

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)	
)	CONSENT ORDER
ROHITKUMAR S. PATEL)	
License No. 9077)	

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 February 19, 2007, and after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy by Board member Parker Chesson. Mr. Patel was present and was represented at the conference by Barry S. Cobb. Board counsel Clinton R. Pinyan and members of the Board's investigation staff were present at the conference. Based upon the record in this proceeding and the statements and materials presented at the conference, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent Rohitkumar S. Patel is licensed by the Board to practice pharmacy and is the holder of license number 9077. At all relevant times, Respondent Patel was employed by Nirmilas, LLC d/b/a Felicity Pharmacy, 8328 Pineville-Matthews Road, Suite 301-A, Charlotte, North Carolina, 28226, and served as its pharmacist-manager. Respondent Patel is no longer employed at this pharmacy, which is no longer the holder of a permit from the Board.
2. In January of 2005, Respondent Patel contacted Dr. David Work at the Board of Pharmacy by telephone to inquire about the legality of sending out prescriptions via mail. Mr. Patel was told that a licensee could fill prescriptions via mail, if done pursuant to the provisions of North Carolina law and Pharmacy Board rules. Respondent Patel did not disclose that he intended to fill prescriptions transmitted via internet nor did he specifically disclose his

contemplated means of delivery of prescriptions. Dr. Work expressed no opinion during this conversation about the legality of internet prescribing or the specific plans for shipment of prescriptions ultimately utilized by Respondent Patel.

3. Between January 2005 and April 2005, Respondent Patel dispensed prescriptions that were sent to him via the internet by Joaquin (Jack) Tomas of the Innovative Pharmacy Group, Inc. Mr. Tomas was a physician who, during all relevant times, had had his license to practice medicine indefinitely suspended by the Florida Board of Medicine. Mr. Patel was not aware of Mr. Tomas' loss of his medical license, and filled no prescriptions written by Mr. Tomas. During this period, Respondent Patel dispensed approximately 100-120 prescriptions per day that were sent to him via the internet.

4. On July 21, 2006, Board investigator Jason Smith interviewed Respondent Patel. Respondent Patel admitted that, between January 2005 and April 2005, he had dispensed approximately 100-120 prescriptions per day that were sent to him via the internet by Innovative Pharmacy Group, Inc.

5. Between April 2006 and June 2006, Respondent Patel dispensed prescriptions that were sent to him via facsimile from either Dr. Tom Hopkins, MD, of Great Neck, New York, or Dr. Katherine M. Brooks, MD, of Kokomo, Indiana. These prescriptions were arranged by NC Group, Inc. Respondent Patel filled these prescriptions, and shipped drugs, to patients residing in California, Colorado, Connecticut, Florida, Georgia, Kansas, Massachusetts, Michigan, Mississippi, New Jersey, Oregon, Rhode Island, Texas, Utah, Virginia and Washington. Records for seven days during that time period (April 5, 2006, April 10, 2006, May 30, 2006, June 1, 2006, and June 21, 22 and 23, 2006) demonstrate that, on those days, Dr. Patel dispensed 7440

units of controlled substances, principally hydrocodone/acetaminophen, pursuant to prescriptions from Dr. Hopkins and Dr. Brooks to patients in more than 10 states.

6. Respondent Patel did not offer to counsel any of the patients to whom he dispensed the prescriptions set forth above.

7. Respondent Patel dispensed prescription drugs, including Schedule III controlled substances, when he knew or should have known that the prescriptions were not issued pursuant to a physical exam and with a valid, pre-existing prescriber-patient relationship.

8. On September 11, 2006, Board investigator Jason Smith interviewed Respondent Patel. Respondent Patel admitted that he had dispensed prescriptions as set forth in paragraphs 4 through 7 above. He stated that he subjectively believed that dispensing prescriptions via the internet was legal prior to a memorandum from Dr. David Work in January of 2006 regarding the Board's position on this practice. After that time, he understood that dispensing prescriptions via internet was illegal, but he subjectively believed that these prescriptions satisfied the requirements of the pharmacy laws and regulations because (a) they were delivered by facsimile rather than by internet, and (b) he understood that the prescribing physicians had taken a medical history from the patients and believed that the review of medical records by a doctor and a telephone conversation between the doctor and patient constituted a valid doctor-patient relationship.

