

STATE OF NORTH CAROLINA  
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF )  
)  
DME PERMIT APPLICATION OF ) **FINAL CONSENT ORDER**  
WILMINGTON ISLAND DME, INC. )  
)  
\_\_\_\_\_ )

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the "Board") at a prehearing conference on April 18, 2011, on the consent of the parties. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. By its consent, the permit applicant, Wilmington Island DME, Inc. ("Wilmington Island") waives its right to appeal this Final Consent Order. Wilmington Island also stipulates that the findings of fact and conclusions of law are legally sufficient to support this Final Consent Order and agrees not to challenge the legal adequacy of the findings and conclusions in any potential future proceeding regarding this Final Consent Order. With the consent of the parties, the Board hereby enters the following:

**FINDINGS OF FACT**

1. Wilmington Island is a corporation organized on August 11, 2009 and existing under the laws of the State of Georgia.
2. Wilmington Island makes the following representations: In August 2009, Wilmington Island began shipping prescription devices and medical equipment into the State of North Carolina without a DME permit having been issued under North Carolina General Statutes § 90-85.22. Between August 2009 and December 2010, on six (6) occasions, Wilmington Island

dispensed of prescription devices and medical equipment into the State of North Carolina in violation of North Carolina General Statutes §§ 90-85.22 and 90-85.38(b).

3. On July 26, 2010, Wilmington Island submitted its DME permit application.

4. With respect to the prior prescriptions shipped into North Carolina, the Board is unaware of instances where Wilmington Island and its personnel actually knew or reasonably should have known that the order was issued without a physical examination of the patient and in the absence of a prior prescriber-patient relationship in violation of 21 NCAC 46 .1801(b) or otherwise was not a valid prescription, and Wilmington Island represents that there were no such instances.

5. Wilmington Island represents and the Board accepts that no board of pharmacy or other federal or state regulatory agency has previously disciplined the permit or any of its personnel related to the practice of dispensing durable medical equipment.

6. Wilmington Island represents and the Board accepts that Wilmington Island has never referred a North Carolina patient to any health care provider.

## CONCLUSIONS OF LAW

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

1. Wilmington Island violated North Carolina General Statutes §§ 90-85.22 and 90-85.38(b) by shipping prescription devices and medical equipment into the State of North Carolina without an out-of-state pharmacy permit from August 2009 to December 2010.

2. Respondent admits that the conduct in this matter violated North Carolina law and constitutes sufficient grounds for disciplinary action in connection with its permit application under North Carolina General Statutes § 90-85.38.

3. The Board has considered the following as mitigating factors in this case:

a. The Board has no information that Wilmington Island has ever shipped prescription devices and medical equipment into the State of North Carolina in circumstances where it actually knew or reasonably should have known that the order was issued without a physical examination of the patient and in the absence of a prior prescriber-patient relationship in violation of 21 NCAC 46 .1801(b) or otherwise was not a valid prescription.

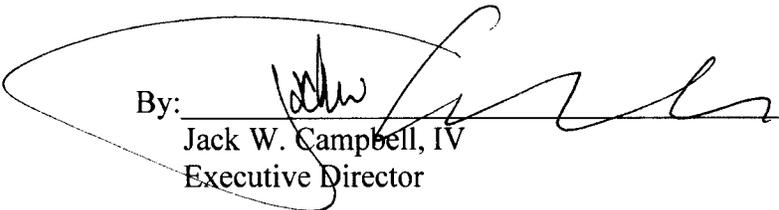
b. Wilmington Island does not have a business model that is likely to encourage or facilitate the shipment of devices and medical equipment based on invalid prescriptions.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit application of Wilmington Island DME, Inc. is hereby GRANTED. However, the permit of Wilmington Island DME, Inc. is hereby INDEFINITELY SUSPENDED, but that suspension is stayed for a period of ten (10) years, upon the following conditions:

1. Respondent's permit is conditioned upon the accuracy of the information in its permit application, the information that it previously provided to the Board in connection with the review of the permit application, and the stipulated Findings of Fact above;
2. Respondent shall violate no laws governing the practice of pharmacy or the distribution of drugs, whether federal, North Carolina or the laws of any other state;
3. Respondent shall violate no rules and regulations of the Board; and
4. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order.

This the 19<sup>th</sup> day of April, 2011.

NORTH CAROLINA BOARD OF PHARMACY

By:   
Jack W. Campbell, IV  
Executive Director

Wilmington Island DME, Inc. 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 Final Consent Order. The undersigned understands and agrees that by entering into this Final Consent Order, it certifies that it has read the foregoing Final 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 Final Consent Order, the Board may take additional disciplinary action. The undersigned understands and agrees that this Final 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 Final Consent Order, and represents that it enters this Final 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 Final Consent Order is duly authorized to accept the Final Consent Order on behalf of Wilmington Island DME, Inc. and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

WILMINGTON ISLAND DME, INC.

[Signature] Date 4-18-11

By: Theresa K Cobb

Title: Manager

STATE OF North Carolina

Durham COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that personally appeared before me this day, and each acknowledged the due execution of the foregoing document: Theresa K. Cobb

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: 4-19-2011



Constance J. Manin

Notary Public

Constance T. Manin

My commission expires: 9-3-2012