

IN THE MATTER OF
CO TRUXTON, INC.

PERMIT No: D02941
Respondent-Distributor

* BEFORE THE
* STATE BOARD
* OF PHARMACY
* Case No.: PI-11-114

* * * * *

CONSENT ORDER

On March 21, 2012, the Maryland State Board of Pharmacy (the "Board") charged CO Truxton, Inc. ("Respondent-Distributor"), Permit No.: D02941, under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 12-101 *et seq.* (2009 Repl. Vol. and 2010 Supp.).

The pertinent provisions of the Act provide as follows:

H.O. § 12-6C-03. Permit Required.

(a) *Wholesale distributor.* – A wholesale distributor shall hold a permit issued by the Board before the wholesale distributor engages in wholesale distribution in the State.

H.O. § 12-6C-11. Violations; penalties.

(a) *Fine.* – (1) If a person knowingly violates any provisions of this subtitle or any regulation adopted under this subtitle, the Board may impose a fine not to exceed \$500,000.

COMAR 10.34.22.05 A. After a hearing held under Health Occupations Article, §12-601, Annotated Code of Maryland, the Board may deny, suspend, revoke, or place on probation a permit holder, reprimand a permit holder, or impose a fine if the permit holder:

(n) Fails to obtain a license, or operates without a valid license when a license is required[.]

On April 25, 2012, the Respondent-Distributor appeared before members of the Board and the Board's counsel for a Case Resolution Conference (CRC) to discuss the

potential resolution of the Charges by consent. At the conclusion of the CRC, the Respondent agreed to enter into this Consent Order to resolve the pending charges and to avoid the expense and time of proceeding to an administrative hearing. The Respondent and the Board agreed to the inclusion of Findings of Fact and Conclusions of Law as required by the Board, and with the terms and conditions set forth herein.

FINDINGS OF FACT

The Board finds the following:

1. The Respondent-Distributor was permitted to operate as a wholesale distributor in the State of Maryland, having been issued permit number D02941. The Respondent-Distributor was first issued a distributor permit on April 21, 2010. The Respondent-Distributor's license is non-renewed, having expired on December 31, 2010.

2. At all times relevant to the charges herein, the Respondent-Distributor was registered to distribute controlled dangerous substances in the State of Maryland pursuant to Article 27, Section 276 *et seq.* by the State of Maryland Department of Health and Mental Hygiene Division of Drug Control, having been issued registration/certification number 085673, which expired on November 30, 2011.

3. The Respondent-Distributor is located in Bellmawr, New Jersey.

4. The Board received information that the Respondent-Distributor was distributing drugs to a physician's office ("Dr. A") located in Maryland.

5. Thereafter, the Board initiated an investigation.

6. On August 9, 2011, the Board issued a *subpoena duces tecum* to Dr. A for copies of all invoices relating to the purchase of drugs from the Respondent-Distributor

from January 2010 through the date of the subpoena.

7. In response to the Board's subpoena, Dr. A provided invoices from April 2, 2010 through August 9, 2011.

8. On 28 occasions between January 6, 2011 and August 9, 2011, the Respondent-Distributor distributed Diethylpropion and/or Phentermine and/or Phendiet, all controlled dangerous substances, to Dr. A.¹ The Respondent-Distributor was operating without a valid license at this time.

9. In resolving the charges against the Respondent-Distributor, the Board considered the following mitigating factors:

- a. The Respondent-Distributor is a family-owned business that has been in operation since 1957;
- b. The Respondent-Distributor has nine employees, six of whom are family members;
- c. The Respondent-Distributor maintains active licenses in 18 states;
- d. The Respondent-Distributor has never been the subject of discipline in any other state;
- e. At the time that the Respondent was doing business in Maryland, it had only one customer (Dr. A).
- f. The Respondent netted a profit of approximately \$7,200 as a result of its unauthorized distribution to Dr. A.

¹ Diethylpropion, Phentermine and Phendiet are stimulants that are similar to an amphetamine. They are appetite suppressants.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provision of the Act: H.O. § 12-6C-03(a) and COMAR 10.34.22.05A (n).

ORDER

Based on agreement of the parties, it is therefore this 21st day of May 2012, by an affirmative vote of the Board, hereby:

ORDERED that within 30 days of the effective date of this Consent Order, the Respondent-Distributor shall pay a fine in the amount of \$7,000, payable to the Maryland Board of Pharmacy; and it is further

ORDERED that failure to comply with the terms and conditions of this Consent Order, including but not limited to failure to pay the required fine, constitutes a violation of this Consent Order and the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board may impose any appropriate sanction under the Act; and it is further

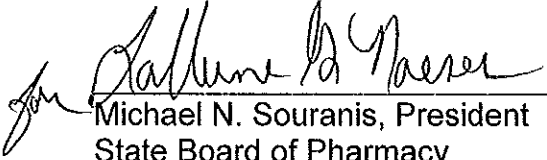
ORDERED the Respondent-Distributor shall bear all expenses associated with this Order; and it is further

ORDERED that the Respondent-Distributor shall not resume distributing drugs into Maryland unless and until it is re-permitted as a wholesale distributor in Maryland; and it is further

ORDERED that if the Respondent-Distributor obtains a valid permit to operate as a wholesale distributor in the Maryland, it shall operate according to the Maryland Pharmacy

Act and in accordance with all applicable laws, statutes and regulations pertaining to its operation as wholesale distributor; and it is further

ORDERED that this document constitutes a formal disciplinary action of the State Board of Pharmacy and is therefore a public document for purposes of public disclosure, pursuant to the Public Information Act, State Gov't § 10-611 *et seq.* and COMAR 10.34.01.12.


Michael N. Souranis, President
State Board of Pharmacy

CONSENT

I, Paul F. Devine, President and C.E.O. of CO Truxton, Inc., acknowledge that I had the opportunity to consult with legal counsel before signing this document. By this Consent, I accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this

Order, and understand its meaning and effect.

May 10th, 2012
Date

Paul F. Devine
Paul F. Devine, President and CEO
CO Truxton, Inc., Respondent-Distributor

Read and approved by:

James P. Nolan
James P. Nolan, Esquire
Attorney for Respondent-Distributor

NOTARY

STATE OF NEW JERSEY

CITY/COUNTY OF Camden :

I HEREBY CERTIFY that on this 10 day of May, 2012, before me, a Notary Public of the foregoing State personally appeared Paul F. Devine, owner and operator of **CO Truxton, Inc., Permit Number D02941**, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Madeline L. Pasquarello

Notary Public
MADELINE L. PASQUARELLO
Notary Public
STATE OF NEW JERSEY

My Commission Expires: My Commission Expires 04-08-2015