

IN THE MATTER OF	*	BEFORE THE
KMS MEDICAL AND SURGICAL SUPPLY, LLC	*	MARYLAND STATE
Unlicensed	*	BOARD OF PHARMACY
	*	Case No. 22-207
* * * * *		* * * * *

PRE-CHARGE CONSENT ORDER

Background

The Maryland Board of Pharmacy (the “Board”) received a Supply Chain Inspection Report of an inspection conducted by the National Association of Boards of Pharmacy (“NABP”) of KMS Medical and Surgical Supply, LLC, (“KMS” or “Distributor”) on January 26, 2022. The inspection report indicated that the Distributor was distributing into Maryland, among other states, without a Maryland wholesale distributor permit. The Board’s subsequent investigation confirmed that the Distributor distributed certain prescription devices into Maryland in 2020-2021 without a wholesale distributor permit.

In lieu of instituting formal proceedings against KMS Medical and Surgical Supply, LLC (the “Distributor”) in accordance with the Maryland Pharmacy Act, Md. Code Ann., Health Occ. § 12-101 *et seq.*, the Board and KMS, Inc. have agreed to resolve this matter as set forth in this Pre-Charge Consent Order.

FINDINGS OF FACT

1. KMS Medical and Surgical Supply, LLC (“KMS”) is a wholesale drug distributor located and licensed in Dearborn, Michigan.
2. On or about January 26, 2022, NABP conducted a Supply Chain inspection of

KMS. NABP's inspection noted that KMS was only licensed as a wholesale distributor in Michigan, although it appeared to be distributing into other states, including Maryland.

3. Upon receiving a copy of the NABP inspection report, the Board opened an investigation into the matter.
4. KMS cooperated with the Board's investigation and provided requested documents. The Board's investigation determined that KMS distributed certain prescription devices into Maryland without a Maryland wholesale distributor's permit.
5. Specifically, between August 2020 and November 2021, KMS distributed units of Pulmo-Aide Compact Compressor/Nebulizer and Ethyl Chloride Spray (3.9 fl. oz.) to various healthcare providers in Maryland without a wholesale distributor's permit.
6. Wholesale distributors must hold a permit issued by the Board before the wholesale distributor engages in the wholesale distribution of prescription drugs or prescription devices in Maryland.
7. KMS asserts that it mistakenly believed that a wholesale distributor's permit was not required in order to distribute prescription devices into Maryland.
8. KMS asserts that it has since reviewed its processes to ensure that it does not distribute prescription devices into Maryland.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that KMS Medical and Surgical Supply, LLC, is subject to a sanction in accordance with Md. Code Ann., Health Occ. §§ 12-6C-03 and 12-6C-11.

ORDER

Based upon an affirmative vote of the Maryland Board of Pharmacy under the authority of Md. Code Ann., Health Occ. § 12-101, *et seq.*, it this 31st day of January 2024, hereby,

ORDERED that KMS Medical and Surgical Supply, LLC, shall pay a FINE in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable to the Maryland Board of Pharmacy within thirty (30) days of the date of this Order, and mailed to:

Wells Fargo Bank
Attn: State of MD - Board of Pharmacy
Lockbox 2051
401 Market Street
Philadelphia, PA 19106

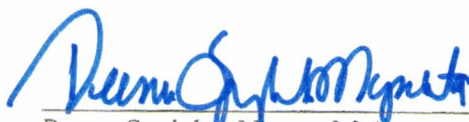
NOTE: Please include the case number, 22-207, on your check or money in order to ensure proper assignment to this case; and be it further,

ORDERED that KMS Medical and Surgical Supply, LLC., shall cease and desist from any and all wholesale distribution of prescription drugs and prescription devices into Maryland unless and until KMS obtains the requisite wholesale distributor permit, or is otherwise authorized; and be it further,

ORDERED that in the event that KMS Medical and Surgical Supply, LLC, violates any of the terms above, the Board, after notice and an opportunity for a hearing, and a determination of a violation, may impose any sanction it deems appropriate, including the imposition of further fines in accordance with Health Occ. § 12-6C-11; and be it further,

ORDERED that this is a formal order and as such is a public document pursuant to the Maryland Public Information Act, Md. Code Ann., General Provisions Article § 4-101, *et seq.*

1-31-24
Date


Deena Speights-Napata, M.A.
Executive Director for:

Neil Leikach, R.Ph.
Board President

CONSENT


1. KMS Medical and Surgical Supply, LLC, acknowledges the validity of this Pre-Charge Consent Order as if it were made after a hearing in which it would have had the right to counsel, to confront witnesses, and to all other substantial procedural protections provided by law.

2. KMS Medical and Surgical Supply, LLC, acknowledges that, by entering into this Pre-Charge Consent Order, it is waiving its right to appeal any adverse ruling of the Board that might have followed such an evidentiary hearing.

3. KMS Medical and Surgical Supply, LLC, acknowledges the legal authority and jurisdiction of the Board to enter and enforce this Pre-Charge Consent Order.

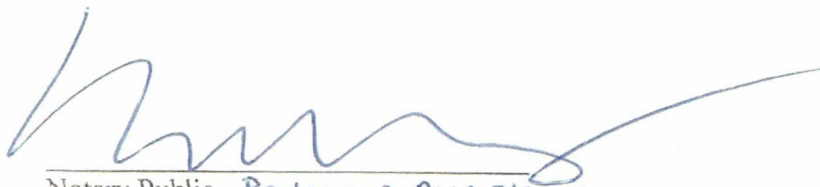
4. KMS Medical and Surgical Supply, LLC, signs this Pre-Charge Consent Order freely and voluntarily, after having had the opportunity to consult with counsel. KMS Medical and Surgical Supply, LLC, fully understands the language, meaning, and effect of this Pre-Charge Consent Order.

1/31/24
Date


Name: Andrew Babicki
Title: President

STATE OF MICHIGAN,
COUNTY/CITY OF CANTON:

I hereby certify that on this 31 day of Jan, 2024, before me, a Notary Public of the State of Michigan, County/City aforesaid, personally appeared Andrew Babick, and made an oath in due form that the foregoing Consent was his/her voluntary act and deed on behalf of KMS Medical and Surgical Supply, LLC.



Notary Public RONALD R. RUARK
My commission expires: 1-17-30

WAYNE CO MICHIGAN

