

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Jay Enterprises  
(DME Permit No. 0346)

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CONSENT ORDER

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 January 24, 2006 and was heard on that day at the Board office before DME Committee members Parker Chesson, Marcia Ladd, Wayne Link, and Mel Elliott. Also present at the conference were the following: Jason Smith, Board Investigator; Steve Hudson, Director of Investigations and Inspections; and Anna Baird Choi, Counsel for the Board. The Notice of Prehearing Conference was served on Jay Enterprises (Respondent Facility) via certified U.S. mail, return receipt requested; Respondent Facility accepted service on January 20, 2006. However, no one was present at the Prehearing Conference on behalf Respondent Facility. 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 0346 and is located at 4410-A Friendship Drive, Matthews, North Carolina.
2. On or about February 10, 2005, Investigator Smith observed a DME facility located at 501 East Franklin Street, Monroe, North Carolina which appeared to be operating without a DME permit.

3. On or about February 10, 2005, Investigator Smith spoke with staff at the Monroe facility. Investigator Smith was informed by staff that the facility was a "branch of Jay Enterprises" (Respondent Facility). Additionally, Investigator Smith was informed that DME was delivered out of the Monroe location and that the facility had been open since November 1, 2004.
4. Investigator Smith determined that there was no DME permit for the Monroe facility. Investigator Smith subsequently spoke with David Warren, the Person in Charge at Respondent Facility, and informed him that he needed to submit a DME registration application on behalf of the Monroe facility with the Board.
5. On or about February 18, 2005, Board staff received a DME registration application from Mr. Warren. The name of the Monroe facility was listed as "Jay Enterprises" and Mr. Warren was listed as the Person in Charge of the Monroe Facility.
6. Prior to the Board's registration of the Monroe facility, Mr. Warren submitted a revised DME registration application for the Monroe facility. The name of the facility had been changed to "First Choice Medical" but Mr. Warren remained listed as the Person in Charge.
7. On or about July 15, 2005, the Board issued a DME permit, no. 1049, to First Choice Medical, 501 E. Franklin Street, Monroe, North Carolina. Subsequent to obtaining its DME permit, the outgoing message on the facility's answering machine informed callers that they had contacted "Jay Enterprises."
8. On or about January 19, 2006, Investigator Smith attempted to inspect the Monroe facility; however, the building was empty and signs indicated that it the building was available for lease.

9. Respondent Facility and/or Mr. Warren failed to provide the Board with notice that the Monroe location was closing.

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 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. G.S. 90-85.22;
  - c. G.S. 90-85.40(f);
  - d. 21 N.C.A.C. 46 .1608; and
  - e. 21 N.C.A.C. 46 .2601

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE, ORDERED, as follows:

1. Respondent Facility, DME permit number 0346, is hereby suspended for eight (8) months.
2. The above-referenced suspension is stayed for five (5) years upon the following conditions:
  - a. Respondent Facility 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.

- b. Respondent Facility shall violate no laws governing the practice of pharmacy or the distribution of devices and medical equipment.
  - c. Respondent Facility shall violate no rules and regulations of the Board.
3. If Respondent Facility fails to comply with any terms or conditions of this Consent Order, Respondent Facility may be subject to additional disciplinary action by the Board.

This the 16 day of September, 2006.

NORTH CAROLINA BOARD OF PHARMACY.

By:   
\_\_\_\_\_  
Jack W. Campbell, IV  
Executive Director

I, R J Buinicky, (name), the undersigned, am President (title) for the holder of DME permit #0346 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 DME permit #0346. I understand and agree that by entering into this Consent Order, I certify that I have read the foregoing Consent Order and that 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.

JAY Enterprises, \_\_\_\_\_ on behalf of DME permit #0346, accepts the DME Committee's proposal in this matter. yes

CONSENTED TO BY: RJ Buinicky 8/2/06  
Name: RJ Buinicky Date  
Title President

State of North Carolina  
Mecklenburg County

I, Mary H. Ryan, a Notary Public for the above-named County and State, do hereby certify that RJ Buinicky personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal this the 2 day of Aug, 2006, by

Mary H. Ryan  
Notary Public  
Mary H. Ryan  
Typed or Printed Notary Name

My Commission Expires May 7, 2011

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\_\_\_\_\_, \_\_\_\_\_ on behalf of DME permit #0346, does not accept the proposed Consent Order in this matter.

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