



Nevada State Board of Pharmacy

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March 11, 2002

Mr. Sherwood N. Cook
Kummer Kaempfer Bonner & Renshaw
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, Nevada 89109

Re: Investigation of Prescriptiononline.com

Dear Mr. Cook:

This letter confirms our conversation on March 8 wherein we discussed the Board of Pharmacy's investigation of and concerns with your client's operation of its pharmacy. You and I agreed that your client would be allowed to continue to operate its pharmacy using the internet, but you agreed that your client would no longer dispense controlled substances except to patients where the patient and the physician are in the same state.

I wanted to iterate the legal standards that apply to the acceptance and dispensing of out-of-state prescriptions. Regarding out-of-state prescriptions for controlled substances, NRS 639.235 provides:

2. If a prescription is prescribed by a person who is not licensed to practice in this state but is authorized by the laws of another state to prescribe, calls for a controlled substance listed in:

(a) Schedule II, the registered pharmacist who is to fill the prescription shall establish and document that the prescription is authentic and that a bona fide relationship between the patient and the person prescribing the controlled substance did exist when the prescription was written.

(b) Schedule III or IV, the registered pharmacist who is to fill the prescription shall establish, in his professional judgment, that the prescription is authentic and that a bona fide relationship between the patient and the person prescribing the controlled substance did exist when the prescription was written. This paragraph does not require the registered pharmacist to inquire into such a relationship upon the receipt of each such prescription.

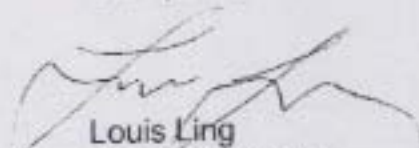
Similarly, regarding out-of-state prescriptions for dangerous drugs, NAC 639.752 provides:

1. Except as otherwise provided in this section and NRS 639.235, a prescription must not be filled or dispensed if the prescription is:
 - (a) Written by a practitioner who is not licensed to practice in this state;
 - (b) For a patient who resides in a state other than Nevada or the state in which the practitioner's practice is located; and
 - (c) Requested to be furnished in a manner inconsistent with NAC 639.710.
2. A prescription described in subsection 1 that is not a controlled substance listed in schedule II, III or IV may be filled and dispensed if:
 - (a) The patient has sought payment for the prescription from a managed care system or insurance plan in which the patient is enrolled that has contracted with the pharmacy for the provision of pharmaceutical services; or
 - (b) A pharmacist has spoken with the patient and the practitioner and has ascertained that the prescription is valid and that a bona fide therapeutic relationship exists between the patient and the practitioner. In determining whether a bona fide therapeutic relationship exists, the pharmacist shall ascertain the date and place at which the practitioner physically examined the patient and shall record that information on the prescription or in another readily retrievable record.

I hope the above information is useful to you as you advise your client as to its operations in the future. We will continue to monitor the controlled substances prescription dispensing of your client's pharmacy, and your client can expect occasional visits from our investigative staff to assure that your client's operation complies with Nevada law. As we discussed, your client can also expect our investigators to visit soon to obtain documents and statements in furtherance of our ongoing investigation.

If you find that this letter does not accurately confirm our telephone call, please let me know. If you have any questions or need any additional information, please call me.

Godspeed,



Louis Ling
General Counsel

c: Fred Ackermann

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Louis Ling
Nevada State Board of Pharmacy
555 Double Eagle Court, Suite 1100
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MAR 20 2002

Re: *Prescriptiononline.com, Inc.*

Dear Mr. Ling:

This letter is in response to your letter of March 11, 2002. I have discussed with the management of Prescriptiononline.com, Inc. (the "Company") your recommendation that the Company not dispense controlled substances except to patients located in the same state as the prescribing physician. However, I respectfully disagree that such dispensing restrictions are mandated by current Nevada law; and on behalf of the Company, I request that you reconsider your position.

As you pointed out in your letter, NRS 639.235(2)(b) requires that prior to filling a prescription for certain controlled substances issued by a person not licensed in Nevada, the registered pharmacist must establish, in his professional judgment, that a bona fide relationship between the patient and the prescribing person existed when the prescription was written. The statute only requires a professional determination that a bona fide relationship exists between patient and physician. The statutory focus is on the existence of a doctor/patient relationship, not the location of the physician or the patient. Even if the physician is located in the same state as the patient, the obligation to determine the existence of a doctor/patient relationship is mandated if the physician is not licensed in Nevada.

