

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

KIRSTEN BERGGREN

(Registration No. 1)

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CONSENT ORDER

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 October 17, 2016 and, after appropriate notice, was heard on that day by Board Member J. Andrew Bowman at the office of the Board. Respondent Kirsten Berggren (hereinafter "Respondent" or "Berggren") was present and represented by counsel, Michael C. Allen. Counsel Clinton R. Pinyan represented the Board. Members of the Board's investigative staff were also present at the Conference.

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. Respondent also stipulates that she waives her right to appeal this Consent Order or challenge in any way the sufficiency of the findings of this Order by her consent. 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 Kirsten Berggren is, and since November 9, 2001 has been, the holder of Technician Registration No. 1.

3. At all relevant times, Berggren was the compounding technician of Nature's Pharmacy (Surrendered Permit No. 6491), located at 752 Biltmore Avenue, Asheville, North Carolina (the "Pharmacy").

COMPOUNDING FOR UNLAWFUL OUT-OF-STATE SHIPMENTS

4. Between October 3, 2009 and February 11, 2015, on approximately 10,000 occasions, the Pharmacy engaged in dispensing into the states and territories of Alabama, Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming without holding pharmacy permits in those states, without holding compounding and/or controlled substance permits when required, and without its pharmacist-manager holding a license in those states in which he was required to do so.

5. Furthermore, on at least 137 occasions during that time period, the Pharmacy exported prescriptions for compounded drugs, including controlled substances, to Bermuda, Ecuador and New Zealand.

6. More than 7,200 of these shipments were made after, on October 3, 2012, the Board investigator warned the Pharmacy's employees, including Technician Berggren, that unlawful interstate and international shipments must stop.

7. At the Conference, Technician Berggren testified that she was not the Pharmacy employee principally responsible for shipping the medications, that she was not the Pharmacy employee responsible for securing out-of-state permits, and that she did not know that all of the prescriptions were being shipped out-of-state. The Board credits those explanations.

8. However, Technician Berggren acknowledged that, on October 3, 2012, the Board warned the Pharmacy and its employees not to ship, mail or dispense any further drugs to other states without appropriate permits or to ship, mail or dispense drugs internationally. Further, as to some of these prescriptions after October 3, 2012, Technician Berggren acknowledged (and the Board finds) that she was aware that she was assisting a pharmacist in preparing and dispensing prescription medications to patients to whom the Pharmacy could not legally ship, mail or dispense prescription medications.

COMPOUNDING AND DISPENSING MEDICATION WITHOUT A PRESCRIPTION

9. The Board finds that, in or around the spring of 2014, Technician Berggren compounded and dispensed a compounded drug cream to a friend who did not have a valid prescription for that drug. Technician Berggren further dispensed this drug without creating valid labels and records related to the dispensing.

10. At the Conference, Technician Berggren denied dispensing the compounded drug cream to the friend. However, the friend was in possession of a container of the medication on which the purported ingredients (not all of which were actually contained in the medication)

were written in Technician Berggren's handwriting. The Board finds that Technician Berggren's explanations were contrary to the greater weight of the evidence presented at the Conference.

