

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

JAMES ROURK
(License No. 11439)

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**CONSENT ORDER OF
DISCIPLINE**

THIS MATTER, in part, 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 February 16, 2009, and, after appropriate notice, was heard on that day by Board member L. Stan Haywood at the offices the Board. Respondent R.Ph. James Rourk (License No. 11439) (hereinafter "Rourk" or "Respondent") was present and represented by counsel Steven M. Shaber and Christopher P. Brewer. Counsel Alexander Elkan represented the Board. Members of the Board's investigative staff and other respondents involved with the subject matter of the Conference were also present.

This matter, in part, also 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 October 14, 2009, and, after appropriate notice, was heard on that day by Board member Parker Chesson at the offices the Board. Respondent R.Ph. James Rourk (License No. 11439) (hereinafter "Rourk" or "Respondent") was present and represented by counsel Jim Wilson. Counsel Alexander Elkan represented the Board. Members of the Board's investigative staff and other respondents involved with the subject matter of the Conference were also present.

The 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 Rourk 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 Rourk is, and was at all relevant times referred to herein, the holder of Pharmacist License No. 11439.

Kinston Facility

3. During all relevant times until December 11, 2007, Respondent Rourk was the pharmacist manager for the Neil Medical Group Pharmacy (Permit No. 4428), located at 2545 Jetport Road, Kinston, North Carolina. Respondent Rourk, the Pharmacy and its employees are and were at all relevant time periods subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

4. Between September 2005 and December 11, 2007, Respondent Rourk failed to provide adequate security measures and failed to maintain an appropriate inventory control system to detect and prevent the diversion of controlled substances at the Pharmacy.

5. During the time period from September 2005 through May 2008, approximately 55,000 dosage units of controlled substances, including, but not limited to Butalbital (a schedule

III controlled substance), Hydrocodone/APAP (a schedule III controlled substance) and Lorazepam (a schedule IV controlled substance) were diverted from the Respondent Pharmacy. Some of the diversions of these substances were perpetrated by a custodial employee, and others were perpetrated by registered technician Lori Tyndall, both as set forth below.

6. In September 2006 the Respondent Rourk became aware that registered technician Lori Tyndall, Registration No. 7403 had diverted and attempted to divert an unknown quantity of controlled substances, including but not limited to, Hydrocodone/APAP (a schedule III controlled substance) and Lorazepam (a schedule IV controlled substance). When Respondent Rourk became aware of the attempted diversion and diversion, Technician Tyndall was terminated, but her conduct was not appropriately reported to the North Carolina Board of Pharmacy or to the U.S. Drug Enforcement Administration.

7. The failure by the Respondent Rourk to appropriately report the September 2006 diversion by technician Tyndall may have contributed to technician Tyndall's subsequent diversion of controlled substances during employment as a technician at another pharmacy.

8. It appears that many, if not most, of the diversions set forth in Paragraph 4 were perpetrated by a custodial employee.

9. As to the diversions by the custodial employee, the Board investigator acknowledged that there was no evidence the Respondent Rourk had knowledge of such diversions prior to notification to the Board of such diversions by the North Carolina State Bureau of Investigations in May 2008.

Mooreville Facility

10. During all relevant times from December 11, 2007 to the present, Respondent Rourk has served the pharmacist manager for Respondent Neil Medical (Permit Number 4780) located at 947 N. Main Street, Mooreville, North Carolina.

11. Between about January 2008 and January 2009, Respondent Rourk failed to provide adequate security and failed to maintain an appropriate inventory control system to detect and prevent the diversion of controlled substances.

12. During this time period, at least 39,000 dosage units of controlled substances, including but not limited to about 20,000 dosage units of Hydrocodone/APAP (a schedule III controlled substance), about 200 dosage units of Oxycodone/APAP (a schedule III controlled substance), and about 19,000 dosage units of Alprazolam (a schedule IV controlled substance), were diverted from the Pharmacy.

13. Respondent Rourk conducted an investigation which resulted in the discharge of four employees.

14. Respondent Rourk reported the diversions from the Mooreville facility to the Board in August 2008, November 2008, and April 2009.

15. The Board investigator acknowledged that Respondent Rourk cooperated in the investigation of these matters by the Board.

16. Respondent Rourk acknowledges responsibility for the failure to report the diversions by Technician Tyndall and for failure to provide adequate security measures and failure to maintain an appropriate inventory control system to detect and prevent the diversion of controlled substances at both the Kinston and Mooreville facilities.

