

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

√ Carolina Home Medical)
(DME Permit No. 0877))
) CONSENT ORDER
Carolina Home Medical)
(Pharmacy Permit No. 7030))

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 22, 2005 and was heard on that day at the Board office before Board member Stan Haywood. Also present at the conference were the following: Jason Smith, Board Investigator; Steve Hudson, Director of Investigations and Inspections; Anna Baird Choi, Counsel for the Board; and Rob Talton and Robert McLaughlin, representatives of Carolina Home Medical (Respondent Facility and Pharmacy). Based upon the record in this proceeding and the statements and materials presented at the conference, the Board makes the following:

FINDINGS OF FACT

1. Respondent Facility is the holder of DME permit number 0877 and is located at 601-C North 8th Street, Smithfield, North Carolina. Respondent Pharmacy is the holder of pharmacy permit number 7030 and is located at 2117 South Glenburnie Road, New Bern, North Carolina. Respondent Facility and Respondent Pharmacy share common ownership.
2. On March 18, 2004, the Board's Investigator learned of allegations that Respondent Facility may have dispensed prescription medications and may also have a storage

facility for DME and oxygen in violation of ACHC (Accreditation Commission for Health Care, Inc.) accreditation.

3. Upon investigation, the Board's Investigator learned that a CPAP delivery technician, Ken Eubanks set-up CPAP masks for patients. Mr. Eubanks was not a respiratory therapist.
4. Joey McLaughlin, Pharmacist Manager for Respondent Pharmacy and Robert Talton for Respondent Facility, stated that when management was made aware that the technician was performing duties reserved for a licensed respiratory care therapist, he was instructed to cease. Also, additional policies and procedures were put into place to prevent this activity from occurring in the future.
5. The N.C. Respiratory Care Board has investigated this matter and has taken action accordingly.

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

CONCLUSIONS OF LAW

1. Respondent Facility admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under G.S. 90-85.38.
2. Respondent Permit admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under G.S. 90-85.38.
3. Respondent Facility violated the following statutes and rules when it failed to comply with requirements of the Pharmacy Practice Act:
 - a. G.S. 90-85.38(6) and (7),
 - b. 21 N.C.A.C. 46 .2601; and

- c. 21 N.C.A.C. 46 .2610.
4. Respondent Permit violated the following statutes and rules when it failed to comply with the requirements of the Pharmacy Practice Act:
- a. G.S. 90-85.38(6) and (7), and
 - b. G.S. 90-85.40.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE,
ORDERED, as follows:

1. Respondent Facility, DME permit number 877, is hereby warned.
2. Respondent Pharmacy, pharmacy permit number 7030, is hereby warned.
3. Respondents Facility and Pharmacy shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of their practice and compliance with the provisions of this Consent Order.
4. Respondents Facility and Pharmacy shall violate no laws governing the practice of pharmacy or the distribution of devices and medical equipment.
5. Respondents Facility and Pharmacy shall violate no rules and regulations of the Board.
6. If Respondents Facility and Pharmacy fails to comply with any terms or conditions of this Consent Order, Respondents may be subject to additional disciplinary action by the Board.

This the 17th day of January, 200^b5.

NORTH CAROLINA BOARD OF PHARMACY

By:



David R. Work
Executive Director

I, Robert A. Talton, Jr, (name), the undersigned, am Person In Charge (title) for the holder of DME permit #0877 and am authorized to sign this Consent Order. I have full knowledge that the permit holder has the right to a hearing and to be represented by counsel in this matter. I freely, knowingly, and voluntarily waive such right by entering into this Consent Order on behalf of DME permit #0877. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and that that the permit holder voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. I further understand that should the permit holder violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. I understand and agree that this Consent Order will not become effective unless and until approved by the Board.

Robert A. Talton Jr, Person In Charge on behalf of DME permit #0877, accepts the Board member's proposal in this matter.

CONSENTED TO BY: [Signature]
Name: _____ Date: 11/10/05
Title _____

State of North Carolina
Johnston County

I, Crystal R. Thornton, a Notary Public for the above-named County and State, do hereby certify that Robert A. Talton Jr personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 10th day of November, 2005.

Crystal R. Thornton
Notary Public
My Commission Expires August 06, 2008

_____, _____ on behalf of DME permit #0877, does not accept the proposed Consent Order in this matter.

By: _____
Name: _____ Date: _____
Title: _____