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 and conclusions of law above, constitutes grounds for discipline pursuant to North Carolina General Statutes § 90-85.15A(d)(4a) and (5) because Respondent's acts were in violation of North Carolina General Statutes §§ 90-85.29, 90-85.30, 90-85.40(b) and (f), 106-122, 106-133, 106-134 and 106-134.1; 21 N.C.A.C. 46 .1801, 46 .1803, 46 .1805, 46 .1818, 46 .2302, 46 .2501 and 46 .2801; 21 U.S.C. §§ 331, 352, 353, 381, 382, 953 and 957; 21 C.F.R. §§ §§ 1.101 and 1312.21-.24; Ala. Code §§ 20-2-51 and 34-23-31; Ariz. Rev. Stat. § 32-1929; Cal. Bus. & Prof. Code §§ 4112, 4120 and 4127.2; Colo. Rev. Stat. § 12-42.5-130; Conn. Gen. Stat. §§ 20-627, 20-628, 20-630 and 21a-317; D.C. Mun. Regs. tit. 22, § B1903; Fla. Stat. ch. 465.0156 and 465.0158; Ga. Code Ann. § 26-4-114.1; Idaho Code § 54-1729; 225 Ill. Comp. Stat. § 85/16a; Ind. Code §§ 25-26-17-3 and 35-48-3-3; Iowa Code §§ 155A.13A and 155A.13B; Ky. Rev. Stat. Ann. §§ 218A.202 and 315.0351; La. Rev. Stat. Ann. § 37:1232; Maine Stat. tit. 32, § 13751; Md. Code Ann. Health Occ. §§ 12-403 and 12-4A-02; Mich. Comp. Laws § 333.17748; Minn. Stat. § 151.19; Mo. Rev. Stat. §§ 195.030 and 338.220; Mont. Code Ann. § 37-7-703; Neb. Rev. Stat. § 71-2407; Nev. Rev. Stat. § 639.2328; N.H. Rev. Stat. Ann. § 318:37; N.J. Stat. Ann. § 45:14-73; N.M. Stat. §§ 30-31-12 and 61-11-14.1; N.Y. Educ. Law § 6808-b; N.D. Cent. Code § 43-15-34.1; Ohio Rev. Code Ann. §§ 4729.54 and 4729.55; Or. Rev. Stat. §§ 475.125 and 689.305; 5 R.I. Gen. Laws § 5-19.1-11; S.C. Code Ann. §§ 40-43-83 and 40-43-86; Tenn. Code

Ann. §§ 63-10-210 and 63-10-216; Tex. Occ. Code §§ 560.001 and 561.0032; Vt. Stat. Ann. tit. 26, § 2061; Va. Code Ann. §§ 54.1-3410.2, 54.1-3434.1 and 54.1-3434.2; Wash. Rev. Code § 18.64.360; W. Va. Code § 30-5-24; Wis. Stat. § 450.065; Wyo. Stat. Ann. § 33-24-152.

3. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on her registration under North Carolina General Statutes § 90-85.15A.

CONCLUSIONS REGARDING DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the Respondent, IT IS THEREFORE ORDERED that:

1. The registration of Respondent KIRSTEN BERGGREN (Registration No. 1) is hereby PERMANENTLY SUSPENDED. That suspension shall be served as follows:

a. Active Suspension. Fourteen (14) days of the suspension must be served as an active suspension, which suspension shall be served on fourteen (14) consecutive days, beginning on Monday, January 23, 2017 at 12:01 a.m., and running through Sunday, February 5, 2017, at 11:59 p.m.

Berggren shall surrender her annual renewal to the Executive Director before the commencement of the period of active suspension.

During the 14-day active suspension period, Berggren shall not be involved in the practice of pharmacy in North Carolina in any capacity, and shall not enter into any pharmacy in the State of North Carolina, except as a patient with a valid prescription, and for the limited purposes of filling that prescription.

b. Stayed Suspension. The remainder of the permanent suspension shall be stayed INDEFINITELY, upon the following conditions:

i. Respondent Berggren shall violate no laws governing the practice of pharmacy or the distribution of drugs, medical devices or medical equipment; and

ii. Respondent Berggren shall violate no rules or regulations of the Board.

2. Respondent Berggren shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation regarding compliance with the provisions of this Consent Order.

3. If Respondent Berggren fails to comply with any terms or conditions of this Order, the period of stay described above shall be lifted and the Board shall activate the permanent suspension of her registration.

This the 17th day of January, 2017.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

Kirsten Berggren, the holder of registration number 1, has full knowledge that she has the right to a formal hearing, at which she would have the right to be represented at her 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, she certifies that she has read the foregoing Consent Order and that she 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 she 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 she has the right to have counsel of her choice review and advise him with respect to his rights and this Consent Order, and represents that she enters this Consent Order after consultation with her counsel or after knowingly and voluntarily choosing not to consult with counsel.

ACCEPTED AND CONSENTED TO BY:

[Signature] Date 23 Dec 2016
KIRSTEN BERGGREN (Registration No. _____)



STATE OF North Carolina
Suncombe 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: Kirsten Berggren.

Kirsten Berggren
Date: December 23, 2016

Jessica Brooke Burton
Notary Public
Jessica Brooke Burton
My commission expires: 04/08/19