17. Respondent Rourk provided testimony and evidence demonstrating that, subsequent to learning of the diversions, the following measures were implemented to improve security and inventory control systems:

- Install additional surveillance camera(s).
- Install a locked cage with limited access to securely store all excess stock of CIII-CV controlled substances.
- Use a tracking log out system as new supplies are needed.
- Limit key access to the control cabinets by creating a log for key assignments.
- Appropriate pharmacy personnel will be present when unlocked controlled drugs are in the dispensing area of the pharmacy.
- Reconcile sales, dispensing, and purchases with inventory during each physical inventory three times yearly.
- Perform selective inventory and reconcile hydrocodone and anxiolytics every two weeks.
- Not less than once a year, an auditor will verify compliance with inventory procedures.
- Limit pharmacy access to pharmacy personnel only. Pharmacy staff to remove trash directly to the compactor via a buddy or similar system with adequate safeguards.
- Prohibit purses, bags, large packages, and lab coats in the pharmacy.
- Discontinue dispensing of controls to employees.
- Background check and criminal history will be performed on all employees.

FINDINGS OF FACT REGARDING DISCIPLINE

Respondent's misconduct is mitigated by the following factors:

- a. Absence of a prior disciplinary record;
- b. Cooperative approach to the Board's investigation proceedings;
- c. Acceptance of responsibility;

- d. Testimonial and evidentiary demonstration of Respondent's efforts to improve inventory, security, and control measures for controlled substances.

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 Rourk's conduct, as set out in the findings of fact above were in violation of N.C. Gen. Stat. §§ 90-85.25(b), 90-85.38(a)(6), (7) and (9), 90-85.40(a), (b), and (f), 90-106, 90-108, 106-122, 106-134.2; and 21 N.C.A.C. 46.1804, 46.1805, and 46.2502.
3. Respondent Rourk's conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38(a).

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of Respondent, the Board enters the following:

CONSENT ORDER OF DISCIPLINE

The license of Respondent R. Ph. James Rourk, License No. 11439, is hereby **SUSPENDED** for thirty (30) days, which suspension is to be served as follows:

1. Active Suspension. Seven (7) days of the suspension must be served as an active suspension, which suspension shall be served on seven (7) consecutive days - beginning on a Monday at 12:00am and ending the next consecutive Monday at 12:00am.

Such suspension shall be served and completed by Respondent Rourk within one year after the date this Consent Order is executed and accepted by the Board.

Service of such suspension shall take place only after Respondent Rourk notifies the Executive Director of the Board of Pharmacy, in writing, of Respondent's intention to serve the active suspension. Such notice shall inform the Executive Director of the dates that the Respondent intends to serve such suspension.

Respondent shall surrender his license to the Executive Director of the Board of Pharmacy during the period of active suspension.

During the seven (7) day active suspension period, Respondent shall not work as a pharmacist or in any capacity in any pharmacy, and shall not enter into any pharmacy in any capacity, except as a customer or patient and for the limited purposes associated therewith.

2. Stayed Suspension. The remainder of the suspension, twenty-three (23) days, shall be stayed on the following conditions that must be met for the period of one year from the date this Consent Order is executed and accepted by the Board:

- a. Respondent Rourk shall violate no laws governing the practice of pharmacy or the distribution of drugs, medical devices or medical equipment;
- b. Respondent Rourk shall violate no rules and regulations of the Board;
- c. Respondent Rourk shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order; and
- d. Respondent Rourk shall not serve as pharmacy manager from December 1, 2009 to the end of the stayed suspension.

3. Respondent Rourk may be subject to additional disciplinary action by the Board for any violations of the terms and conditions of this Consent Order.

This the 27th day of October, 2009.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director

James Rourke, the holder of license number 11439, 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:

JAMES ROURK (License No. 11439)

James Rourke Date 10/14/09
By: James G Rourke
Title: Pharmacy Manager.

NORTH CAROLINA

Durham COUNTY

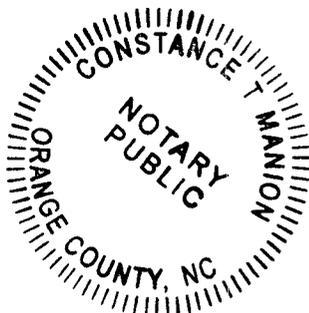
I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person(s) personally appeared before me this day, and each acknowledged the due execution of the foregoing document: CONSENT ORDER OF DISCIPLINE

Date: 10/14/09

Constance J. Manion
Notary Public

CONSTANCE T. MANION

My commission expires: 9-3-2012



REJECTED BY:

JAMES ROURK (License No. 11439)

_____ Date _____

By: _____

Title: _____