

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA BOARD OF PHARMACY**

In the Matter of)	
)	
PACIFICO NATIONAL, INC. DBA AMEX)	OAH No. 23-0263-PHA
PHARMACY)	Agency No. 2023-000289
_____)	

FINAL DECISION AFTER REMAND

I. Introduction

Pacifico National, Inc. (“Pacifico”) is a Florida corporation that does business as Amex Pharmacy. It applied for an out-of-state pharmacy license in Alaska on June 20, 2022. The Alaska Board of Pharmacy (“Board”) considered Pacifico’s application and denied it on February 16, 2023.

Pacifico requested a hearing to challenge the denial of its application. Following a hearing in front of the Office of Administrative Hearings (OAH), the assigned administrative law judge issued a proposed decision recommending that the Board grant Pacifico a license, subject to a fine, probation, and limitations on the license. Before the Board could act upon the proposed decision, OAH and the Division of Corporations, Business, and Professional Licensing (Division) were notified that the principal of Pacifico was deceased and that Pacifico had closed its Florida pharmacy business and that its Florida pharmaceutical license was closed.

That information regarding Pacifico’s apparent closure of its pharmaceutical operations was presented to the Board during its November 16, 2023 meeting. The Board therefore declined to adopt the proposed decision and instead remanded the case to OAH for the administrative law judge to:

hold a supplemental hearing to determine whether this case should be dismissed as moot given the reports that Pacifico National, Inc. dba AmEx Pharmacy has ceased its pharmacy operations and surrendered its Florida pharmacy license.

Pacifico’s supplemental hearing was held on December 13, 2023. The evidence showed that Pacifico had surrendered its Florida pharmacy license, had closed its doors, had shut down its website, that its former pharmacist in charge was working for a different business, and that its telephone numbers were no longer in service. Accordingly, because Pacifico no longer has a Florida licensed pharmacy, it no longer exists as a pharmaceutical entity, and consequently there is no relief that can be granted to it. The consequence of this closing of its doors is that this case must be dismissed as moot.

II. Facts

A. Background Information

Pacifico is a Florida corporation that engages in a number of business enterprises. One of those is Amex Pharmacy, which has operated under a Florida Community Pharmacy license, permit PH16954, since 1991. Prior to 2014, Florida's pharmacy licensing rules allowed pharmacies to engage in sterile compounding without requiring a special permit. In 2014, those rules changed to require a separate sterile compounding permit, and pharmacies that engaged in sterile compounding were encouraged to register with the FDA as a "503B" facility.¹

In 2014, Pacifico obtained a sterile compounding permit from Florida, permit PH27532, and registered with the FDA as a 503B facility in 2015. Due to 503B requirements, Pacifico completely separated its pharmacy business into two units: its Community Pharmacy unit, permit PH16954, and its sterile compounding unit, permit PH 27532.²

Pacifico's sterile compounding unit was inspected by Florida and the FDA in 2015 and 2016. Violations were found, which resulted in Florida summarily suspending Pacifico's sterile compounding permit in February 2016.³ That summary suspension was subsequently lifted in April 2016.⁴ Pacifico's sterile compounding unit was inspected again by the FDA in 2019, violations were again found, and the FDA issued a product recall, after Pacifico itself would not issue a recall.⁵ Pacifico completely closed its sterile compounding unit in 2019. Pacifico entered in a restriction of practice agreement with Florida in 2019, wherein it agreed to no longer perform sterile compounding and surrendered its sterile compounding Permit PH27532.⁶

Pacifico continued to operate its Amex Pharmacy Community Pharmacy, Permit PH16954, and there have been no violations found against it. It, however, operates as an out-of-state pharmacy in numerous other states, where it has an extensive history of discipline entered against it based primarily upon its prior sterile compounding unit, including several instances of not disclosing discipline entered against it in some of those states. It has been disciplined in Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Missouri, N. Carolina, Pennsylvania, Texas, Virginia, and Wisconsin. Licenses for Alabama,

¹ Michael Boehmer testimony; Mark Sangree testimony. *Also see* Federal Food, Drug, and Cosmetic Act § 503B (21 U.S.C. § 353b).

² Boehmer testimony; Sangree testimony.

³ Ex. 11.

⁴ Ex. 1.

⁵ Ex. 2.

⁶ Sangree testimony; Ex. E, pp. 5 – 6.

