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Kristopher Mangosing

To: David Wuest
Subject: RE: Rx2U Pharmacy appeal

From: Maryam <mary_am10@hotmail.com>
Sent: Thursday, July 23, 2020 5:02 PM
To: Mark I. Sedar <msedar@pharmacy.nv.gov>
Subject: Rx2U Pharmacy appeal

Dear Mr Sedar

This letter is in response to the denied variance by Mr Wuest for the restroom in the Rx2U pharmacy. I would respectfully request an in-person appeal of the requirements set out in NAC 639.30(4). Attached is a letter that explains the situation in depth.

Thank you for your time

Maryam Rastkerdar



July 22, 2020

Mr. Mark Sedar
Nevada Board of Pharmacy
985 Damonte Ranch Pkwy. Ste. 206
Reno, NV 89521
Msedar@pharmacy.nv.gov

RE: Rx2U, LLC. Variance Appeal

Dear Mr. Sedar,

This letter follows the inspection of Rx2U Pharmacy by Mr. Joe Dodge on June 17, 2020. Mr. Dodge found the pharmacy substantially compliant. He asked that we relate the location of the pharmacy lavatory for your review and consideration.

With regard to these issues, Nevada Administrative Code ("NAC") 639.530 provides in relevant parts as follow:

NAC 639.530 Sanitation; required washbasins; exception. (NRS 639.070)

4. In addition to the washbasin required pursuant to subsection 3, and except as otherwise provided in this subsection, a pharmacy that is built or remodeled after November 1, 1996, must contain a lavatory with a toilet and washbasin within or adjoining the pharmacy. A pharmacy that is remodeled after November 1, 1996, may ask the Board for an exception to this requirement and the Board will, if it deems it appropriate, grant the exception.

First, please note that the subject premise was built in 1973. The premise is rather small. Other tenants do not handle what could be considered a high volume of people. The premise is a very quiet and controlled environment. The floor plan identifies the pharmacy, and a washbasin area reserved for the exclusive use of the pharmacy. This area is clearly identified by signs designating it for use by the pharmacy only. The pharmacy contains a washbasin within the pharmacy walls and the lavatory with washbasin area is only a short distance away from the pharmacy.

Second, we recognize NRS 639.070(1)(g) expressly grants the Pharmacy Board authority to "regulate the means of recordkeeping and storage, handling, sanitation and security of drugs, poisons, medicines, chemicals and devices." Additionally, we recognize NAC § 639.530(4) requires a pharmacy to "contain a lavatory with a toilet and washbasin within or adjoining the pharmacy." However, the term "adjoining" is not defined by statute. Absent statutory interpretation, terms are to be given reasonable meaning with consideration of the legislative intent of the statute.

NRS 639.070 was amended in 1991 by Assembly Bill 501 (Chapter 35), to include regulation of recordkeeping, handling, and sanitation. The bill was requested by the State Board of Pharmacy due to the increasingly common sale of prescription drugs by mail and to allow the Board of Pharmacy to deal with mail order companies in the case of a consumer complaint, patient injury, or quality of care dispute involving a Nevada Resident. Below is Legislative Summary for Assembly Bill 501 (1991):

Assembly Bill 501 makes two changes in the laws relating to pharmacies. First, it provides for the licensing of mail order pharmacies located outside Nevada which sell prescription drugs to Nevada residents. Second, it provides for the licensing of wholesale drug distributors.



The bill requires that all mail order pharmacies which supply prescription drugs to Nevada residents must be licensed by the State Board of Pharmacy. In order to receive a license, a pharmacy must present satisfactory evidence that it complies with Federal law and the laws of the state in which it is located. The pharmacy must be willing to make available for inspection any records required by the board and must provide the board with information regarding prescriptions which are shipped to Nevada residents. The pharmacy must provide Nevada customers with a toll free number which they may call for information.

The bill also requires wholesalers of drugs to be licensed by the State Board of Pharmacy and defines the conditions under which a license may be granted.

