

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

In the Matter of

THOMAS J. NORKUS
License No. 8600

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FINAL ORDER

THIS MATTER came on to be heard before the North Carolina Board of Pharmacy (the “Board”) on January 15, 2013, pursuant to an Amended Notice of Hearing, dated October 23, 2012, and was heard by Board Members Gene Minton; Dr. J. Parker Chesson, Jr.; Carol Yates Day; E. Lazelle Marks; Robert McLaughlin, Jr., and William A. Mixon at the offices of the North Carolina Board of Pharmacy. Respondent Thomas Norkus (License No. 8600) was present and represented by counsel.

The Board heard the testimony of Michele Sivak and Thomas Readling of North Carolina Mutual Drug Company (“Mutual Drug”), Jason Smith of the Board staff, and Respondent Norkus. The Board received evidence offered without objection by the Board staff, which included documents produced by Mutual Drug in response to a Board subpoena. The Board further received and considered evidence offered by Respondent without objection. Considering the testimony and evidence, the Board hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Norkus is, and was at all relevant times referred to herein, a pharmacist licensed to practice pharmacy in the State of North Carolina with license number 8600.

2. The Board is a body duly organized under the laws of the State of North Carolina and is the proper body for this proceeding under the authority granted to it in Chapter 90 of the General Statutes of North Carolina, and the rules and regulations promulgated thereunder. Norkus is and was, at all relevant times referred to herein, subject to the rules and regulations of the North Carolina Board of Pharmacy and the laws of the State of North Carolina.

3. Norkus was properly served and received all notice of this hearing that was required by law

4. On March 16, 2009, Norkus met with representatives of Mutual Drug, a drug wholesaler that serves independent pharmacies in North Carolina and surrounding states. Norkus told representatives of Mutual Drug that he was planning to open a long-term care pharmacy.

5. Norkus incorporated Josepharm, Inc. ("Josepharm") by Articles of Incorporation executed on March 31, 2009, and filed with the North Carolina Secretary of State on April 8, 2009. Norkus is and was, at all relevant times referred to herein, the President and sole owner of Josepharm.

6. On or about September 22, 2011, Norkus filed with the Board an Application for Registration and Permit to Conduct a Pharmacy on behalf of Josepharm, 5000 Nations Crossing, Suite 222, Charlotte, North Carolina, 28217 (the "Application"). The Application listed Norkus as the owner and pharmacist-manager for Josepharm. In the Application, Norkus certified that, inter alia, he was responsible for the conduct of Josepharm according to the laws of North Carolina, including the Pharmacy Practice Act.

7. On or about October 16, 2011, Norkus again contacted Mutual Drug about using Mutual Drug's services.

8. On October 25, 2011, the Board issued permit number 11126 to Josepharm.
9. In November 2011, Norkus applied to open an account with Mutual Drug, purportedly for the purchase of drugs for distribution by Josepharm as a long-term care pharmacy.
10. On December 14, 2011, Mutual Drug opened an account for Josepharm and provided an account number to Norkus.
11. Shortly after Mutual Drug opened an account for Josepharm, Norkus began to return outdated prescription drugs to manufacturers and to request that credit be applied to Josepharm's account at Mutual Drug. Specifically, Norkus returned the following outdated drugs:
 - a. 2 boxes of Aggrenox Caps 60's, 3 boxes of CAT-TTS-a 3.5 cm/sq 2.5mg, and 1 box of Micardis HCT Tabs 80 + 12.5mg UD to Boehringer Ingeiheim Pharmaceuticals, Inc. for a total credit amount of \$568.07;
 - b. 3 boxes of Lovenox 40mg to Sanofi-aventis U.S. LLC for a total credit amount of \$818.19;
 - c. 4 boxes of Nexium 40mg 30ct to AstraZeneca LP for a total credit amount of \$694.04;
 - d. 1 box of Dilantin Inftab 50 mg to Pfizer for no credit because it was more than one year past expiration;
 - e. 1 box of Abilify Tab 15 mg to Bristol-Myers Squibb Company for a total credit amount of \$492.00; and
 - f. 1 bottle of Benicar 40 mg tablets to Daiichi-Sankyo for a total credit amount of \$60.90 (collectively the "Returned Drugs")
12. Upon receipt of credit memoranda from the pharmaceutical companies for the Returned Drugs, Michele Sivak from Mutual Drug contacted Norkus about the returns. On January 27, 2012, Norkus had a conversation with Sivak about the Returned Drugs. During that conversation, Norkus acknowledged that he and Josepharm had not purchased the Returned

Drugs from the manufacturers and had not purchased them through Mutual Drug. He claimed that he had obtained the drugs by bartering, working for pharmacies in exchange for the Returned Drugs. He stated that Josepharm had additional products that he intended to return to manufacturers and that Mutual Drug would probably soon receive more credit memoranda related to those drugs.

