

Hairhoger ONLY 99-048

Derek L. Schmidt, #17781
Wm. Scott Hesse, #12013
Assistant Attorneys General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751

FILED
KS DISTRICT COURT
TOPEKA

NOV 29 11 31 AM '99

TOPEKA, KANSAS



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,

v.

ROY C. ALIVIO, BO PLATT,
MALE CLINIC, L.L.C., d/b/a MALE CLINIC,
DAVID HAIRHOGGER,
d/b/a COMMUNITY DRUG OF PITTSBURGH,
MILES JONES, M.D., and
RICK WILLIAMS, M.D.
Defendants.

Case No. 99 C 751

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 29th day of NOVEMBER, 1999, comes before the Court the Journal Entry of Consent Judgment entered into between the Plaintiffs and Defendant David Hairhoger, d/b/a Community Drug of Pittsburgh (hereinafter "Defendant Hairhoger"), pursuant to K.S.A. 50-632(b) and pursuant to the Kansas Pharmacy Practices Act, K.S.A. 65-1626 *et seq.* The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Derek L. Schmidt, Assistant Attorney General. The Kansas Board of Pharmacy appears by and through Wm. Scott Hesse, Assistant Attorney General. Defendant Hairhoger appears by and through counsel,

Richard C. Evans of Schroer, Rice P.A. There are no other appearances. Defendants Roy C. Alivio; Bo Platt; Male Clinic, L.L.C.; Miles Jones, M.D.; and Rick Williams, 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 any Defendant other than Defendant Hairhoger for the acts and practices alleged in Plaintiff's Petition filed in this case.

Whereupon, the parties to this Consent Judgment 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. Defendant Hairhoger is an individual conducting business, specifically the practice of pharmacy, in and from the State of Pennsylvania. Defendant Hairhoger maintains a place of business at 517 Greenfield Avenue, Pittsburgh, Pennsylvania 15207.

JURISDICTION AND VENUE

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

ALLEGATIONS

6. The Plaintiffs allege that Defendant Hairhoger is a supplier as defined by K.S.A. 50-624(i).
7. The Plaintiffs allege that at all times relevant hereto, and in the ordinary course of business, Defendant Hairhoger has engaged in consumer transactions in Kansas as defined by K.S.A. 50-624(c).

8. The Plaintiffs allege that at all times relevant hereto, Defendant Hairhoger has engaged in the practice of pharmacy within the State of Kansas by dispensing prescription-only medications to persons located within the State of Kansas.

9. The Plaintiffs have alleged that Defendant Hairhoger dispensed the prescription-only medication Viagra to a minor consumer in the State of Kansas, as set forth in paragraph twenty (20), specifically subparagraph 20(c), of the Amended Petition. Such paragraph is hereby fully incorporated by reference.

10. The Plaintiffs have alleged that Defendant Hairhoger dispensed the prescription-only medication Viagra to a female consumer in the State of Kansas, as set forth in paragraph twenty-one (21), specifically subparagraph 21(c), of the Amended Petition. Such paragraph is hereby fully incorporated by reference.

11. The Plaintiffs have alleged that Defendant Hairhoger engaged in unconscionable acts and practices in violation of K.S.A. 50-627(b) by dispensing prescription-only medications to Kansas consumers without being registered as a nonresident pharmacy with the Kansas Board of Pharmacy, as set forth in paragraph twenty-four (24), specifically subparagraph 24(c)(iv), of the Amended Petition. Such paragraph is hereby fully incorporated by reference.

12. The Plaintiffs have alleged that Defendant Hairhoger committed violations of the Kansas Pharmacy Practices Act, K.S.A. 65-1626, *et seq.*, as set forth in paragraph twenty-seven (27) of the Amended Petition, including all subparagraphs thereof. Such paragraph is hereby fully incorporated by reference.

13. Defendant Hairhoger denies the allegations of the Plaintiffs. For the purposes of settlement only, Defendant Hairhoger voluntarily agrees to entry of this Journal Entry of Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

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

consumers and/or other persons in Kansas unless Defendant Hairhoger 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 Hairhoger agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

15. Defendant Hairhoger agrees to refrain from, and be permanently enjoined from, advertising, selling, prescribing, dispensing and/or delivering prescription-only medications to consumers and/or other persons in Kansas if Defendant Hairhoger knows or has reason to know that such prescription-only medication has been prescribed by a physician who is not 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 Hairhoger agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

INVESTIGATIVE FEES AND CIVIL PENALTIES

16. Defendant Hairhoger agrees to pay \$4,500.00 in investigation fees and an additional \$4,500.00 in civil penalties to the "Office of the Attorney General" at the time of signing of this Consent Judgment, pursuant to K.S.A. 50-623 *et seq.* Payment shall be by cashier's check.

GENERAL PROVISIONS

17. Defendant Hairhoger agrees to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendant Hairhoger acts individually and/or through his 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 Hairhoger.

18. Defendant Hairhoger agrees not to enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose and/or with the effect of avoiding compliance with the terms of this consent judgment.

