

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
)
OUT-OF-STATE PERMIT)
APPLICATION OF STOKES) **FINAL CONSENT ORDER**
HEALTHCARE, INC. d/b/a STOKES)
PHARMACY)
)

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the “Board”) at a prehearing conference on November 19, 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, Stokes Healthcare, Inc. (“Stokes”) waives its right to appeal this Final Consent Order. Stokes 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. Stokes is a corporation organized on January 3, 2002 and existing under the laws of the State of New Jersey. Stokes holds a pharmacy permit in the State of New Jersey and holds out-of-state pharmacy permits in a number of other states.

2. Stokes held an out-of-state pharmacy permit in North Carolina from November 1, 2007 to December 31, 2008 pursuant to North Carolina General Statutes § 90-85.21A. Stokes did not renew its North Carolina out-of-state pharmacy permit for 2009 and thereafter.

3. Stokes makes the following representations: Stokes' failure to renew its out-of-state pharmacy permit for 2009 and thereafter was inadvertent. Although it was unreasonable to do so, Stokes failed to recognize that it had not renewed its permit and it continued shipping prescription drugs into the State of North Carolina without a current out-of-state pharmacy permit. Between January 2009 and January 2011, Stokes shipped prescription drugs into the State of North Carolina on approximately 250 occasions in violation of North Carolina General Statutes §§ 90-85.21A and 90-85.38(b). The vast majority of those drugs were compounded veterinary drugs.

4. On December 6, 2010, the Board received a new permit application from Stokes. Stokes represents that the application was submitted because Stokes had only recently realized that it had failed to renew its out-of-state pharmacy permit for 2009 and 2010. On its North Carolina permit application, Stokes truthfully disclosed that it had previously shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit.

5. On January 19, 2011, the Board staff denied Stokes's permit application because of its prior shipments into the State of North Carolina without an out-of-state permit and informed Stokes that it could not make further shipments into the State of North Carolina until a permit was granted.

6. Stokes represents that, upon receipt of that letter, Stokes 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 Stokes has made no shipments since it received the January 19, 2011 request from the Board staff.

7. Following the staff denial of Stokes's application in 2011, Stokes initially requested reconsideration of that denial. But Stokes subsequently allowed that request to become inactive.

8. On July 31, 2012, Stokes submitted a new application for an out-of-state pharmacy permit which, again, truthfully disclosed that it had previously shipped prescription drugs into the State of North Carolina without an out-of-state pharmacy permit between January 2009 and January 2011.

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

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

11. Stokes represents and the Board accepts that Stokes 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 Stokes.

CONCLUSIONS OF LAW

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

1. Stokes 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 January 2009 and January 2011.

2. Stokes 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. Stokes ceased shipment for a period of nearly two years after it was informed that it could not ship without an out-of-state permit.

b. The Board has no information that Stokes 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. Stokes 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 Stokes Healthcare, Inc. d/b/a Stokes Pharmacy is hereby GRANTED, with a 2013 permit to be issued on January 1, 2013 (or within one week thereafter). Stokes Healthcare, Inc. may not ship into North Carolina until after that 2013 permit is issued. However, the permit of Stokes Healthcare, 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 20th day of November, 2012.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jack W. Campbell, IV
Executive Director

Stokes Healthcare, 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 Stokes Healthcare, Inc. and to bind the permit holder.

ACCEPTED AND CONSENTED TO BY:

STOKES HEALTHCARE, INC.

Emmett M. McVey Date 9-10-12
By: Emmett M. McVey
Title: Pharmacist in charge

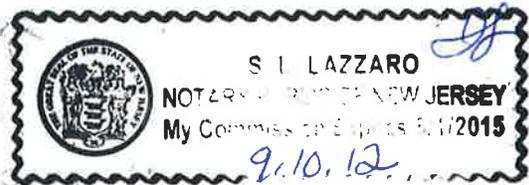
STATE OF New Jersey
Burlington COUNTY

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: Emmett McVey

[PRINT NAME OF INDIVIDUAL SIGNING]

Date: 9.10.12

S. Lazzaro
Notary Public
S. Lazzaro



My commission expires: 8.1.2015