



12 July 2018

TRANSMITTED VIA ELECTRONIC MAIL, FACSIMILE, AND COURIER

RE: NOTICE OF BREACH OF REGISTRY AGREEMENT

Marty Allain
National Association of Board of Pharmacy (pharmacy)
1600 Feehanville Drive
Mount Prospect, Illinois 60056
US

Email: registry@safe.pharmacy
Fax: +1 847 391 4502

Dear Marty Allain,

Please be advised that as of 12 July 2018, National Association of Board of Pharmacy (“NABP”) is in breach of its Registry Agreement with the Internet Corporation for Assigned Names and Numbers (“ICANN”) dated 19 June 2014 (“RA”). This breach results from:

1. NABP’s failure to operate the top-level domain (“TLD”) pharmacy in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies, as required by Section 3.c. of Specification 11 of the RA.

A Public Interest Commitment Dispute Resolution Procedure (“PICDRP”) Standing Panel was invoked by ICANN pursuant to Section B.3.3 of the PICDRP for review of this matter. Please refer to the attachment for details regarding this breach, as well as the attached report issued by the PICDRP Standing Panel.

In addition, NABP has been deemed noncompliant in the following area:

1. NABP’s failure to publish on its website a primary contact for handling inquiries related to malicious conduct in the TLD feedback, as required by Section 4.1 of Specification 6 of the RA.

ICANN requests that NABP cure these breaches by 11 August 2018, 30 days from the date of this letter, by taking the following actions:

1. Provide ICANN with corrective and preventative action(s), including implementation dates and milestones, to address the PIC Reporter’s complaint, the PIC Standing Panel’s findings and ensure that NABP will operate the TLD pharmacy in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies; and

2. Publish on NABP's website a primary contact for handling inquiries related to malicious conduct in the TLD feedback.

If NABP fails to timely cure the breaches and provide the information requested by 11 August 2018, ICANN may commence the RA termination process.

If you have questions or require assistance, please contact Jennifer Scott at jennifer.scott@icann.org.

Sincerely,



Maguy Serad
Vice President
Contractual Compliance

Cc: John O. Jeffrey, General Counsel and Secretary

ATTACHMENT

Failure to operate TLD in transparent manner

Section 3.c of Specification 11 of the RA requires registry operators to operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies. NABP's failure to operate the TLD feedback in a transparent manner, as described by the PICDRP Standing Panel's evaluation of this matter in the attached report, is a breach of Section 3.c. of Specification 11 of the RA.

Failure to publish abuse contact information on website

Section 4.1 of Specification 6 of the RA requires registry operators to provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and provide ICANN with prompt notice of any changes to such contact details. NABP's failure to publish a primary contact for handling abuse inquiries on its website for TLD pharmacy is a breach of Section 4.1 of Specification 6 of the RA.

Chronology:

Date of Notice	Deadline for Response	Details
9-Mar-2018	N/A	ICANN received Public Interest Commitment (PIC) Dispute Resolution Procedure report via web PICDRP complaint form.
10-Mar-2018	19-Mar-2018	ICANN confirmed receipt of PIC Report and sent request for attachments from PIC Reporter via email to john@johnberryhill.com . No response received from PIC Reporter.
20-Mar-2018	27-Mar-2018	ICANN resent request for attachments from PIC Reporter via email to john@johnberryhill.com .
22-Mar-2018	N/A	Email from PIC Reporter providing attachments (john@johnberryhill.com).
26-Mar-2018	N/A	ICANN completed preliminary review of PIC Report, per PICDRP Section B.1.3.
26-Mar-2018	2-May-2018	ICANN sent PIC Report, per PICDRP Section B.2.1., to Registry Operator via email at registry@safe.pharmacy .
26-Mar-2018	2-May-2018	ICANN sent PIC Reporter notification, per PICDRP Section B.2.1, via email to john@johnberryhill.com .
30-Apr-2018	N/A	Email from PIC Reporter (john@johnberryhill.com).
1-May-2018	N/A	ICANN confirmed receipt of PIC Reporter's email via email to john@johnberryhill.com , cristin@johnberryhill.com and mj@johnberryhill.com .

