

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
OUT-OF-STATE PERMIT) **FINAL CONSENT ORDER**
APPLICATION OF KEBD)
ENTERPRISES, LLC D/B/A BELMAR)
PHARMACY)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the “Board”) at a prehearing conference on July 16, 2012, 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, KEBD Enterprises, LLC d/b/a Belmar Pharmacy (“Belmar”) waives its right to appeal this Final Consent Order. Belmar 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. Belmar is a limited liability company organized on March 20, 2006 and existing under the laws of the State of Colorado. Belmar holds a pharmacy permit in the State of Colorado and holds out-of-state pharmacy permits in a number of other states.

2. Belmar makes the following representations: Beginning by at least April 1998, while under prior ownership, Belmar 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 April 1998 and June 2006, Belmar shipped hundreds 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 June 6, 2006, the assets of Belmar were sold to KEBD Enterprises, LLC. Even if Belmar had previously held an out-of-state pharmacy permit, this change of ownership would have required Belmar to apply for a new North Carolina out-of-state pharmacy permit pursuant to 21 NCAC 46 .1603.

4. Within a few months after the transition to the new management of Belmar, KEDB Enterprises, LLC became concerned that the pharmacy had been shipping unlawfully into the State of North Carolina and other states without an out-of-state pharmacy permit. After the issue was raised, Belmar began to undertake submitting out-of-state pharmacy permit applications in those states. Although the new owners of Belmar 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, Belmar continued to ship into the State of North Carolina in violation of North Carolina General Statutes §§ 90-85.21A and 90-85.38(b).

5. On its North Carolina permit application, Belmar truthfully disclosed that it had previously shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit.

6. On April 23, 2009, the Board staff denied Belmar's permit application because of its prior shipments into the State of North Carolina without an out-of-state permit and because Belmar's application was otherwise deficient. On May 1, 2009, Belmar was informed that it could not make further shipments into the State of North Carolina until a permit was granted.

7. Belmar represents that, upon receipt of that letter, Belmar immediately ceased shipping into the State of North Carolina in violation of North Carolina General Statutes

§§ 90-85.21A and 90-85.38(b). The Board accepts that Belmar has made no shipments since it received the May 1, 2009 request from the Board staff.

8. Following the staff denial of Belmar's application in 2009, Belmar initially requested reconsideration of that denial. But Belmar subsequently allowed that request to become inactive.

9. On January 23, 2012, Belmar submitted a new application for an out-of-state pharmacy permit. That application was deficient in a number of respects, which led the Board staff to deny the permit application again. On March 21, 2012, Belmar submitted a complete application which, again, truthfully disclosed that it had previously shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit prior to May 2009.

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

11. With respect to the prior prescriptions shipped into North Carolina, the Board is unaware of instances where Belmar 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 Belmar represents that there were no such instances.

12. Belmar represents and the Board accepts that Belmar 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 Belmar.

CONCLUSIONS OF LAW

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

1. Belmar 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 June 2006 to May 2009.

2. Belmar 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. Belmar ceased shipment for a period of more than three years after it was informed that it could not ship without an out-of-state permit.

b. The Board has no information that Belmar 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. Belmar 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 KEBD Enterprises, LLC d/b/a Belmar Pharmacy is hereby GRANTED. However, the permit of KEBD Enterprises, LLC 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 13th day of July, 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

KEBD Enterprises, LLC 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 KEBD Enterprises, LLC and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

KEBD ENTERPRISES, LLC

KEBD/Bellman Pharmacy Date 6/18/12
By: Lamar Dale Jones
Title: Pharmacy Manager

STATE OF Colorado

Jefferson 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: Lamar Dale Jones, RPh.

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: 6/18/12

Gina Boche
Notary Public
Gina Boche

My commission expires: 4/17/16

