

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
OUT-OF-STATE PERMIT) **FINAL CONSENT ORDER**
APPLICATION OF PORTLAND)
PROFESSIONAL PHARMACY)
ASSOCIATES)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the “Board”) on November 18, 2008, 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, Portland Professional Pharmacy Associates (“Portland”) waives its right to appeal this Final Consent Order. Portland 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. Portland is a corporation organized on March 9, 1998 and existing under the laws of the State of Maine. Portland does business under the names NMHC Ascend and Ascend SpecialtyRx. Portland holds a pharmacy permit in the State of Maine and holds out-of-state pharmacy permits in a number of other states. Portland provides specialty drugs, including drugs used in the treatment of infertility.

2. Beginning on August 1, 2001, while under prior ownership, Portland began shipping prescription drugs into the State of North Carolina without an out-of-state pharmacy

permit having been issued under North Carolina General Statutes § 90-85.21A. Between August 1, 2001 and May 1, 2008, Portland shipped thousands of prescription drugs into the State of North Carolina in violation of North Carolina General Statutes §§ 90-85.21A and 90-85.38(b).

3. As of July 31, 2003, Portland became a wholly owned subsidiary of National Medical Health Card Systems, Inc. (“NMHC”).

4. On February 25, 2008, SXC Health Solutions Corp. (“SXC”) and NMHC entered into an Agreement and Plan of Merger whereby SXC would acquire NMHC and its wholly owned subsidiary, Portland.

5. As part of the transition to the new management of Portland, SXC discovered that Portland had been shipping prescription drugs into the State of North Carolina and other states without an out-of-state pharmacy permit. After that discovery, Portland promptly began to undertake submitting out-of-state pharmacy permit applications in those states. Portland prepared an application to be submitted to the Board for an out-of-state pharmacy permit. The application was completed and signed in April 2008, before the completion of the acquisition.

6. On April 30, 2008, pursuant to the Agreement and Plan of Merger, SXC became the parent company and through its subsidiary, SXC Health Solutions, Inc., became the sole shareholder of NMHC. As part of that transaction, Portland’s new owners were required to apply for a new Maine pharmacy permit, which was issued on June 10, 2008. Even if Portland had previously held an out-of-state pharmacy permit, this stock purchase would have required Portland to apply for a new North Carolina out-of-state pharmacy permit pursuant to 21 NCAC 46 .1603.

7. On May 1, 2008, all of the officers of Portland were replaced by individuals who also serve as officers of SXC.

8. On May 27, 2008, Portland submitted its out-of-state pharmacy permit application.

9. On Portland's application, it truthfully disclosed that it had previously shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit.

10. Between May 1, 2008 and May 31, 2008, although the new owners of Portland had taken ownership and knew that they were required to hold an out-of-state pharmacy permit in order to ship prescription drugs into the State of North Carolina, Portland continued to ship into the State of North Carolina in violation of North Carolina General Statutes §§ 90-85.21A and 90-85.38(b).

11. After May 31, 2008, Portland's practice was to refer all orders to a pharmacy that does hold an out-of-state pharmacy permit from the Board. On two instances (August 29, 2008 and September 23, 2008), Portland did ship single-item orders to one patient residing in North Carolina. Portland has acknowledged that these shipments were an error committed by an employee and that, upon discovery, the shipment of drugs to this patient was stopped and additional measures were put in place to prevent the recurrence of such errors. The Board accepts that those shipments were inadvertent and were the only two shipments that occurred after May 31, 2008 in violation of North Carolina General Statutes §§ 90-85.21A and 90-85.38(b).

12. As of the date of this order, Portland does not operate an Internet Pharmacy as defined in 21 NCAC 46 .1317(17).

13. With respect to the prior prescriptions shipped into North Carolina, the Board is unaware of instances where Portland and its pharmacists 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 Portland represents that there were no such instances.

14. Portland represents and the Board accepts that Portland has never had any disciplinary action or investigation by any federal or state pharmacy regulatory authority involving the pharmacy or any of the pharmacists associated with Portland.

15. Portland represents and the Board accepts that Portland 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. Portland violated North Carolina General Statutes §§ 90-85.21A and 90-85.38(b) by shipping prescription drugs into the State of North Carolina without an out-of-state pharmacy permit from May 1, 2008 to May 30, 2008, and on one occasion each on August 29, 2008 and September 23, 2008.

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 substantial mitigating factors in this case:

a. The current owners of Portland shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit for less than one month before ceasing its shipments pending action on this application. In light of the facts of this case, including but not limited to the change in ownership and management of Portland, any prior shipments by the earlier owners should not be considered as violations by the current proposed permit holder.

Furthermore, Portland's pharmacy-manager prepared Portland's out-of-state pharmacy permit application in time for the application to be submitted before the change in ownership, but it was not submitted due to no fault of the pharmacy-manager.

b. The Board has no information that Portland and its pharmacists have ever shipped prescription drugs into the State of North Carolina in circumstances where they 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.

c. Portland is not an Internet Pharmacy and otherwise does not have a business model that is likely to encourage or facilitate the shipment of drugs based on invalid prescriptions or other violations of the pharmacy laws.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the permit application of Portland Professional Pharmacy Associates is hereby GRANTED. However, the permit of Portland Professional Pharmacy Associates 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;
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 18th day of November, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jack W. Campbell, IV
Executive Director

Portland Professional Pharmacy Associates 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 Portland Professional Pharmacy Associates and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

PORTLAND PROFESSIONAL
PHARMACY ASSOCIATES

[Signature] Date 11-18-08
By: Richard Couillard, Jr.
Title: Pharmacist in Charge (Director)

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: Richard Couillard, Jr.

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: 11/18/08

Constance J. Manion
Notary Public

Constance T. Manion

My commission expires: 9/3/2012