NAC 639.752 places additional obligations on a pharmacist where a non Nevada-licensed practitioner prescribes for a patient not located in Nevada or the practitioner's state, where the drugs are to be delivered "in a manner inconsistent with NAC 639.710." The focus of that statute seems to be the manner in which the drugs are delivered, since all three elements of NAC 639.752(1) have to be present before the restrictions in NAC 639.752(2) apply. While secondary consideration is given to the location of the patient being in a different state than the

state in which the physician's practice is located, that factor is not controlling. For example, NAC 639.752 would not apply if a practitioner practicing in Arizona, but also licensed in Nevada, issued a prescription for a Colorado resident. Nor would the statute cover a situation where a Nevada based and licensed physician issued a prescription to a Nebraska resident. Additionally, the statute would not apply to an Arkansas physician who issues a prescription to a Nevada resident. And finally, the statute would not apply to a situation in which a Nevada pharmacy fills a prescription issued by an Idaho physician to a Utah resident, so long as the drugs are not delivered to the Utah resident in a manner inconsistent with NRS 639.710.

The Company has advised me that the Company's procedures for filling any new prescription consist of the following:

- 1) An order must be placed by a customer.
- 2) The order must be followed by a prescription being faxed to the Company directly from the prescribing physician.
- 3) After receipt of the prescription, a Company pharmacist must contact the prescribing physician by telephone and confirm that a doctor/patient relationship existed between the physician and the patient at the time the prescription was written.
- 4) For controlled substances, the Company must obtain a copy of the prescribing physician's DEA license.
- 5) The prescription is then filled.
- 6) The filled prescription is delivered by a nationally recognized carrier (UPS, Federal Express, or U.S. Express Mail).
- 7) Delivery is made only to the residence of the patient and must be accepted and signed for by the patient or other adult.
- 8) Signed delivery receipts are returned by the carrier to the Company, and are filed and maintained in the Company's records.

The Company believes it is in full compliance with all statutes and regulations applicable to its operations. The Company satisfies the provisions of NRS 639.235 by telephonically confirming with the prescribing physician that a bona fide relationship existed between the prescribing physician and the patient at the time the prescription was written. The provisions of NAC 639.752 do not apply because the drugs are not delivered in a manner inconsistent with NRS 639.710. In all instances the drugs are delivered to the residence of the patient by a nationally recognized carrier and signed for by the patient or other adult. Customers do not have the option to have their drugs delivered in any other manner.

Louis Ling
March 15, 2002
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As you are probably aware, the Company is licensed or is otherwise qualified to issue prescriptions in every state except California. In addition to its pharmacy license, where needed the Company has secured special state licenses to dispense controlled substances. The Company has attempted in every respect to operate in a manner consistent with applicable law.

While the Company understands your concerns about its volume of controlled substances, the Company believes its product mix is consistent with other Internet or mail-order pharmacies. The Company hopes that you and the Nevada Pharmacy Board (the "Board") understand the current general profile of persons who fill their prescriptions through Internet and mail-order pharmacies. The Company believes a majority of the drugs filled by Internet and mail-order pharmacies are controlled substances. The Company also urges you and the Board to recognize current practices and trends in the health care industry. Many physicians issue prescriptions to their patients based on information and analysis that does not include a physical examination. And many physicians issue prescriptions from time to time to their non-resident patients. For your information, the Company is providing you copies of letters from prescribing physicians who outlined for the Company their prescribing procedures in order to alleviate the Company's concerns following your inquiry.

Again, the Company respectfully requests that you reconsider the restrictions you wish to impose on the Company that would prohibit the Company from filling a prescription for a patient residing in a state other than the state of the prescribing physician. The Company is committed to operating its business in compliance with all state and federal laws. However, the Company believes the restrictions you proposed represent an unfair, selective regulatory burden that is are not based on current law.

Sincerely,

KUMMER KAEMPFER BONNER & RENSHAW


Sherwood N. Cook

SNC/ps
Enclosures