13. Based on Norkus's efforts to receive credit for the Returned Drugs, Mutual Drug terminated Josepharm's account on or about January 30, 2012.

14. On February 10, 2012, Jason Smith, an investigator for the Board met with Norkus at Josepharm's location at 5000 Nations Crossing, Suite 222, Charlotte, North Carolina. Norkus told Smith that he obtained the Returned Drugs from pharmacies at which he had worked in exchange for working at the pharmacy. Norkus stated that he had received the Returned Drugs through barter a couple of years before. At that time, Norkus did not have a pharmacy permit, but he claimed that he had received the drugs in hopes of starting his own pharmacy one day. Norkus further claimed that he had planned to use credit obtained for the Returned Drugs to begin stocking Josepharm's inventory.

15. During this interview, Norkus showed the investigator additional outdated medications that Norkus claimed he had obtained through bartering with pharmacies at which he worked. Specifically, the investigator observed and documented the following outdated drugs at Josepharm's office:

- a. 1 box of Lovenox 30mg/.3mL with an expiration date of September 2011;
- b. 1 box of Lovenox 40mg/.4mL with an expiration date of September 2011;
and
- c. 1 bottle of Lipitor 40mg with an expiration date of September 2011.

16. Norkus has consistently refused to identify any of the pharmacies that purportedly provided him with the outdated drugs. In addition to refusing to answer Smith's questions regarding the source(s) of the drugs, Norkus declined to answer questions both during his deposition and in testimony before the Board regarding the source(s) of the drugs. Norkus only would attribute the drugs to a friend with whom he bartered in 2009 and whom he wished to protect from investigation by Board staff.

17. The uncontroverted evidence was that Norkus received the drugs through barter at a time in which he had no pharmacy permit. Norkus, therefore, participated in unauthorized distribution of drugs without a prescription and in violations of state and federal law, resulting in receiving (and subsequently shipping) drugs that were misbranded. Furthermore, even if he had possessed a pharmacy permit, the receipt of drugs without a pedigree was contrary to state and federal law and also resulted in receiving (and subsequently shipping) drugs that were misbranded and that were held under conditions whereby they may have been contaminated with filth, or whereby they may have been rendered injurious to health. Furthermore, at the hearing, Norkus acknowledged that one of the reasons for taking drugs in barter was to avoid taxes on income from his work as a pharmacist.

CONCLUSIONS OF LAW

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

1. The evidence demonstrated that Respondent violated the following statutes and rules:

- a. North Carolina General Statutes § 90-85.38(a)(6);
- b. North Carolina General Statutes § 90-85.38(a)(7);
- c. North Carolina General Statutes § 90-85.40(b);
- d. North Carolina General Statutes § 90-85.40(f);
- e. North Carolina General Statutes § 106-122;
- f. 21 N.C.A.C. 46 .1805;
- g. 21 U.S.C. § 331(a), (b) and (c);
- h. 21 U.S.C. § 351(a);
- i. 21 U.S.C. § 352;
- j. 21 U.S.C. § 353(b) and (e); and
- k. 21 C.F.R. § 203.50.

2. Considering all of the facts and circumstances of this matter, the Board finds and concludes that the discipline set forth in this Final Order is appropriate.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the license of Respondent Thomas J. Norkus, License No. 8600, is hereby SUSPENDED for twelve (12) months, to be served as follows as announced by the Board at the conclusion of the hearing:

1. Seven (7) days of the suspension must be served as an active suspension. These seven days shall be served consecutively from 12:00 p.m. on January 15, 2013, to 12:00 p.m. on January 22, 2013. During the active portion of his suspension, Norkus shall not be present in any pharmacy in the State of North Carolina except as a customer with a valid prescription from a treating physician.

2. The remaining days of the suspension shall be stayed for five (5) years from the date of this hearing, upon the following conditions:

- i. Respondent Norkus shall violate no laws governing the practice of pharmacy or the distribution of drugs;
- ii. Respondent Norkus shall not serve as a pharmacist-manager of any pharmacy;
- iii. Respondent Norkus shall not serve as a preceptor of pharmacy students;
- iv. Respondent Norkus shall violate no rules and regulations of the Board;
- v. If Respondent Norkus fails to comply with any terms or conditions of this Final Order, Respondent may be subject to additional disciplinary action by the Board.

This Final Order is entered nunc pro tunc to January 15, 2013, as announced at the hearing.

NORTH CAROLINA BOARD OF PHARMACY

By: 

Jack W. Campbell, IV
Executive Director

CERTIFICATE OF SERVICE

I certify that, today, I served the foregoing Final Order on Counsel for the Respondent both by certified U.S. mail addressed to counsel for Respondent, along with a courtesy copy by e-mail:

Reed N. Fountain
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January 24, 2013



Jack W. Campbell, IV
Executive Director