

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
RITE AID PHARMACY,) **CONSENT ORDER**
)
Permit No. 9617)

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 September 20, 2010, and, after appropriate notice, was heard on that day at the office of the North Carolina Board of Pharmacy (hereinafter, "Board") by Board member Gene Minton. Respondent Rite Aid Pharmacy, Permit No. 9617 ("Rite Aid") was present at the conference through its corporate representative and was represented by counsel Anna Baird Choi. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were present at this conference, as was a related respondent.

FINDINGS OF FACT

1. Respondent Rite Aid is located at 508 Highway 29 North, China Grove, North Carolina, and holds permit number 9617.
2. Effective April 17, 2009, Thomas Carter resigned as the pharmacist-manager for Respondent Rite Aid. From April 17, 2009 until June 2, 2009, Respondent Rite Aid operated without a pharmacist-manager.
3. On May 18, 2009, when Respondent Rite Aid was without a pharmacist-manager, a Rite Aid pharmacist erroneously dispensed two simultaneous prescriptions for venlafaxine 37.5 mg to a patient. More specifically, the patient had been prescribed venlafaxine 37.5 mg and tizanidine 2 mg. The Rite Aid pharmacist dispensed the prescribed venlafaxine and, in addition,

dispensed a second vial of venlafaxine in place of the prescribed tizanidine. The second vial of venlafaxine was erroneously labeled as tizanidine and was erroneously logged into pharmacy records as being tizanidine.

4. On the date of the dispensing error, Respondent Rite Aid permitted more than two technicians to work under the supervision of one pharmacist without Board authorization, which contributed to an increased risk of patient harm. At the conference, Respondent Rite Aid acknowledged that it frequently did so, because the District Manager erroneously interpreted the technician-ratio requirement to permit a pharmacist to supervise more than two technicians, so long as no more than two technicians were performing technician functions at a particular time.

5. Also, on the date of the dispensing error, Respondent Rite Aid permitted one pharmacist to dispense 312 prescriptions which, under the facts of this case, was a rate that posed a danger to the public health or safety.

6. On June 3, 2009, Respondent Rite Aid discovered that a 500-count bottle of Hydrocodone/APAP 5/500 mg (a schedule III controlled substance) was missing. Respondent Rite Aid subsequently performed an audit that revealed the loss of 7,983 dosage units of Hydrocodone/APAP at the pharmacy, broken down by the following strengths: 4,137 dosage units of 10/500 mg; 2,089 dosage units of 10/325 mg; 853 dosage units of 5/500 mg; 564 dosage units of 5/325 mg; 250 dosage units of 10/650 mg. The time period for this audit was from June 2008 to July 2009; however, as revealed by monthly audits by Respondent Rite Aid, the majority of these drugs were diverted during the time period when Respondent Rite Aid did not have a pharmacist-manager in April, May and June of 2009.

7. On June 2, 2009, Ruth Pleasants became the temporary pharmacist-manager at Respondent Rite Aid. Because Ms. Pleasants was a temporary pharmacist-manager, by

operation of law, she ceased serving as pharmacist-manager on August 31, 2009. From August 31, 2009 until October 21, 2009, Respondent Rite Aid again operated without a pharmacist-manager.

CONCLUSIONS OF LAW

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

1. Respondent Rite Aid violated N.C. Gen. Stat. §§ 90-85.15A(c), 90-106, 90-108, 106-122, 106-134 and 106-134.1; and 21 N.C.A.C. 46 .1805, 46 .1811 and 46 .2502(a), (b), (d) and (e); and 21 U.S.C. §§ 331, 829 and 842.

2. Respondent Rite Aid 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 the permit of Respondent Rite Aid, Permit No. 9617, is hereby SUSPENDED for seven (7) days. That suspension is stayed for one (1) year upon the following conditions:

i. Respondent Rite Aid shall violate no laws governing the practice of pharmacy or the distribution of drugs;

ii. Respondent Rite Aid shall violate no rules and regulations of the Board; and

iii. Respondent Rite Aid shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and 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 Respondent may be subject to additional disciplinary action by the Board.

This the 19th day of October, 2010.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jay W. Campbell, IV
Executive Director

Rite Aid Pharmacy, the holder of permit number 9617, has full knowledge that it has the right to a 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, he or she certifies that he has read the foregoing Consent Order and that Rite Aid Pharmacy 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 Rite Aid Pharmacy 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 Rite Aid Pharmacy 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 execute the Consent Order on behalf of Rite Aid Pharmacy and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

RITE AID PHARMACY (Permit No. 9617)

M.A. Podgurski Date 10-12-2010
By: Michael A. Podgurski
Title: Vice President

STATE OF Pennsylvania
Cumberland COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person personally appeared before me this day and acknowledged the due execution of the foregoing document: Consent Order (Permit No. 9617)

Date: 10/12/10

[Signature]
Notary Public

My commission expires: _____

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
DEBORAH A. HURLEY, Notary Public
East Pennsboro Twp., Cumberland County
My Commission Expires October 7, 2011