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BEFORE THE BOARD OF PHARMACY  
OF THE STATE OF OREGON

4 In the Matter of the ) Case No. 2008-0640  
5 Drug Outlet Registration of )  
6 )  
7 WHEELER PHARMACY, INC dba: ) CONSENT ORDER  
8 WHEELER PHARMACY )  
9 )  
10 Registrant )

13 WHEREAS, the Board of Pharmacy of the State of Oregon has filed a Notice of Proposed  
14 Disciplinary Action; Answer Required ("Notice"), hereby incorporated by reference, regarding the  
15 registrant in the above-captioned matter; and  
16

17 WHEREAS, the above-noted Notice was duly served on the registrant as required by law;  
18 and  
19

20 WHEREAS, the parties are desirous of resolving and settling those matters contained in the  
21 above-noted Notice without further proceedings thereon; and  
22

23 WHEREAS, the registrant is aware of the right to a hearing with the assistance of counsel  
24 and the right to judicial review of the Board's decision, and hereby freely and voluntarily waives  
25 those rights; and  
26

27 WHEREAS, the registrant admits that the facts alleged in the above-noted Notice are true,  
28 that legal cause exists pursuant to ORS 689.405 and ORS 689.445 for disciplinary action and  
29 imposition of a civil penalty by the Board; and  
30

31 WHEREAS, the registrant consents to the civil penalty as set forth herein;  
32

33 The Board finds that the allegations in the Notice are true and hereby:  
34

35 1. The registrant shall pay the Board a civil penalty in the amount of \$5,000. The \$5,000  
36 civil penalty will be stayed if there are no future violations involving those included in the Notice  
37 and registrant submits a Quality Assurance Plan, acceptable to the Board, detailing steps  
38 implemented to ensure all current and future staff possesses and maintains a valid license for their  
39 job duties. Quality Assurance Plan must be submitted to the Board within 15 days from the date this  
40 Consent Order becomes final.  
41

42 2. Failure of the registrant to comply with the sanctions of this Consent Order may, after  
43 notice and hearing, result in further disciplinary action.  
44

45 CONSENT

46  
47 I hereby acknowledge that I am the authorized representative of registrant. On behalf of the  
48 registrant, I further certify that I have read and understand the Notice and this Consent Order and am  
49 aware of the right to a hearing with the assistance of counsel and the right to judicial review of the  
50 Boards final order. On behalf of the registrant I agree to the Board entering the Consent Order.  
51

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53 \_\_\_\_\_  
54 Authorized Representative  
55 WHEELER PHARMACY, INC dba  
56 Wheeler Pharmacy  
57 Registrant (Reg. No. RP-0000582)  
58  
59  
60

613/09  
62 \_\_\_\_\_  
63 Date

64 IT IS SO ORDERED.

65 BOARD OF PHARMACY  
66 FOR THE STATE OF OREGON  
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69 \_\_\_\_\_  
70 Gary Miner, R.Ph.,  
71 Compliance Director

6/4/09  
72 \_\_\_\_\_  
73 Date

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BEFORE THE BOARD OF PHARMACY  
OF THE STATE OF OREGON

In the Matter of the ) Case No. 2008-0640  
Drug Outlet Registration of )  
WHEELER PHARMACY, INC dba: ) NOTICE OF PROPOSED  
WHEELER PHARMACY ) DISCIPLINARY ACTION;  
Registrant ) ANSWER REQUIRED  
)

Under the authority granted pursuant to ORS 689.135, 689.145, 689.335, 689.405 and 689.445, the Oregon Board of Pharmacy proposes to take disciplinary action against your Certificate of Registration No. RP-0000582 because Wheeler Pharmacy violated the Oregon Pharmacy Act and the Board of Pharmacy rules as set forth below:

From on or about 10/1/2008 through 12/12/2008, Wheeler Pharmacy allowed, aided, and abetted two individuals to perform the duties of a pharmacy technician without a pharmacy technician license.

The above conduct is contrary to accepted standards of practice and unprofessional conduct as defined by OAR 855-006-0005(25)(e) and (i) and in violation of and grounds for discipline pursuant to ORS 689.486(5), OAR 855-041-0020(2), OAR 855-019-0300(5)(b), OAR 855-041-0060(7), ORS 689.405(1)(a), (e)(B), and (h).

Based on these alleged violations, the Board proposes to impose a civil penalty in the amount of \$5,000 per violation.

**HEARING RIGHTS**

The corporation is entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183). An attorney must represent the corporation. If the corporation wishes to have a hearing, the corporation's attorney must file a written request for hearing with the Board within 21 days from the date this notice was mailed. The corporation's attorney may send or deliver a request for hearing to:

Oregon Board of Pharmacy  
800 NE Oregon Street, Suite 150  
Portland, OR 97232  
Fax: (971) 673-0002

If a request for hearing is not received within this 21-day period, the corporation's right to a hearing shall be considered waived.

If the corporation requests a hearing, the corporation's attorney will be notified of the time and place of the hearing. Before the commencement of the hearing, the corporation will be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing.

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If the corporation does not request a hearing within 21 days, or if it withdraws a hearing request, notifies the Board or Administrative Law Judge that it will not appear, or fails to appear at a scheduled hearing, the Board may issue a final order by default imposing discipline. If the Board issues a final order by default, it designates its file on this matter as the record.

**ANSWER REQUIRED**

Pursuant to OAR 855-001-0010 and OAR 855-001-0015, if you request a hearing you must also provide, within 21 days from the date this contested case notice was served, a written answer to the allegations set forth in this contested case notice. Your written answer must include an admission or denial of each factual matter alleged in the notice and a short and plain statement of each relevant affirmative defense you may have. Except for good cause, factual matters alleged in the notice and not denied in the answer shall be presumed admitted; failure to raise a particular defense in the answer will be considered a waiver of such defense; new matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and evidence shall not be taken on any issue not raised in the notice and the answer.

**Hearing Request and Answers:  
Consequences of Failure to Answer  
855-001-0015**

- (1) A hearing request, and answer when required, shall be made in writing to the Board by the party or his attorney and an answer shall include the following:
  - (a) An admission or denial of each factual matter alleged in the notice;
  - (b) A short and plain statement of each relevant affirmative defense the party may have.
- (2) Except for good cause;
  - (a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;
  - (b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;
  - (c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and
  - (d) Evidence shall not be taken on any issue not raised in the notice and the answer.

BOARD OF PHARMACY  
FOR THE STATE OF OREGON

\_\_\_\_\_  
 Gary Miner, R.Ph.  
 Compliance Director

5/21/09  
 \_\_\_\_\_  
 Date

DATE OF MAILING 5/26/2009