This bill was requested by the State Board of Pharmacy. The sale of prescription drugs by mail is increasingly common. Health Maintenance organizations often use this kind of service. The bill is intended to allow the board to deal with mail order companies in the case of a consumer complaint, patient injury, or quality of care dispute involving a Nevada resident. The provisions regarding the licensing of wholesale distributors are added to the law in accordance with the Federal Prescription Drug Marketing Act of 1987 which requires that wholesale distributors be licensed by the states.

Summary of Legislation, Nevada Legislature, Sixty-Sixty Session, Pg. 152-153 (1991).

The bill was intended to allow the Board of Pharmacy to deal with mail order companies in the case of a consumer complaint, patient injury, or quality of care dispute involving a Nevada resident. It is apparent that the intent of amending NRS 639.070 to include regulation of sanitation was not to deny approval of any/all Nevada pharmacies which do not meet the requirement; but rather to ensure that proper sanitation requirements and procedures are in place to be in compliance with public health and safety measures. The drafters of NAC § 639.530(4) show clear intent to provide opportunity for exceptions to the requirement, by allowing the Board of Pharmacy to grant exceptions when appropriate. In fact, many major pharmacies in Clark County do not have a lavatory which shares a wall with the Pharmacy. Rather, many pharmacies have a lavatory located within a reasonable distance, which is the case here. (*See attached list of Pharmacies without a lavatory which share a wall with the Pharmacy*).

Rx2U Pharmacy has an adjacent lavatory, with toilet and washbasin, for the exclusive use of Rx2U Pharmacy within a few feet of Pharmacy. There is a washbasin located within the pharmacy walls. Policies and procedures have been implemented for when the pharmacist must leave the pharmacy area to utilize the restroom. Rx2U Pharmacy has implemented all necessary policies, procedures, and equipment to ensure proper sanitation.

Rx2U, LLC has established the following guidelines to resolve any concerns regarding the procedures for when the pharmacist must leave the pharmacy area to utilize the lavatory:

- Everyone must exit the pharmacy area;
- The sliding glass window must be closed and locked;
- The pharmacy door must be closed and locked so that no one may enter until the pharmacist returns; and
- The pharmacy alarm must be turned on.

For the foregoing reasons, we respectfully request an in-person appeal of the requirement set out in NAC 639.530(4). Thank you for your time and consideration in this matter. Should you have any concerns or questions, please don't hesitate to contact me directly. Our contact information is listed below. You may also reach me on my personal cellphone at 702-426-5100.

Best regards,

Maryam Rastkerdar, Pharm. D.



PHARMACIES WITHOUT ADJOINING WALL LAVATORY IN CLARK COUNTY, NEVADA

1. Walgreens Pharmacy
1701 N. Green Valley Pkwy.
Henderson, NV 89074
2. CVS Pharmacy
1551 W. Sunset Rd.
Henderson, NV 89014
3. CVS Pharmacy
1551 W. Sunset Rd.
Henderson, NV 89014
4. ACME Sav-On Pharmacy
3010 W. Ann Rd.
North Las Vegas, NV 89031
5. ACME Sav-On Pharmacy
1807 W. Craig Rd.
North Las Vegas, NV 89032
6. Walgreens Pharmacy
1445 W. Craig Rd., Ste. 100
North Las Vegas, NV 89032
7. Smith's Pharmacy
3013 W. Craig Rd.
North Las Vegas, NV 89032
8. Providence Pharmacy
1729 E. Charleston Blvd., Ste. F
Las Vegas, NV 89104
9. Raxo Drugs
3199 S. Eastern Ave.
Las Vegas, NV 89169
10. Real Care Pharmacy
4723 E. Flamingo Rd.
Las Vegas, NV 89121
11. Walmart Pharmacy
5198 Boulder Hwy.
Las Vegas, NV 89122
12. Smith's Pharmacy
3850 E. Flamingo Rd.
Las Vegas, NV 89121

