

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
OUT-OF-STATE PERMIT) **FINAL CONSENT ORDER**
APPLICATION OF PINE PHARMACY)
AND HOME CARE PRODUCTS)
CENTER, INC.)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the "Board") 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, Pine Pharmacy and Home Care Products Center, Inc. ("Pine") waives its right to appeal this Final Consent Order. Pine 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. Pine is a corporation organized on December 24, 1991 and existing under the laws of the State of New York. Pine holds a pharmacy permit in the State of New York and holds out-of-state pharmacy permits in a number of other states.

2. Pine makes the following representations: In November 2009, Pine 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 November 2009 and November 2010, Pine made 33 shipments 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. Pine represents that all of the shipments were Avastin 1.25 mg/0.05ml, compounded for individual injections, and that all of the drugs were shipped to physicians for office administration.

3. On October 5, 2010, Pine submitted its out-of-state pharmacy permit application.

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

5. With respect to the prior prescriptions shipped into North Carolina, the Board is unaware of instances where Pine 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 Pine represents that there were no such instances. Moreover, given the nature of Pine's represented shipments – shipments made to physicians for office administration – the risk of a violation of 21 NCAC 46 .1801(b) is low.

7. On Pine's application, it truthfully disclosed prior findings of violations made by the New York Board during routine pharmacy inspections. Pine represents and the Board accepts that the permit and all pharmacists' licenses are currently in good standing and that Pine has never had any other disciplinary action or investigation by any federal or state pharmacy regulatory authority involving the pharmacy or any of the pharmacists associated with Pine.

8. Pine represents and the Board accepts that Pine 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. Pine 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 November 2009 to November 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 Pine 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.


b. Pine 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 Pine Pharmacy and Home Care Products Center, Inc. is hereby GRANTED. However, the permit of Pine Pharmacy and Home Care Products Center, 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;
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 19th day of April, 2011.

NORTH CAROLINA BOARD OF PHARMACY

By: 

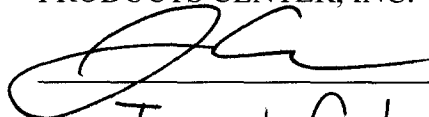
Jack W. Campbell, IV
Executive Director

Pine Pharmacy and Home Care Products Center, 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 Pine Pharmacy and Home Care Products Center, Inc. and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

PINE PHARMACY AND HOME CARE
PRODUCTS CENTER, INC.

 _____ Date 4/18/11

By: Joseph Catanese

Title: Pharmacist in Charge

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: Joseph Catanese

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: April 18, 2011

Constance J. Manion
Notary Public

Constance T. Manion

My commission expires: 9-3-2012