

99-047

Stacy A. Jeffress, #12460
David Harder, #18344
Wm. Scott Hesse, #12013
Assistant Attorneys General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2001 NOV 20 A 9:57

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General, and

KANSAS BOARD OF PHARMACY,

Plaintiffs,

vs.

DVM ENTERPRISES, INC., d/b/a
CYBRXPRESS, JOHN S. STIVERSON, a/k/a
SCOTT STIVERSON, d/b/a STIVERCORP
and d/b/a ONLINE PHYSICIANS,
DANIEL THOMPSON, M.D., and
HOME PRESCRIPTION SERVICES, INC.,

Defendants.

Case No. 99-C-737

Home Prescription
Services, Inc.

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20th day of November, 2001, comes before the Court the Journal Entry of Consent Judgment entered into between the Plaintiffs and Defendant Home Prescription Services, Inc. pursuant to K.S.A. 50-632(b). The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Stacy A. Jeffress and David Harder, Assistant Attorneys General. The Kansas Board of Pharmacy appears by and through Wm. Scott Hesse, Assistant Attorney General. Defendant Home Prescription Services, Inc., appears by and through

counsel, Michael E. Francis. Defendants DVM Enterprises, Inc., d/b/a Cybrxpress, John S. Stiverson, a/k/a Scott Stiverson, d/b/a Stivercorp and d/b/a Online Physicians, and Daniel Thompson, M.D., are not parties to this Consent Judgment, and approval and entry of this Journal Entry of Consent Judgment shall not diminish, reduce or otherwise alter the liability of Defendants DVM Enterprises, Inc., d/b/a Cybrxpress, John S. Stiverson, a/k/a Scott Stiverson, d/b/a Stivercorp and d/b/a Online Physicians, and Daniel Thompson, M.D., for the acts and practices alleged in Plaintiff's Petition filed in this case.

Whereupon, the parties advise the Court that they have stipulated and agreed to the following matters:

THE PARTIES

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Kansas Board of Pharmacy is authorized by K.S.A. 65-1626, *et seq.*, to regulate pharmacies doing business in the State of Kansas.
3. Defendant Home Prescription Services, Inc. (hereinafter "HPS"), was at the time of the filing of the Petition in this case an unauthorized foreign corporation organized under the laws of the State of Virginia.. Defendant HPS had at the time of the filing of the Petition in this case a registered agent, Robert J. Patane, Jr., at 4301 Foxchase Court, Roanoke, Virginia 24014.

JURISDICTION AND VENUE

4. Defendant HPS enters its voluntary general appearance.
5. Defendant HPS admits that the Court has jurisdiction over the parties and the subject matter.
6. Defendant HPS admits that venue is proper in the Third Judicial District of Kansas (Shawnee County).

ALLEGATIONS

7. The Attorney General alleges that Defendant HPS is a supplier as defined by

K.S.A. 50-624(j) (2001 Session Laws). Defendant HPS denies the allegations of the Attorney General.

8. The Attorney General alleges that at all times relevant hereto, and in the ordinary course of business, Defendant has engaged in consumer transactions in Kansas as defined by K.S.A. 50-624(c). Defendant HPS denies the allegations of the Attorney General.

9. The Attorney General has alleged that Defendant HPS committed unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-627 (a) and (b), in that on or about the 24th and 25th days of May, 1999:

- a. Defendant HPS took advantage of the inability of Kansas consumers to reasonably protect consumers' interest because of consumers' inability to understand the language of an agreement or similar factor, in violation of K.S.A. 50-627(b)(1), in that Defendant HPS was a party to consumer transactions in Kansas in which the prescription-only medications which are controlled substances, Meridia and Phentermine, were advertised for sale, prescribed, sold, and caused to be dispensed to consumers without requiring an examination by or actual consultation with a physician to determine the medical need for those medications and to explain the proper administration, potential side-effects, dangers, and contraindications for these medications;
- b. Defendant HPS committed unconscionable acts and practices in reckless disregard of the safety and welfare of Kansas consumers who entered into transactions with Defendant HPS for prescription-only medications, in violation of K.S.A. 50-627(b), in that:
 - i. Defendant HPS dispensed the prescription-only medications which are controlled substances, Meridia and Phentermine, to Kansas consumers even though it was not registered as a nonresident pharmacy by the Kansas Board of Pharmacy, as is required by law,

and without providing consultation in either oral or written form to the consumers regarding the proper administration, potential side effects, dangers, and contraindications.

