

EFFECTIVE AS A FINAL ORDER

DATE: 2.19.2020

FILED

JAN 28 2020 AD

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of)

) KSBHA Docket No. 20-HA00037

1-800 Contacts, CLD)

Kansas Registration No. 75-00001)

SUMMARY ORDER

NOW ON THIS 28th day of January, 2020, this matter comes before Tucker Poling, Interim Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A 77-537. Pursuant to K.S.A 77-537, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (15) days of service.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. 1-800 Contacts, C.L.D., ("Registrant") is an entity based in Draper, Utah, which dispenses contact lenses in Kansas. Registrant was originally issued registration number 75-0001 to distribute contact lenses in the state of Kansas on or about June 10, 2003. Registrant's current registration designation is Active. Registrant most recently renewed such registration on or about October 3, 2019.
2. The last known mailing address for Registrant is: 261 W. Data Drive, Draper, Utah 84020.
3. On or about October 2, 2018, Registrant failed to meet the deadline for registration with the Board for their 2019 renewal. According to Registrant, a turnover of personnel who handle registration renewals contributed to the error.

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4. The Board became aware of a lapse in Registrant's registration during an ongoing investigation for KSBHA Investigation No. 19-00704. KSBHA Investigation No. 19-00704 involved Luxottica of America, Inc. ("Luxottica"). Luxottica and Registrant share a contact lens dispensing facility, thus when a Board Investigator requested information from Luxottica regarding KSBHA Investigation No. 19-00794, a response was erroneously drafted and sent by Registrant's General Counsel. Both organizations had lapses in registration with slightly different date ranges, which caused the confusion.

5. On or about January 11, 2019, Registrant submitted a late renewal application, which was partially complete.

6. On or about January 16, 2019, Registrant paid the \$150 registration renewal fee to the Board.

7. On or about February 5, 2019, the Board sent an email to Registrant informing them their registration renewal application was incomplete and asking for a completed application.

8. On or about February 8, 2019, the Board received a complete renewal application from Registrant.

9. A wallet registration card was issued to Registrant, indicating Registrant had an Active registration beginning on February 11, 2019.

10. In a response dated April 25, 2019, Registrant's representative admitted 7,244 contact lens orders had been shipped to Kansas residents between October 5, 2018 and February 11, 2018, the time period in which Registrant did not have an Active registration in Kansas.

Applicable Law

11. K.S.A. 65-4967(a) of the Patient's Contact Lens Prescription Release Act defines an entity dispensing

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contact lenses as:

...a person or entity not licensed under K.S.A. 65-1505, and amendments thereto, or license to practice medicine and surgery in Kansas who mails or delivers, using commercial courier or overnight or other delivery services, contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine.

12. K.S.A. 65-4967(b) of the Patient's Contact Lens Prescription Release Act further states:

No person dispensing contact lenses as defined under subsection (a) may dispense contact lenses to Kansas residents unless they meet the requirements of this section, is registered under this section and pays the annual registration fee set by the state board of healing arts.

13. K.S.A. 65-4968(b)(1) states:

Upon a finding of any violation of the patient's contact lens prescription release act, in lieu of or in addition to any other action, ... the state board of healing arts for persons subject to the provisions of K.S.A. 65-4967, and amendments thereto, registered under K.S.A. 65-4967, and amendments thereto, or licensed by the state board of healing arts to practice medicine and surgery may assess a civil fine not in excess of \$10,000 against such person dispensing contact lenses under this act.

Conclusions of Law

14. The Board has jurisdiction over Registrant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

15. The Board finds Registrant is subject to the provisions of K.S.A. 65-4937(a) in that it is an entity dispensing contact lenses.

16. The Board finds Registrant violated K.S.A. 65-4967(b) in that Registrant dispensed contact lenses to Kansas residents without meeting the requirements of the section, because Registrant had continued to ship contact lenses between October 3, 2018 and February 11, 2019, the time period in which Registrant's registration had lapsed to approximately 7,244 Kansas residents.

17. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons or entities other than Registrant, 1-800 Contacts, CLD.

IT IS, THEREFORE, ORDERED that Registrant is assessed a **CIVIL FINE** in the amount of **seven thousand, five hundred dollars (\$7,500.00)** for Registrant's violations of the Patient's Contact Lens Prescription Release Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before **April 15, 2020**. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 28th day of January, 2020.

KANSAS STATE BOARD OF HEALING ARTS



Tucker Poling
Interim Executive Director

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FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Tucker L. Poling, Interim Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 19th day of February 2020 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

1-800 Contacts, CLD
261 W. Data Drive
Draper, UT 84020
ksalazar@1800contacts.com
Registrant

Roy Monclair
1-800 Contacts, CLD
261 W. Data Drive
Draper, UT 84020
rmonclair@1800contacts.com
General Counsel for Registrant

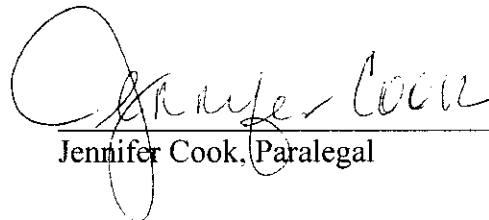
And a copy was hand-delivered to:

M. Katie Baylie, Associate Disciplinary Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.



Jennifer Cook, Paralegal