinney has not missed a scheduled appointment with his counselor since he began the program.

29. Mr. McKinney's licensed professional counselor provided a sworn statement stating her opinions regarding Mr. McKinney's recovery and request for reinstatement.

CONCLUSIONS OF LAW

Mr. McKinney's conduct, as set forth in the findings of fact set out above, constitutes grounds for discipline pursuant N.C. Gen. Stat. §§ 90-85.38(a)(3), (5), (6), (7), and (9) as follows:

- a) Mr. McKinney indulged in the use of drugs to an extent that rendered him unfit to practice pharmacy in violation of N.C. Gen. Stat. § 90-85.38(a)(3);
- b) Mr. McKinney developed a physical or mental disability that rendered him unfit to practice pharmacy with reasonable skill, competence and safety to the public in violation of N.C. Gen. Stat. § 90-85.38(a)(5);
- c) Mr. McKinney failed to comply with the laws governing the practice of pharmacy and the distribution of drugs in violation of N.C. Gen. Stat. §§ 90-85.38(a)(6), 21 NCAC .1411, and 21 NCAC 46 .2502(d);
- d) Mr. McKinney failed to comply with the rules adopted by the Board in violation of N.C. Gen. Stat. §§ 90-85.38(a)(7), 21 NCAC .1411, and 21 NCAC 46 .2502(d); and
- e) Mr. McKinney was negligent in the practice of pharmacy in violation of N.C. Gen. Stat. § 90-85.38(9).

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing findings of fact and conclusions of law, the Board enters the following:

IT IS THEREFORE ORDERED that the request of the Board staff for discipline is **GRANTED** and the reinstatement of Mr. McKinney's license to practice pharmacy will be based upon certain restrictions and preconditions as set forth hereafter. **FURTHERMORE**, it is hereby **ORDERED** that Mr. McKinney's petition for reinstatement of his license is hereby **GRANTED**, only in the event that Mr. McKinney satisfies preconditions as set forth hereafter, and subject to the restrictions stated herein.

1. As a prerequisite to application for reinstatement, Mr. McKinney shall:
 - a) Acquire no fewer than 1,000 hours of practical pharmacy experience under the supervision of a licensed North Carolina pharmacist, such hours to commence no earlier than the date of entry of this Order. Mr. McKinney shall submit one or more North Carolina Practical Pharmacy Experience Affidavits as evidence of his satisfactory completion of this requirement. Mr. McKinney shall not acquire more than 32 hours of practical experience per week, though this limitation may be increased at the discretion of NCPRN.
 - b) Mr. McKinney shall complete continuing education courses to the same extent as if his license had not been surrendered, for a total of 90 hours through the end of 2014. No fewer than 48 hours of this continuing education must be live programming. In addition, until Mr. McKinney's license is reinstated, Mr. McKinney shall complete continuing education in subsequent years as though he were a licensed pharmacist. Mr. McKinney shall submit to the Board's Executive Director all documentation of his satisfaction of continuing education requirements.

- c) At such time that Mr. McKinney completes the requirements specified in paragraphs 1(a) and 1(b) above, he shall complete an Application to Reinstate a Lapsed or Inactive License and pay the appropriate fee.

2. If and when Mr. McKinney's license is reinstated, that license shall be **PERMANENTLY SUSPENDED**, with that suspension **STAYED INDEFINITELY**. Mr. McKinney's license is **ACTIVELY SUSPENDED FOR A PERIOD OF FIFTY-TWO (52) MONTHS**. The active suspension is deemed to have been served from the date of his voluntary surrender of license on December 9, 2009 to the date of this Order. Furthermore, if and when Mr. McKinney's license is reinstated, that license is subject to the following restrictions:

- a) Mr. McKinney shall successfully complete his NCPRN treatment and monitoring agreement, which shall be extended for a period of 18 months beyond its current expiration date. NCPRN may, in its discretion, further extend the duration of the treatment and monitoring agreement.
- b) Mr. McKinney shall not serve as a pharmacist-manager of any pharmacy.
- c) Mr. McKinney shall not serve as a preceptor of pharmacy students.
- d) Mr. McKinney shall not practice as a pharmacist more than 32 hours per week, on average. This limitation may be extended at the discretion of NCPRN.
- e) Mr. McKinney shall violate no laws governing the practice of pharmacy or the distribution of drugs.
- f) Mr. McKinney shall violate no rules or regulations of the Board.

3. If Mr. McKinney fails to comply with any term or condition of this Order, the stay of the permanent suspension of his license shall be lifted and Mr. McKinney may be subject to additional disciplinary action by the Board.

This 15th day of April, 2014.



Jack W. Campbell, IV
Executive Director

CERTIFICATE OF SERVICE

I certify that on April 24th, 2014, I caused a copy of this Order of Discipline to be served on Petitioner by registered mail, return-receipt requested:

[REDACTED]



Jack W. Campbell IV
Executive Director

cc: McKinney License File, #06370
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