Arkansas, Massachusetts, Michigan, North Carolina, Ohio, Oklahoma, South Carolina, Utah, and Vermont are lapsed.⁷

Pacifico's most recent inspection by Florida was conducted on May 9, 2023, with no violations found.⁸ It has a current accreditation from the Accreditation Commission for Health Care which is valid through November 13, 2023.⁹ Further, its Florida Community Pharmacy license does not have any violations.¹⁰

B. Pacifico's Application and Subsequent Proceedings

Pacifico applied for registration with the State of Alaska as an out of state pharmacy on June 20, 2022, under the business name of Amex Pharmacy. Its voluminous application disclosed that two of its pharmacists, Michael Boehmer, and Scott Brierton, had previously been convicted of crime(s) and been professionally disciplined in other states. It also disclosed that Pacifico's pharmaceutical license had been disciplined in multiple other states.¹¹

The Board considered Pacifico's application at its February 16, 2023 meeting. It denied the application, based upon Pacifico's prior discipline history in other states.¹²

Pacifico requested a hearing to challenge the denial of its license. Its hearing was held on July 25, 2023. Pacifico's witnesses were Michael Boehmer, R. Ph., its pharmacist in charge, its pharmacist Scott Brierton, R. Ph., and Mark Sangree, its president. Michael Bowles, the Board's executive administrator, who was also the investigator in this case, was the witness for the Division. Following that hearing, a proposed decision was issued recommending that Pacifico's application be approved with conditions.

After the proposed decision was issued, Mr. Boehmer, who had been Pacifico's authorized representative through this process, notified the Division and the administrative law judge that Mr. Sangree was unexpectedly deceased, that Pacifico had closed its pharmacy operations, and returned its Community Pharmacy license to the State of Florida, and that he was no longer employed by Pacifico. He confirmed that information in a recorded status conference held on November 13, 2023.

The proposed decision was presented to the Board on November 16, 2023 along with the information regarding Mr. Sangree's demise and the reported closure of Pacifico's Florida

⁷ Mr. Bowles' testimony.

⁸ Ex. A.

⁹ Ex. B.

¹⁰ Michael Bowles testimony.

¹¹ Ex. 15. The complete application is located at the Agency Record (AR), pp. 2 – 282.

¹² AR 322 – 323.

Community Pharmacy. The Board then declined to adopt the proposed decision and instead remanded the case to OAH for the administrative law judge to:

hold a supplemental hearing to determine whether this case should be dismissed as moot given the reports that Pacifico National, Inc. dba AmEx Pharmacy has ceased its pharmacy operations and surrendered its Florida pharmacy license.

Pursuant to the Board's directive, that supplemental hearing was held on December 13, 2023. Pacifico was notified of the supplemental hearing by notice sent to it at its business address of record.¹³ Pacifico did not appear at the hearing, and no one acting on Pacifico's behalf contacted the Office of Administrative Hearings prior to the hearing. The Division presented one witness at the hearing, Mr. Bowles. Mr. Bowles investigated and found the following:

- The pharmacy phone numbers were no longer in service.
- The former pharmacist in charge, Mr. Boehmer, and the other pharmacist who previously testified for Pacifico were no longer employed with Pacifico.
- The Pacifico/Amex Pharmacy website, which had been previously active, was no longer active.
- The Florida Board of Pharmacy website shows that Pacifico's Community Pharmacy license is closed.
- Mr. Boehmer has made attempts to contact staff with the Florida Board of Pharmacy, with no response.

III. Discussion

The uncontroverted evidence in this case shows that Pacifico has completely ceased its pharmacy operations and closed its Amex Pharmacy license. In other words, Pacifico is no longer a licensed pharmacy operation in the State of Florida, and no longer exists as a licensed pharmacy. The type of Alaska license/registration applied for by Pacifico is for "registration of a pharmacy located outside the state."¹⁴ In order to qualify for that type of registration/license, the applicant is required to provide "a copy of a current, valid facility license or registration from the jurisdiction where the pharmacy is located."¹⁵ Because Pacifico no longer has a current "facility license or registration" from Florida, which is where it is located, it does not even have the capacity to apply for licensure/registration in Alaska as an out of state pharmacy.

¹³ Prior to the supplemental hearing being scheduled, two emails were sent to the attorney that Mr. Boehmer stated was handling Mr. Sangree and Pacifico's affairs. That attorney responded he had no knowledge of the "entity." Accordingly, he was not sent notice of the supplemental hearing.

¹⁴ 12 AAC 52.010(b)(5).

¹⁵ 12 AAC 52.130(b)(3).

Because there is no longer an applicant which holds a valid out of state license, this means that there is no longer an underlying issue to resolve. This means that it is moot: “[a] claim is moot if it has lost its character as a present, live controversy.”¹⁶ Accordingly, this case should be dismissed as moot.

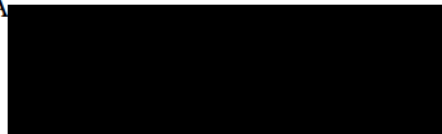
IV. Conclusion

Pacifico’s appeal of the denial of its license application is dismissed as moot.

Dated this 15th day of February, 2024.

ALA

By:



Chair, Alaska Board of Pharmacy

NOTICE OF APPEAL RIGHTS

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

¹⁶ *Kodiak Seafood Processors Ass’n v. State*, 900 P.2d 1191, 1195 (Alaska, 1995) (citations omitted).