

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Professional Care Home Oxygen	)	
(DME Permit No. 0188)	)	
	)	CONSENT ORDER
✓ Professional Care Pharmacy	)	
(Limited Service Permit No. 7176)	)	

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; Gina Kelly, representative of Respondent Facility; and Savannah Swartout, Pharmacist Manager of Respondent 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 0188 and is located at 938 Cambridge Street, Fayetteville, North Carolina. Respondent Pharmacy is the holder of pharmacy limited service permit number 7176 and is located at 920 Cambridge Street, Fayetteville, North Carolina.
2. On May 19, 2004, the Board’s Investigator learned of allegations that a respiratory therapist at Respondent Pharmacy was compounding respiratory medications without proper supervision.

3. Upon investigation, the Board's Investigator learned that employees at Respondent Facility had access to the pharmacy key and at times would enter the pharmacy and pull medications and orders that need to be filled. Afterwards, the staff would bag them for delivery techs to take to the Medicine Shoppe Pharmacy to be filled. Savannah Swartout, Pharmacist Manager of Respondent Pharmacy, also owns the Medicine Shoppe Pharmacy.
4. Ruth Harris, a registered technician employed at Respondent Pharmacy, told the Board's investigator that when Respondent Pharmacy runs out of compounding respiratory medications, she will take compounding medications from the Medicine Shoppe to Respondent Pharmacy and fill the plastic vials and put the vials in boxes with the drug item labels on them. She stated that the boxes she fills are for stock and are not patient specific. She also stated that the only time she performs these tasks is when RPh. Swartout is too busy and the Medicine Shoppe and when Respondent Pharmacy is out of stock.
5. The Board's investigator was unable to substantiate allegations that a respiratory therapist was compounding medications without supervision from a pharmacist.
6. The Board's investigator learned that Respondent Pharmacy keys were available to all staff. The investigator also learned that the staff's use of the pharmacy was contrary to the stated policy.

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),
  - b. G.S. 90-85.40.
  - c. 21 N.C.A.C. 46 .1804, and
  - d. 21 N.C.A.C. 46 2502.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE,

ORDERED, as follows:

1. The permit of Respondent Facility, DME permit number 188, is suspended for seven (7) business days.
2. The permit of Respondent Pharmacy, pharmacy permit number 7176, is suspended for seven (7) business days.
3. The suspensions described above are stayed for three (3) years upon the following conditions:

- a. Respondents Facility and Pharmacy shall develop and submit plans on how the Pharmacist Manager will properly supervise technicians and secure the facility/pharmacy.
  - b. These plans shall be submitted to the Board's Executive Director within thirty (30) days after the Consent Orders are signed.
4. 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.
  5. Respondents Facility and Pharmacy shall violate no laws governing the practice of pharmacy or the distribution of devices and medical equipment.
  6. Respondents Facility and Pharmacy shall violate no rules and regulations of the Board.
  7. 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 17<sup>th</sup> day of January, 2007.

NORTH CAROLINA BOARD OF PHARMACY

By:   
David R. Work  
Executive Director

I, Savannah Swartout, (name), the undersigned, am manager (title) for the holder of pharmacy permit #7176 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 pharmacy permit #7176. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and 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.

Savannah Swartout manager on behalf of pharmacy permit #7176, **accepts** the Board member's proposal in this matter.

CONSENTED TO BY: Savannah Swartout/manager 11/18/05  
Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

State of NC  
Cumberland County

I, Yvette Horne, a Notary Public for the above-named County and State, do hereby certify that Savannah Swartout personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 18<sup>th</sup> day of November, 2005.

Yvette J Horne  
Notary Public

My Commission Expires 6/12/2008

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\_\_\_\_\_, \_\_\_\_\_ on behalf of pharmacy permit #0188, **does not accept** the proposed Consent Order in this matter.

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_