

STATE OF NORTH CAROLINA
BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

AEROFLOW, INC.
(DME Permit Number 554)

)
)
)
)
)
)

CONSENT ORDER

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 June 14, 2010 and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Robert McLaughlin, Jr. Board Counsel and members of the Board's investigative and legal staff were present at this conference. Respondent Aeroflow, Inc. (DME Permit No. 554) (hereinafter, the "Respondent" or "Aeroflow") was present by and through its principal Don J. Hite.

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. During all relevant time periods, Aeroflow has had a principal office address of 856 Sweeten Creek Road, Asheville, North Carolina 28803 and has been the holder of North Carolina Board of Pharmacy Durable Medical Equipment ("DME") Permit Number 554.

3. Respondent is and was 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. On or about May 12, 2009, Aeroflow was called to provide oxygen on an after-hours basis for a patient who was being released from the hospital. With respect to that patient, Aeroflow

a) failed to properly document patient counseling with respect to the use of oxygen equipment in that no orientation checklist or any documentation on patient counseling was undertaken as required; and

b). failed to properly document in the patient record a written plan of service including an assessment of the safety of the home environment, the caregiver or patient ability to comply with the prescription, and the caregiver or patient ability to operate and clean the equipment as instructed.

5. As a consequence of the above referenced documents not having been obtained, Aeroflow did not maintain such documents and records as set forth above at the dispensing site for three years, and could not provide such documents upon request by a Board investigator.

6. On May 4, 2009, Aeroflow failed to properly maintain segregated areas for clean, dirty and contaminated equipment in that Aeroflow maintained a storage building that contained both full, clean oxygen cylinders and used, empty and/or defective oxygen cylinders in the same area.

11. The Board finds that discipline is warranted due to the nature of the conduct described.

CONCLUSIONS OF LAW

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

1. Respondent violated N.C. Gen. Stat. § 90-85.40(f), and 21 N.C.A.C. 46.2504(g), 46.2608, 46.2610(c)(4), 46.2610(h)(1) and (3), and 46.2610(i).


2. Respondent consents to the findings herein and agrees that such conduct constitutes sufficient grounds under N.C. Gen. Stat. § 90-85.38 for the imposition of the disciplinary action set forth below.

DISCIPLINARY ACTION

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that Respondent Aeroflow, Inc. is hereby FORMALLY REPRIMANDED.

This the 19th day of April, 2011.

NORTH CAROLINA BOARD OF PHARMACY

By: 
Jay W. Campbell, IV
Executive Director

Aeroflow, Inc., the holder of DME Permit Number 554, has full knowledge that it has the right to a hearing, at which it would have the right to be represented at its 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, it certifies that it has read the foregoing Consent Order and that it 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 understands and agrees that this Consent Order will not become effective unless and until approved by the Board.

The undersigned understands that it has the right to have counsel of its choice review and advise it with respect to its rights and this Consent Order, and represents that it enters this Consent Order after consultation with its counsel or after knowingly and voluntarily choosing not to consult with counsel.

ACCEPTED AND CONSENTED TO BY:

AEROFLOW, INC. (DME Permit No. 6966)

AEROFLOW, INC.

By: 

Title: PRESIDENT

Date: 3/16/2011

STATE OF NC

Buncombe COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person personally appeared before me this day and acknowledged the due execution of the foregoing document: Don J. Hite

Date: 3/16/11

Ashlie R Groff
Notary Public

ASHLIE R GROFF
Notary Public, North Carolina
Buncombe County
My Commission Expires
December 16, 2012

My commission expires: 12/16/12