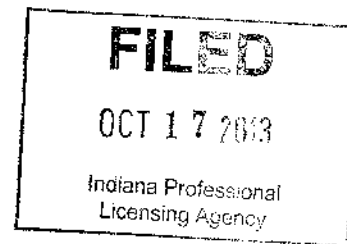


BEFORE THE INDIANA
BOARD OF PHARMACY
CAUSE NUMBER: 2013 IBP 0073

IN THE MATTER OF THE NON-RESIDENT)
PHARMACY PERMIT OF:)
ESI MAIL PHARMACY SERVICE, INC.)
PERMIT NUMBER: 64000419A)



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Indiana Board of Pharmacy ("Board") held an administrative hearing on October 7, 2013, Room W064 of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana concerning the "Complaint" filed by the Consumer Protection Division of the Attorney General's Office which alleges that ESI Mail Pharmacy Services, Inc. ("Respondent") should have its permit as a non-resident pharmacy disciplined.

Darren Covington, Deputy Attorney General, represented the State of Indiana. Respondent appeared in person and by counsel, Philipp Wickizer.

The Board, after taking official notice of its file in this matter, votes 4 to 0 to issue the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent, who has a mailing address of 3684 Marshall Lane, Bensalem, Pennsylvania 19020 was a duly permitted non-resident pharmacy with permit number 64000419A.
2. In July 2013, the Consumer Protection Division of the Attorney General's Office filed a "Complaint" against the Respondent. The Complaint alleged that Respondent's permit should be disciplined because it was disciplined in another state. The allegations were based on the

assertion that Respondent had been disciplined in both Colorado and Michigan. Specifically the State's charge is set out as follows:

Respondent violated Ind. Code § 25-1-9-4(a)(7) in that Respondent has had disciplinary action taken against its Colorado and Michigan licenses on grounds similar to Ind. Code § 25-1-9-4(a)(3), to wit, Ind. Code ch 35-48-7 & Ind. Code ch. 25-1-13 (failing to report to a drug monitoring program); and, Ind. Code § 25-1-9-4(a)(7).

3. The State presented evidence that Respondent had been fined by the licensing authorities in Colorado because it did not report to Colorado's drug monitoring program that it had not distributed controlled substances during a certain time period. The Michigan discipline was based on the Colorado discipline.

4. Peter Cymbolski, pharmacist in charge at Respondent, testified on behalf of the Respondent. He explained that Respondent is a component of a large national pharmacy that specializes in mail order business. As a business decision Respondent surrendered its permit in Pennsylvania and it no longer ships drugs. It is now primarily a back-up facility in case of a national disaster.

5. In September 2013, Respondent surrendered its Indiana permit as a non-resident pharmacy as part of the business plan outlined above.

6. The Board observes that although Respondent may have violated Colorado law it did not violate Indiana law and that no purpose would be served by disciplining the Indiana permit which has already been surrendered.

CONCLUSIONS OF LAW

1. A pharmacy license is subject to discipline if the pharmacy violates a statute in another state that is similar to a statute in Indiana the violation of which would subject the pharmacy to discipline. Ind. Code § 25-1-9-4.

2. The Board concluded that under the unique circumstance of this case that it would be pointless to impose further discipline on Respondent.

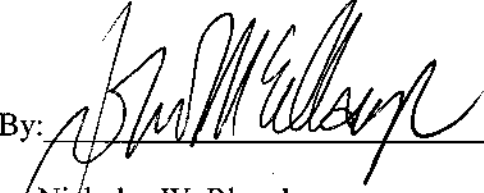
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board **DISMISSES** the State's "Complaint" in this matter.

SO ORDERED, this 17th day of October, 2013.

INDIANA BOARD OF PHARMACY

By: _____

for 
Nicholas W. Rhoad
Executive Director
Indiana Professional Licensing Agency

CERTIFICATE OF SERVICE

I certify that a copy of the Findings of Fact, Conclusions of Law and Order has been duly served upon:

ESI Mail Pharmacy Service, Inc.

3684 Marshall Lane

Bensalem, PA 19020

Service by U.S. Mail

Philipp Wickizer

Express Scripts Holding Company, Inc.

One Express Way

Mail Stop HQ2E03

St. Louis, MO 63121

Service by U.S. Mail

Darren Covington, Deputy Attorney General

Office of the Indiana Attorney General

Indiana Government Center South

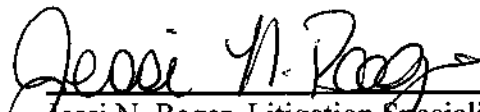
302 West Washington Street, Fifth Floor

Indianapolis, IN 46204

Service by e-mail

10/17/13

Date


Jessi N. Rager, Litigation Specialist

Indiana Board of Pharmacy

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