Date of Notice	Deadline for Response	Details
1-May-2018	N/A	Email from Registry Operator (registry@safe.pharmacy).
2-May-2018	N/A	ICANN confirmed receipt of Registry Operator's email via email to registry@safe.pharmacy .
8-May-2018	22-May-2018	ICANN requested explanation from Registry Operator, per PICDRP Section B.3.2., via email to registry@safe.pharmacy .
14-May-2018	N/A	Email from Registry Operator (registry@safe.pharmacy).
14-May-2018	22-May-2018	ICANN responded to Registry Operator via email to registry@safe.pharmacy .
22-May-2018	N/A	Email from Registry Operator (registry@safe.pharmacy).
22-May-2018	N/A	ICANN confirmed receipt of Registry Operator's email via email to registry@safe.pharmacy .
30-May-2018	N/A	Email from PIC Reporter (john@johnberryhill.com).
7-Jun-2018	N/A	ICANN determined a compliance investigation is appropriate and elected to invoke Standing Panel, per PICDRP Section B.3.3.
7-Jun-2018	11-Jun-2018	ICANN sent Registry Operator notification, per PICDRP Section B.3.3, via email to registry@safe.pharmacy .
7-Jun-2018	11-Jun-2018	ICANN sent PIC Reporter notification of invoking the Standing Panel via email to john@johnberryhill.com , cristin@johnberryhill.com and mj@johnberryhill.com . No response received from PIC Reporter.
11-Jun-2018	N/A	Email from Registry Operator (registry@safe.pharmacy).
14-Jun-2018	15-Jun-2018	ICANN resent PIC Reporter notification via email to john@johnberryhill.com and cristin@johnberryhill.com . No response received from PIC Reporter.
20-Jun-2018	N/A	Email from Registry Operator (registry@safe.pharmacy).
25-Jun-2018	N/A	ICANN sent PIC Reporter the Standing Panel disclosures, per PICDRP Section B.4.1, via email to john@johnberryhill.com , cristin@johnberryhill.com and mj@johnberryhill.com .
25-Jun-2018	N/A	ICANN sent Registry Operator the Standing Panel disclosures, per PICDRP Section B.4.1, via email to registry@safe.pharmacy .
25-Jun-2018	10-Jul-2018	ICANN provided Standing Panel access to PIC report and Registry Operator responses.
11-Jul-2018	N/A	Email from Standing Panel reporting its evaluation results to ICANN.
11-Jul-2018	N/A	ICANN conducted compliance check to determine other areas of noncompliance.

Date of Notice	Deadline for Response	Details
12-Jul-2018	N/A	ICANN sent PIC Reporter notification of Standing Panel result, per PICDRP Section B.4.2, via email to john@johnberryhill.com .

Standing Panel Evaluation Report

General Information	
PIC Report ID	QSE-367-13523
PIC Reporter	Canadawide Pharmacy Ltd care of John Berryhill legal counsel
Registry Operator	National Association of Boards of Pharmacy
Date of PIC Report	9 March 2018
Date PIC Report sent to Registry Operator	26 March 2018
Date of PIC Conference	24 April 2018
Date of Referral to Standing Panel	25 June 2018
Date of Standing Panel Report	10 July 2018

Standing Panel Member Information			
Panelist	Name	Signature	Registry Compliant? (Y/N)
Presiding	Reynaldo Urtiaga	RU	N
2	Megan Stifel	MHS	N
3	Kevin Newmeyer	KPN	N

PIC Report Details	
Top-level domain (TLD)	pharmacy
Domain name	canadawidepharmacy.pharmacy
Specify the Specification 11 section number(s) and PIC(s) from the Registry Operator's Registry Agreement in which the Registry Operator is allegedly not complying:	
Section 3(c) of Specification 11. "Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies".	

Specify the stated grounds of alleged non-compliance with each PIC:
The Registry Operator, National Association of Boards of Pharmacy, did not provide sufficient information for the denial of registration in the letter of closure. The registry operator denied the registration based on "several connections" between the applicant CanadaWide Pharmacy and a pharmacy network that does not comply with the Registry's program standards. No amplifying information on the non-complying pharmacies was provided to the applicant.
Specify the provided explanation of the harm caused to the Reporter by the alleged non-compliance with each PIC:

The failure of NABP to provide amplifying information on the connections to the non-compliant pharmacy network does not allow the applicant to amend or clarify its business practices to meet NABP standards and obtain registration and the ability to use the .pharmacy TLD.

Chronology of Events	
Date	Event
27 June 2017	.Pharmacy application submission date
11 July 2017	Registry Operator’s request for additional information
21 December 2017	Notice of Closure of .pharmacy application
9 March 2018	Date of PIC Report
26 March 2018	Date PIC Report sent to Registry Operator
24 April 2018	Date of PIC Conference

Detailed Decision

Detailed findings and conclusions, including whether the Registry Operator is in compliance with the relevant PIC provision(s):

Initially, it bears noting that section 2.17 of the Registry Agreement entered into between ICANN and the Registry Operator provides that “Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto (“Specification 11”).”

