

IN THE MATTER OF * BEFORE THE
CUBIST PHARMACEUTICALS, INC. * STATE BOARD OF
RESPONDENT * PHARMACY
* CASE NO. PI-14-070

* * * * *

FINAL CONSENT ORDER

The State Board of Pharmacy ("the Board") charged Cubist Pharmaceuticals, Inc. (the "Respondent-Corporation") with violating certain provisions of the Maryland Pharmacy Act ("the Act"), Md. Health Occ. Code Ann. ("H. O.") § 12-101 *et seq.* (Repl. Vol. 2009).

The pertinent provisions state:

H.O. § 12-6C-03.

(a) A wholesale distributor shall hold a permit issued by the Board before the wholesale distributor engages in wholesale distribution in the State.

H.O. § 12-6C-11. Violations; penalties.

(a) *Fine.* — (1) If a person knowingly violates any provisions of this subtitle or any regulation adopted under this subtitle, the Board may impose a fine not to exceed \$500,000.

ALLEGATIONS OF FACT¹

1. At all times relevant herein, the Respondent-Corporation was not authorized to engage in wholesale distribution in the State of Maryland.

2. The Respondent-Corporation is a corporation, with offices located in Lexington, Massachusetts.

¹ The statements contained in the allegations of fact are intended to provide the Respondent-Corporation notice. They are not intended as and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent-Corporation in connection with the charges.

3. In or around August 2013, the Board received notification from the Food and Drug Administration ("FDA") that the Respondent-Corporation had voluntarily recalled four lots of Cubicin (daptomycin for injection) 500 mgs in 10 ml single use vials due to the presence of glass particulate in a number of vials from these lots.²

4. After receiving the FDA notification about the Cubicin recall, the Board staff determined that the Respondent-Corporation did not have a wholesale distributor permit to distribute drugs in Maryland. The Respondent-Corporation had never held a wholesale distributor permit issued by the Board.

5. Further investigation by Board staff revealed the Respondent-Corporation distributed Cubicin to approximately 35 hospitals and other health care facilities throughout Maryland.

6. On March 24, 2014, the Board issued the Respondent-Corporation a wholesale distributor permit.

7. The Respondent-Corporation cooperated with the Board during the resolution negotiations in complete good faith at all times.

8. By distributing Cubicin in the State of Maryland, without a wholesale distributor permit, the Respondent-Corporation violated the Act.

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 24th day of April, 2014, by a majority of the Board hereby:

ORDERED that the Respondent-Corporation shall pay a fine in the amount of one hundred thousand dollars (\$100,000). The fine is payable to the Maryland Board of

² Cubicin is an antibiotic used for the prevention and treatment of serious bacterial infections.

Pharmacy no later than 90 (ninety) days from the date that this Order is signed by the Board; and it is further

ORDERED that the Respondent-Corporation shall not distribute prescription drugs in the State of Maryland without a wholesale distributor permit; and it is further

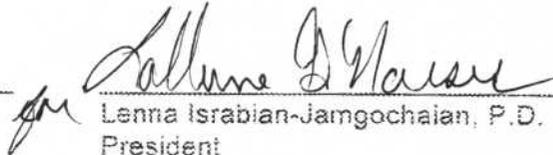
ORDERED that Respondent shall be responsible for all costs incurred under this Order; and it is further

ORDERED that the effective date of this Order is the date that it is signed by the Board; and it is further

ORDERED that this document constitutes a formal disciplinary action of the State Board of Pharmacy and is therefore a public document for purposes of public disclosure, pursuant to Md. State Govt. Code Ann. §§ 10-611 et seq. (Repl. Vol. 2009).

Date

4/24/14



Lenna Israbian-Jamgochajian, P.D.
President
State Board of Pharmacy

Consented to:

Cubist Pharmaceuticals, Inc.

Date

4/18/2014



Name: Thomas J. DesRosier

Title: Executive Vice President, Chief
Legal and Administrative Officer

CONSENT OF CUBIST PHARMACEUTICALS, INC. BY
THOMAS J. DESROSIER, CHIEF LEGAL AND ADMINISTRATIVE OFFICER

I, Thomas J. DesRosier, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., by affixing my signature hereto, acknowledge that:

1. Cubist Pharmaceuticals, Inc. is represented by Steven F. Barley and Marc A. Marinaccio of Hogan Lovells US LLP.

2. I am aware that Cubist Pharmaceuticals, Inc. is entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 12-315 (Repl. Vol. 2009) and Md. State Govt. Code Ann. §§ 10-201 et seq. (Repl. Vol. 2009).

3. I, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., acknowledge the validity and enforceability of this Consent Order as if entered after a formal evidentiary hearing in which Cubist Pharmaceuticals, Inc. would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on its own behalf, and to all other substantive and procedural protections provided by law. As Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., I am waiving those procedural and substantive protections.

4. I, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., voluntarily enter into and consent to the foregoing findings of fact, conclusions of law, and order and agree to abide by the terms and conditions set forth in this Consent Order, as a resolution of the Board's case, based on the findings set forth herein.

5. I, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., waive my right to contest the findings of fact and conclusions of law, and I waive my right to a full evidentiary hearing, and any right to appeal this Consent Order, as set forth in Md. Health Occ. Code Ann. § 4-319 (Repl. Vol. 2009) and Md. State Govt. Code Ann. §§ 10-201 et seq. (Repl. Vol. 2009).

6. I, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., acknowledge that by failing to abide by the terms and conditions set forth in this Consent Order, and, following proper procedures, Cubist Pharmaceuticals, Inc. may be subject to disciplinary action.

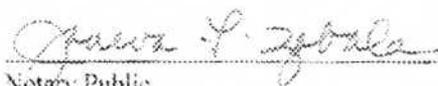
7. I, as Chief Legal and Administrative Officer of Cubist Pharmaceuticals, Inc., sign this Consent Order, without reservation, as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

April 21, 2014
Date


Thomas J. DesRosier
Executive Vice President, Chief Legal and
Administrative Officer
Cubist Pharmaceuticals, Inc.

STATE OF Massachusetts
CITY/COUNTY OF Lexington/County of Middlesex

I HEREBY CERTIFY that on this 21st day of April, 2014, before me, the undersigned, a Notary Public of said State, personally appeared **Thomas J. DesRosier**, who acknowledged himself to be the Executive Vice President, Chief Legal and Administrative Officer of **Cubist Pharmaceuticals, Inc.**, a Delaware corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within agreement, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Chief Legal and Administrative Officer of said Corporation.


Notary Public

My commission expires: August 28, 2020