19. Defendant Hairhoger acknowledges that in the course of settlement negotiations, he has represented to the Office of the Attorney General of the State of Kansas that there were six (6) instances prior to the date of entry of this Consent Judgment in which consumers from the State of Kansas purchased prescription-only medications from the Internet website situated at www.maleclinic.com and in which such prescriptions were filled and dispensed by Defendant Hairhoger. Defendant Hairhoger further acknowledges that the Plaintiffs relied upon Defendant Hairhoger's representation of such number of prescriptions in agreeing to the terms of settlement set forth in this Journal Entry of Consent Judgment. Defendant Hairhoger agrees that in the event he has failed to fully disclose the number of instances in which he filled and dispensed prescriptions to consumers in the State of Kansas pursuant to a purchase by the consumer of prescription-only medication from the Internet web site situated at www.maleclinic.com, each such undisclosed dispensation of a prescription-only medication shall constitute a separate violation of this Order. Defendant agrees that in the event Defendant Hairhoger violates the requirements of this Paragraph, Defendant Hairhoger shall pay a penalty as follows: In the event the Court determines the failure to disclose any such dispensation was inadvertent and the total number of such undisclosed dispensations is five (5) or fewer, Defendant Hairhoger shall pay a penalty of \$3,000.00 for each undisclosed dispensation; in the event the Court determines that Defendant Hairhoger knowingly or with reason to know failed to disclose any such dispensation or if the total number of such undisclosed dispensations is greater than five (5), Defendant Hairhoger shall pay a penalty of \$10,000.00 for each undisclosed dispensation.

20. Defendant Hairhoger 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 Board of Pharmacy for the business practices of Defendants and/or of any Defendant. Defendant Hairhoger 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 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.

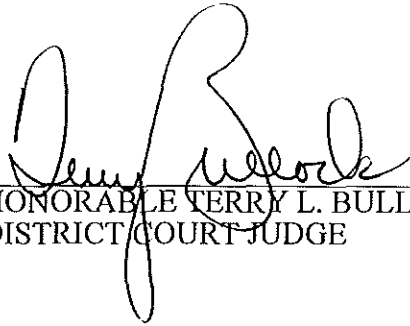
23. Compliance with this Consent Judgment does not relieve Defendant Hairhoger of any obligation imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction not related to the acts and practices set forth in the Petition filed in this case..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the Court.

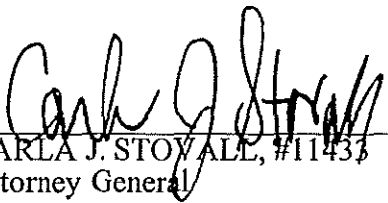
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

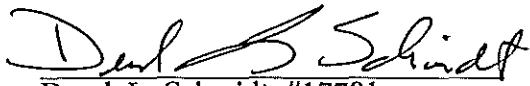
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant Hairhoger in the amount of \$9,000.00.

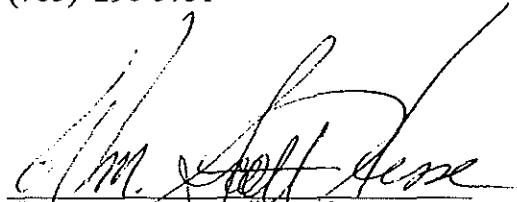
IT IS SO ORDERED.


HONORABLE TERRY L. BULLOCK
DISTRICT COURT JUDGE

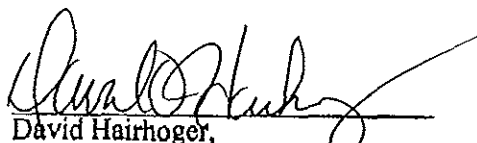
Approved by:


CARLA J. STOVALL, #11433
Attorney General


Derek L. Schmidt, #17781
Assistant Attorney General
Kansas Judicial Center
301 S.W. 10th Avenue
Topeka, Kansas 66612-1597
(785) 296-3751

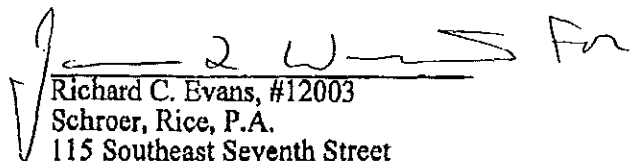

Wm. Scott Hesse, #12013
Assistant Attorney General
Kansas Judicial Center
301 S.W. 10th Avenue
Topeka, Kansas 66612-1597
(785) 296-3751

Attorneys for Plaintiffs



David Hairhoger,
d/b/a Community Drug of Pittsburgh

Defendant



Richard C. Evans, #12003
Schroer, Rice, P.A.
115 Southeast Seventh Street
P.O. Box 2667
Topeka, Kansas 66601-2667
(785) 357-0333



John G. Horan
McDermott, Will & Emery
600 13th Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 756-8000

Attorneys for Defendant Hairhoger