9. Mr. Patel cooperated at all times with requests of Board investigator Jason Smith, and voluntarily answered all questions posed of him by Mr. Smith. On July 25, 2006, Mr. Patel voluntarily surrendered the Felicity Pharmacy permit for cause as a result of the matters set forth in this Consent Order. This cooperation has factored into the terms of this consent order.

CONCLUSIONS OF LAW

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

1. Respondent Patel violated the following statutes and rules when he dispensed prescriptions sent to him via the internet and/or facsimile:

- a. N.C. Gen. Stat. § 90-85.38(a)(6), (7) and (9);
- b. N.C. Gen. Stat. § 90-85.40(b);
- c. N.C. Gen. Stat. § 90-106;
- d. N.C. Gen. Stat. § 90-108;
- e. N.C. Gen. Stat. § 106-134;
- f. N.C. Gen. Stat. § 106-134.1;
- g. 21 N.C.A.C. 46.1411
- h. 21 N.C.A.C. 46.1801(b);
- i. 21 N.C.A.C. 46.1804;
- j. 21 N.C.A.C. 46.1805;
- k. 21 N.C.A.C. 46.2502;
- l. 21 N.C.A.C. 46.2504;
- m. 21 U.S.C. § 829;
- n. 21 U.S.C. § 842;
- o. 21 C.F.R. § 1306.04;
- p. 21 C.F.R. § 1306.11; and
- q. 21 C.F.R. § 1306.21.

2. Respondent Patel 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:


3. Respondent Patel's license, number 9077, shall be suspended for ten (10) months,
which shall be served as follows:

- a. Respondent's license to practice pharmacy shall be actively suspended for a period of two (2) months, which active suspension will commence immediately upon the acceptance of this Consent Order by the Board of Pharmacy. Respondent shall not be present in any pharmacy except as a customer during the active suspension of his license; and
- b. The remaining eight (8) month suspension of Respondent's license shall be stayed for a period of three (3) years that shall commence upon the conclusion of his two-month active suspension. The stay of the suspension of Respondent's license is subject to the following conditions:
 - i. Prior to the conclusion of the active suspension of his license, Respondent shall pass the jurisprudence portion of the Board's licensure examination. Respondent may schedule the taking of the jurisprudence examination by contacting the National Association of Boards of Pharmacy.
 - ii. During the stay period, Respondent Patel shall not serve as a pharmacist-manager.
 - iii. During the stay period, Respondent Patel shall advise the Board in writing and within 30 days of any change of the following:

- (a) employment address, (b) home address, (c) home phone number, or
(d) change in practice status.
- iv. Respondent Patel shall cooperate with the Board, its attorneys,
investigators and other representatives in any investigation and
compliance with the provisions of this Consent Order.
- v. During the stay period, Respondent Patel shall violate no laws
governing the practice of pharmacy or the distribution of drugs.
- vi. During the stay period, Respondent shall violate no rules and
regulations of the Board.
4. If Respondent fails to comply with any terms or conditions of this Consent Order,
Respondent may be subject to additional disciplinary action by the Board.
- This the 20th day of February, 2007.

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director

Rohitkumar S. Patel, the holder of license # 9077, has full knowledge that he has the right to a hearing, where he would have the right to be represented 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.

CONSENTED TO BY:

Rohit S Patel

Rohitkumar S. Patel
License No. 9077

2-19-07

Date

Sworn to and subscribed before me
this the 19th day of February, 2007.

Carol S. Smith

Notary Public Signature

Carol S. Smith

Notary Public Printed Name

My Commission Expires: 12/05/11