

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

CVS Pharmacy
(Permit No. 6548)

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**CONSENT ORDER OF
DISCIPLINE**

THIS MATTER 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 July 20, 2009 and, after appropriate notice, was heard on that day by Board member L. Stan Haywood at the offices the Board. The Respondent CVS Pharmacy (Permit No. 6548) (hereinafter, "Respondent" or "CVS") was present and was represented by Counsel George Hearn. Counsel Sarah Phillips represented the Board. Members of the Board's investigative staff and other Board counsel were also present at the Conference.

CVS 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 its consent, CVS also stipulates that it waives its 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 CVS Pharmacy is, and was at all relevant times referred to herein, the holder of Pharmacy Permit No. 6548, which Pharmacy is located at 505 Smokey Park Highway, Asheville, North Carolina (the "Pharmacy"). CVS and its employees were subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. In or around December 2007, Respondent and R. Ph. Robin James (License No. 17591) ("James") failed to timely notify the Board that James had become the pharmacist-manager of CVS. James testified that she had mailed the notification to the Board; however, the Board has no record of ever receiving the packet. James testified that she and CVS never followed up on the status of the change in pharmacist-manager, notwithstanding the fact that she and CVS knew or should have known that they did not receive a permit certificate listing James as pharmacist-manager. They should have followed up with the Board about the change in pharmacist-manager, but they did not do so.

4. Between about May 2008 and September 2008, James was on leave. The Pharmacy was required to have an acting or temporary pharmacist-manager when James was on leave.

5. R. Ph. Rebecca Fire (License No. 16748) ("Fire") knew that the regular pharmacist-manager was taking a leave of absence and understood that she would be taking responsibility of the Pharmacy in her absence. The Board finds and concludes that Fire was, in fact, acting or temporary pharmacy-manager from May 2008 through September 2008. Although Fire testified that she had never accepted the duties of a pharmacist-manager, the Board finds it unreasonable and unlawful for a pharmacist to accept responsibility for managing a permit holder, yet disclaim the duties imposed on such a manager by North Carolina law. In

the alternative, Respondent operated between May 2008 and September 2008 without having any pharmacist-manager present for 32 hours per week.

6. On August 14, 2008, Respondent and R. Ph. Mary Sentelle (License No. 5286) (“Sentelle”) improperly dispensed Clonidine 0.1 mg to a patient who did not have a prescription for that drug, failing to exercise appropriate professional care and judgment in dispensing the prescription.

7. When the patient questioned the additional prescription, Respondent did not properly respond and act to investigate whether the patient had a prescription for Clonidine 0.1 mg.

8. On the date of the error, CVS failed to adequately supervise technicians.

9. From time to time during 2008, CVS had more than two technicians working under the supervision of one pharmacist without Board authorization and failed to adequately supervise technicians. CVS and its agents testified that they mailed a waiver request to the Board. However, the Board did not receive the request. No waiver was ever issued by the Board, and licensees and permit holders are not permitted to vary from the pharmacist-technician ratio unless and until they actually receive a waiver from the Board. The Board finds and concludes that it is unreasonable and unlawful for a licensee or permit holder to allow more than two technicians to work under the supervision of one pharmacist, simply based on a pending waiver request. Respondent acknowledged that, although it never received a waiver of the technician to pharmacist ratio from the Board, CVS and its agents still knowingly violated the statute.

10. During 2008, CVS failed to display its current permit. When the investigator visited the store on October 23, 2008, no one knew where the 2008 permit was located and the current permit had not previously been displayed during 2008.

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's conduct, as set out in the findings of fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38 because Respondent's acts were in violation of N.C. Gen. Stat. §§ 90-85.15A(c), 90-85-21(a), 90-85.23, 90-85.38(b), 90-85.40(f), and 106-134.1(a); and 21 N.C.A.C. 46 .1601(e), 46 .1804(a), 46 .1805, 46 .1813(d) and 46 .2501.

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

1. Respondent CVS Pharmacy's permit to operate a pharmacy (Permit No. 6548) is hereby suspended for seven (7) days. The suspension shall be stayed for a period of two (2) years. The stay is conditioned upon Respondent's compliance with the terms of this Consent Order. If at the end of the two (2) year period, Respondent has violated no terms of this Consent Order, Respondent shall not be required to serve the seven (7) day suspension;

2. Respondent shall violate no laws governing the practice of Pharmacy or the distribution of drugs;

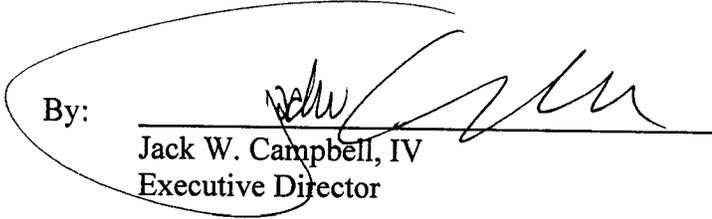
3. Respondent shall violate no rules and regulations of the Board;

4. If Respondent fails to comply with the terms or conditions of this Consent Order, Respondent may be subject to additional disciplinary action by the Board.

This the 15th day of September, 2009.

NORTH CAROLINA BOARD OF PHARMACY

By:



Jack W. Campbell, IV
Executive Director

CVS Pharmacy, the holder of permit number 6548, has full knowledge that it has the right to a formal 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 further understands that should it 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 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.

The undersigned certifies that its agent executing this Consent Order is duly authorized to accept the Consent Order on behalf of the permit holder and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

CVS PHARMACY (Permit No. 6548)

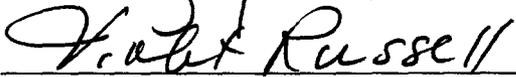

Date 9/14/09
By: Greg Yount
Title: Pharmacist Manager

NORTH CAROLINA

Burke 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: D.L. - Greg Yount

Date: 9/14/2009


Notary Public
Violet Russell

My commission expires: 4-11-12