10. The Attorney General, at the direction of the Kansas Board of Pharmacy, has alleged that Defendant HPS has violated the Kansas Pharmacy Practice Act, K.S.A. 65-1626 *et seq.*, as follows:

- a. Defendant dispensed prescription-only medications in violation of K.S.A. 65-1643(f); and
- b. Defendant HPS has acted as a pharmacy without registration by the Kansas Board of Pharmacy in violation of K.S.A. 65-1636 and K.S.A. 65-1657.

11. Defendant HPS denies each of the Attorney General's allegations but agrees to this Consent Judgment without trial or adjudication of any issue or fact in order to bring this matter to a mutually beneficial conclusion

INJUNCTIVE RELIEF

12. Defendant HPS agrees to refrain from and to be permanently enjoined from engaging in violations of the Kansas Consumer Protection Act as described in Paragraph 9 (nine) above. Defendant HPS agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

13. Defendant HPS agrees to refrain from and to be permanently enjoined from the unlawful advertising, selling, prescribing, dispensing, and/or delivering of prescription-only medications, including but not limited to controlled substances, to consumers and/or other persons in Kansas. Defendant HPS agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

14. Defendant HPS agrees to refrain from, and be permanently enjoined from, advertising, selling, prescribing, dispensing, and/or delivering prescription-only medications,

including but not limited to controlled substances, to consumers, patients, and/or other persons in Kansas unless such medications are properly prescribed by a physician who is in compliance with all requirements of the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*, specifically including but not limited to all requirements set forth in K.S.A. 65-2803 related to licensing. Defendant HPS agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

15. Defendant HPS agrees to refrain from, and be permanently enjoined from, advertising, selling, prescribing, dispensing and/or delivering prescription-only medications, including but not limited to controlled substances, to consumers, patients, and/or other persons in Kansas unless Defendant HPS has complied fully with all applicable requirements of the Kansas Pharmacy Practices Act, K.S.A. 65-1626 *et seq.*, specifically including but not limited to all requirements for nonresident pharmacies set forth in K.S.A. 65-1657. Defendant HPS agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

GENERAL PROVISIONS

16. Defendant HPS has represented to the Plaintiffs that it is no longer in business and has no income or assets available to pay any monetary judgment. Based on these representations, the Plaintiffs are willing to settle this case without the imposition of any costs, fees, or civil penalties against Defendant HPS. In the event that the settling Defendant does have assets undisclosed to the Plaintiffs, Plaintiffs reserve the right to pursue Defendant HPS for costs, fees, and civil penalties.

17. Defendant HPS agrees to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendant acts through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns, or whether acting through any corporation or other entity whose acts, practices, or policies are directed, formulated, or controlled by Defendant HPS.

18. Defendant HPS agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives not later than twenty (20) days after the date of this Consent Judgment.

19. Defendant HPS agrees not to enter into, form, organize, or reorganize into any partnership, corporation, sole proprietorship, or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

20. Defendant HPS agrees to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by, or authority from the State of Kansas and/or the Attorney General of the State of Kansas and/or the Kansas State Board of Pharmacy for the business practices of Defendant HPS. Defendant HPS agrees that making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Order.

21. Jurisdiction is retained by this Court for the sole purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

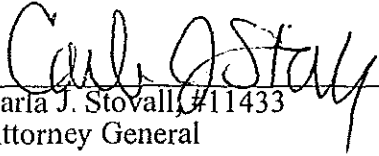
22. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reasons whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions, or parts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the Kansas Pharmacy Practice Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.


IT IS SO ORDERED.

/s/
THE HONORABLE TERRY L. BULLOCK
DISTRICT COURT JUDGE

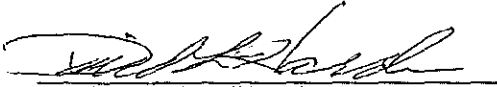
Approved by:



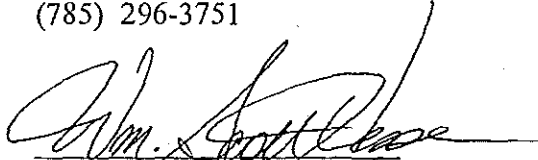
Carla J. Stovall, #11433
Attorney General



Stacy A. Jeffress, #12460
Assistant Attorney General
Office of the Attorney General
Consumer Protection/Antitrust Division
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751



David Harder, #18344
Assistant Attorney General
Office of the Attorney General
Consumer Protection/Antitrust Division
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751



Wm. Scott Hesse, #12013
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

ATTORNEYS FOR PLAINTIFFS



Michael E. Francis, #8783
Sloan, Listrom, Eisenbarth,
Sloan & Glassman, L.L.C.
700 Kansas Avenue #714
Topeka, Kansas 66603
(785) 357-6311

ATTORNEY FOR DEFENDANT
HOME PRESCRIPTION SERVICES, INC.