

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
FISHER RX DIRECT, LLC) CONSENT ORDER
Permit Number 9970)

THIS MATTER came on for consideration at a prehearing conference (the "Conference"), pursuant to 21 N.C.A.C. 46 .2008, before a member of the North Carolina Board of Pharmacy (the "Board"). The Conference was scheduled for February 20, 2012, and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (the "Board") by Board member Dr. J. Parker Chesson, Jr. Respondent Fisher Rx Direct, LLC (Permit No. 9970) (hereinafter the "Pharmacy" or "Respondent") was present through its representatives. Counsel Clinton R. Pinyan represented the Board. Members of the Board's investigative staff and other related respondents involved with the subject matter of the Conference were also present.

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 its consent, Respondent 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. On December 17, 2007, the Board issued permit number 9970 to the Pharmacy, which is located at 1157-1 East Marion Street, Shelby, North Carolina. The Pharmacy opened in January 2008.

3. From its inception, R. Ph. Cynthia Fisher (License No. 17782) ("R. Ph. Fisher") has been a part owner of the Pharmacy and, until July 15, 2011, she served as its pharmacist-manager. During the relevant time period, R. Ph. Fisher's mother, Barbara Fisher ("Technician Fisher"), was a technician and part owner of the Pharmacy.

4. As described further herein, during R. Ph. Fisher's service as pharmacist-manager, the Pharmacy failed to adequately supervise technicians and other employees, R. Ph. Fisher generally abdicated the responsibilities required of a pharmacist-manager, and the Pharmacy permitted Technician Fisher to exercise many of the supervisory responsibilities required of a pharmacist-manager.

5. During R. Ph. Fisher's service as pharmacist-manager, the Pharmacy 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.

6. As a result, a substantial number of controlled substances were diverted from the Pharmacy. Between January 2008 and June 2011, approximately 97,450 dosage units of controlled substances were diverted from the Pharmacy, including Morphine (a schedule II controlled substance), Oxycodone (a schedule II controlled substance), Hydrocodone/APAP (a schedule III controlled substance), Suboxone (a schedule III controlled substance) and Alprazolam (a schedule IV controlled substance). In addition, non-controlled, legend drugs, including Levitra, were diverted from the Pharmacy.

7. These drugs (or the vast majority of them) were diverted by Technician Fisher to sell on the streets. Technician Fisher diverted whole stock bottles of drugs, as well as drugs that were to be returned to stock. In part, Technician Fisher diverted the drugs by providing them to a friend who entered a back office area of the Pharmacy where drugs were stored and removed the drugs – often in large quantities – in shopping bags. R. Ph. Fisher testified that, at the time, she did not see anything unusual about the visits by Technician Fisher’s friend to an area of the Pharmacy where drugs were stored. In addition, R. Ph. Fisher testified that she was not aware that Technician Fisher had any role in processing drugs that were being returned to stock at the Pharmacy.

8. In September and October 2010, the Pharmacy filled nine controlled substance prescriptions for out-of-state patients, written by out-of-state physicians, under circumstances that should have reasonably given the Pharmacy reason to believe that the prescriptions were invalid.

9. On October 1, 2010 and October 6, 2010, the Pharmacy filled two separate 120 dosage-unit Oxycodone prescriptions for one out-of-state patient from an out-of-state physician, dispensing well in excess of a normal therapeutic dosage (even if the prescriptions had been valid).

10. Between August 2010 and March 2011, the Pharmacy employed H.L., a delivery driver who was permitted to perform the functions of a technician without being registered with the Board. Although Pharmacy employees testified that H.L. routinely counted pills and entered prescriptions, R. Ph. Fisher testified that she was unaware that he was doing so.

11. In March 2011, employees of the Pharmacy suspected that H.L. was diverting drugs. Although Technician Fisher terminated H.L. based upon these suspicions and

R. Ph. Fisher was informed of these suspicions, the responsible pharmacists at the Pharmacy failed to investigate whether there had been any losses. R. Ph. Fisher acknowledged that, had she investigated the suspicions of diversion by H.L., she might have earlier discovered the large-scale diversion by Technician Fisher.

12. As of July 15, 2011, the Pharmacy had failed to complete any biennial inventory of controlled substances at the Pharmacy, even though it had been open for three and a half years. It furthermore failed to do so even after, on April 26, 2011, the Pharmacy had been cited by the Board for failing to perform an inventory and had been instructed to perform an inventory. R. Ph. Fisher testified that, by July 15, 2011, technicians had performed the counting required to complete the biennial inventory, but the inventory had not been completed.

13. At points between January 2008 and July 2011, employees at the Pharmacy improperly and negligently kept a stash of expired medications in an cabinet marked for "store use" and permitted employees to access and consume those medications (notwithstanding that they were expired) without presenting valid prescriptions and without proper records being kept of the medications dispensed. Those medications included at least one controlled substance, Gani-Tuss NR (a schedule V controlled substance). R. Ph. Fisher testified that she was not aware of the practice and did not know what was in the "store use" cabinet. The Board finds that it was unreasonable for the Pharmacy, through its pharmacist-manager, to be unaware of these facts.

14. At points between January 2008 and July 2011, the Pharmacy improperly and negligently kept expired medications in open display vases in the pharmacy, where they might be accessed by pharmacy employees, rather than disposing of the medications.

CONCLUSIONS OF LAW

1. The evidence demonstrates that the Pharmacy violated the following statutes and rules: N.C. Gen. Stat. §§ 90-85.15A(b), 90-85.29, 90-85.30, 90 85.38(b), 90-85.40(a), (b) and (f), 90 106, 90-108, 106-122, 106-134 and 106 134.1; 21 N.C.A.C. 46 .1801, 46 .1802, 46 .1804, 46 .1805, 46 .2501 and 46 .2502(a), (d) and (e); 21 U.S.C. §§ 331, 829 and 842; and 21 C.F.R. §§ 1304.03, 1304.04, 1304.11, 1304.21 and 1304.22.

2. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on its permit under N.C. Gen. Stat. § 90-85.38(b).

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that Respondent Pharmacy's permit (Permit No. 9970) is hereby SUSPENDED for SEVEN (7) DAYS, but that suspension is STAYED for TWO (2) YEARS from the date that this Order is accepted by the Board, upon the following conditions:

1. Respondent shall Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs.
2. Respondent shall violate no rules or regulations of the Board.
3. Respondent shall be subject to random and unannounced inspections by Board staff and investigators. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation of compliance with the provisions of this Consent Order.

If Respondent fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and, in addition, Respondent may be subject to additional disciplinary action by the Board.

This the 2⁴ day of March 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director

Fisher Rx Direct, LLC, the holder of permit number 9970, 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.

FISHER RX DIRECT, LLC (Permit No. 9970)

Cynthia Fisher PIC Date 3-8-12

By: Cynthia Fisher PIC

Title: Pharmacist PIC at time

NORTH CAROLINA

Cleveland 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: Cynthia Fisher

Date: 3-8-12

Angela B. Mellon

Notary Public

10/24/15 Angela B Mellon

My commission expires: 10/24/15
