

State of Iowa
Board of Pharmacy

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TELECONFERENCE MINUTES
January 16, 2015

The special meeting of the Iowa Board of Pharmacy was held on Friday, January 16, 2015, at 10:00 a.m., via teleconference pursuant to the provisions of Iowa Code section 21.8. An in-person meeting was impractical due to the travel distances of members of the Board, the limited agenda, and the need for immediate action. Chairperson Maier called the meeting to order at 10:00 a.m.

MEMBERS PRESENT

Edward L. Maier, Chairperson
James Miller, Vice-Chair
Susan M. Frey
Edward J. McKenna
Sharon K. Meyer
Judith M. Trumpy

MEMBERS ABSENT

LaDonna Gratias

STAFF PRESENT

Lloyd Jessen, Executive Director
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary

I. Closed Session.

Motion (Frey/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; and 21.5 (1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Frey, Maier, McKenna, Meyer, Miller, Trumpy; No: None;

Abstain: None; Absent: Gratias. Passed: 6-0-0-1.

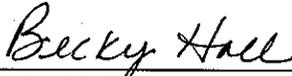
Motion (McKenna/Trumpy) to go into open session. Roll call vote. Yes: Frey, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: Gratias. Passed: 6-0-0-1.

In open session, the following action was taken:

A. Motion for Summary Judgment.

Motion (Trumpy/Miller) to deny Respondent's Motion for Summary Judgment for PCM Venture I LLC, Nonresident Pharmacy License No. 3677 of Sandy, Utah. Roll call vote. Yes: Frey, Maier, McKenna, Meyer, Miller, Trumpy; No: None; Abstain: None; Absent: Gratias. Passed: 6-0-0-1. A copy of the Order Denying Respondent's Motion for Summary Judgment is attached as Addendum A.

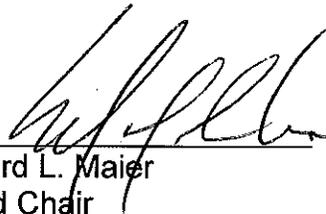
Meeting adjourned at 10:19 a.m. on January 16, 2015.



Becky Hall
Recording Secretary



Lloyd K. Jessen
Executive Director



Edward L. Maier
Board Chair

APPROVED THIS 10th DAY OF March, 2015.

ADDENDUM A

**ORDER DENYING
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT**

**PCM VENTURE I LLC
NONRESIDENT PHARMACY LICENSE NO. 3677
SANDY, UTAH**

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
)	Docket No. 2013-3677
Nonresident Pharmacy License of)	DIA No. 14PHB044
PCM VENTURE I LLC)	
License No. 3677,)	
)	ORDER DENYING
Respondent.)	RESPONDENT'S MOTION FOR
)	SUMMARY JUDGMENT

Hearing in this matter is set to take place before the Iowa Board of Pharmacy (the Board) on January 28 and 29, 2015. On January 14, 2014, Respondent PCM Venture I LLC filed a Motion for Summary Judgment.

At a meeting on January 16, 2015, the Board considered Respondent's Motion for Summary Judgment. The Board voted in open session to deny the motion and directed Administrative Law Judge Laura Lockard to draft the Board's ruling for signature by the chairperson.

DISCUSSION

A Notice of Hearing and Statement of Charges in this matter was originally issued on January 14, 2014. Hearing was set for March 11, 2014. Prior to the hearing date, Respondent requested a continuance and the hearing was continued to April 29, 2014. The parties thereafter jointly requested two separate continuances, which were granted by the Board. Hearing dates were set for August 26, 2014, then for November 18, 2014. The parties anticipated that the length of hearing would make the November 18 date untenable, as the Board was scheduled to hear other cases on that date as well. A prehearing conference was held on September 22, 2014, at which the parties agreed to hearing dates of January 28 and 29, 2015.

Respondent's Motion for Summary Judgment was filed on January 14, 2014, two weeks prior to hearing. To date, the state has not yet filed any response or resistance to Respondent's motion.

Iowa Rule of Civil Procedure 1.981 provides that a motion for summary judgment shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court. Under that rule, a party resisting the motion must file a resistance within 15 days from the date of service, unless otherwise ordered by the court. The Board's regulations do not contain a separate procedure for summary judgment motions. While the Board's rules indicate that motions pertaining to the hearing must

be filed and served at least ten days prior to the date of hearing, motions for summary judgment are explicitly excepted from this deadline.¹

In this case, allowing the state the 15 days prescribed by the Iowa Rules of Civil Procedure to respond to the summary judgment motion would result in the state's resistance to the motion being due January 29, 2015, after the hearing in the matter had already commenced. The purpose of the summary judgment procedure is to permit a party to obtain judgment promptly and without the expense of trial where there is no fact issue to try.² That purpose is greatly undermined by the filing of a motion for summary judgment two weeks prior to the date of hearing.

The Board finds that prejudice to the nonmoving party, the state, would result from reaching the merits of Respondent's motion. In the two weeks prior to hearing, the nonmoving party would be required to expend its time and resources on preparing a response to a lengthy motion for summary judgment. Requiring the moving party to file its motion at least 60 days in advance of the hearing means that the parties are able to complete their work related to summary judgment in advance of the time that they must begin preparing for hearing.

In addition to the prejudice to the nonmoving party that would result from allowing the filing of a summary judgment motion two weeks prior to the hearing, the Board notes that it would be nearly impossible for the Board to adequately consider Respondent's motion within that time frame. Even if the state filed a resistance within 10 days – a deadline that is unreasonable given the nature of a summary judgment motion and the detailed requirements to respond to it – such resistance would be received by the Board on January 26, a mere two days prior to the start of the hearing. The expectation that the Board could rule on the motion within that time frame is patently unreasonable.

Respondent's motion contains no explanation for the timing of its filing. This matter has been pending since January, 2014, with several continuances having been requested and granted: one from Respondent and two from the parties jointly. The Board can discern no reason that Respondent could not have filed its motion for summary judgment at an earlier date.

ORDER

For the foregoing reasons, the Board denies Respondent's Motion for Summary Judgment as untimely. Hearing in this matter shall take place as previously scheduled on January 28 and 29, 2015.

¹ 657 Iowa Administrative Code (IAC) 35.14(4).

² *Davis v. Comito*, 204 N.W.2d 607, 608 (Iowa 1973) (citation omitted).

DIA No. 14PHB013

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Dated this 16th day of January, 2015.

A handwritten signature in black ink, appearing to read "Edward L. Maier". The signature is fluid and cursive, with the first name "Edward" and last name "Maier" clearly legible.

Edward L. Maier, Chairperson
Iowa Board of Pharmacy

cc: Kevin Marino, Attorney for Respondent (BY FIRST CLASS MAIL)
Sara Scott, Assistant Attorney General (BY ELECTRONIC MAIL)