

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

NEIL MEDICAL GROUP
(Permit No. 4428)

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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 February 16, 2009 and, after appropriate notice, was heard on that day by Board member L. Stan Haywood at the offices the Board. Respondent Neil Medical Group (Permit No. 4428) (hereinafter, the "Respondent" or the "Pharmacy") was present via current pharmacist manager R.Ph. Douglas Hazelgrove (License No. 7795), previous pharmacist manager R.Ph. James Rourk (License No. 11439), and other officers and agents and was represented by counsel Steven M. Shaber and Christopher P. Brewer. Counsel Alexander Elkan represented the Board. Members of the Board's investigative staff were also present at the Conference.

The Respondent has agreed to waive a formal hearing in the above-referenced matter. By its consent, the Respondent agrees to the findings of fact and conclusions of law recited herein and to the discipline imposed. Respondent 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. The Respondent is, and was at all relevant times referred to herein, located at 2545 Jetport Road, Kinston, North Carolina, and the holder of Pharmacy Permit No. 4428. Respondent 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.

3. Between September 2005 and May 2008, the Pharmacy was under the supervision of R.Ph. Douglas Hazelgrove (License No. 7795) as pharmacist manager from December 11, 2007 to the present, and under the supervision of R.Ph. James Rourk (License No. 11439) as pharmacist manager during the relevant time period prior to December 11, 2007.

4. During this time period (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.

5. In September 2006 the Respondent Pharmacy and then-pharmacist manager 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 Pharmacy and pharmacy manager 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.

6. The failure by the Pharmacy and Pharmacist Manager 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.

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

8. As to the diversions by the custodial employee, the Board investigator acknowledged that there was no evidence the Respondent Pharmacy or its pharmacy managers 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.

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

10. Respondent acknowledges responsibility for its failure to provide adequate security measures and failure to maintain an appropriate inventory control system to detect and prevent the diversion of controlled substances.

11. The Respondent Pharmacy provided testimony and evidence demonstrating that, subsequent to learning of the diversions in June 2008, the following measures were implemented to improve the security and inventory control system:

- 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

Based upon the above findings the Board concludes as a matter 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 Pharmacy violated N.C. Gen. Stat. §§ 90-85.25(b), 90-85.40(f), and 21 N.C.A.C. 46.1804 and 46.2502.
3. The Pharmacy's conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 90-85.38(b).

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

Respondent Neil Medical Group, Permit No. 4428, is hereby REPRIMANDED by the Board for the aforementioned conduct.

This the 27th day of October, 2009.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

Neil Medical Group, the holder of permit number 4428, 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 this Consent Order on behalf of the permit holder and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

NEIL MEDICAL GROUP (Permit No. 4428)

DR. Randy Uzzell

Date 10-20-09

By: N. Randy UZZELL

Title: President

NORTH CAROLINA

Greene 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: N. Randy Uzzell

Date: 10-20-09

Bonita G Hill
Notary Public

Bonita G Hill

My commission expires: March 6, 2012

REJECTED BY:

NEIL MEDICAL GROUP (Permit No. 4428)

_____ Date _____

By: _____

Title: _____