Pursuant to paragraph 2 of Specification 11, the Public Interest Commitments set forth in paragraph 3 thereof, are enforceable through the Public Interest Commitment Dispute Resolution Process (“the PICDRP”) established by ICANN. The Registry Operator is bound by the PICDRP, and must implement any remedies imposed by ICANN following a determination by a PICDRP Panel.

Here, the Panel is called upon to assess and determine whether the Registry Operator was in compliance or not with the Public Interest Commitment found in paragraph 3(c) of

Specification 11 (hereinafter “the PIC”), when it denied and closed the PIC Reporter’s application to register <canadawidepharmacy.pharmacy>.

Paragraph 3(c) of Specification 11 reads as follows:

“Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies”.

For the reasons discussed below, the Panel finds that the Registry Operator did not comply with its obligations under the PIC to operate .pharmacy applications in a transparent manner and implement clear registration policies and program standards.

The Standing Panel assesses that the domain name application’s denial is based on the failure by the PIC Reporter to meet three of Registry Operator’s .pharmacy program standards, namely licensure, legal compliance, and affiliated websites.

.Pharmacy applicants are required to meet the following standards:

“1. Licensure. An applicant, as well as community members to which the applicant site links or with which it is affiliated, must possess all necessary licenses, registrations, or permits to practice in all required jurisdictions. This includes not only the jurisdiction where the entity is located, but also any jurisdiction where its patients or customers reside. All such licenses, registrations, or permits must be in good standing.

...

5. Legal compliance. An applicant, as well as community members to which the applicant site links or with which it is affiliated, must comply with all provisions of jurisdictional law, including laws addressing regulatory agency approval of prescription medication.

...

10. Affiliated websites. The applicant website, any community member it promotes, its staff, domain name registrants, and any person or entity that exercises control over, or participates in the applicant business, must not be affiliated with or control any other website that violates these standards.

A non-pharmacy applicant that affiliates with pharmacies or prescription drug wholesale distributors must affiliate only with pharmacies or prescription drug wholesale distributors that are accredited or approved by the NABP .Pharmacy, VIPPS, DMEPOS or VAWD programs or, if the affiliate is a pharmacy, it has received a favorable inspection by the NABP VPP program within the 12 months prior to the date the .pharmacy application is submitted.*An “affiliate,” in this context, refers to any website to which the applicant website links, as well as other entities that share or have shared a common ownership or common principals with the applicant entity.

* NABP may use its discretion in determining whether an applicant must meet this element of the standard.”

The notice of closure considers the licensure and legal compliance standards only by reference to the “affiliated websites” standard.

With regard to the latter, the Registry Operator conveyed to the PIC Reporter that:

“Company’s pharmacy, until recently, belonged to a group of pharmacies known as Medisave, in BC, Canada. Several connections between Company, the Medisave pharmacies in BC, and the pharmacy network Solaris Pharmaceuticals Inc. / Candrug Pharmacy, Inc. have been identified.

Pharmacies affiliated with the network Solaris / Candrug Pharmacy, Inc. include candrugs.net, medisave.ca, medisavepharmacy.ca, pharमारiscanada.com, orderingcanadianmedications.com, canadadrugsonline.com, solarisworldwide.com, and globaldrugsdirect.com. These websites ship prescription drugs into jurisdictions where they are not licensed to do so, which is in violation of numerous .Pharmacy Program Standards, notably Standards 1, Licensure, and 5, Legal Compliance.”

The Panel notes three inconsistencies in the above findings, that are relevant to the PIC in question.

The **first inconsistency** concerns the Registry Operator’s failure to substantiate its assertion that it identified several connections between the PIC Reporter and Medisave, and between the PIC Reporter and the pharmacy network of Solaris Pharmaceuticals Inc. and Candrug Pharmacy, Inc.

If the Registry Operator, in fact, identified several connections between the PIC Reporter on the one hand, and Medisave, Solaris Pharmaceuticals, Inc. and Candrug Pharmacy, Inc. on the other, it certainly failed to specify what those several connections were, how were they evidenced, and the relevance and materiality of those connections.

In order to operate in a transparent manner, as required by the PIC, the Registry Operator was expected, in the Panel’s opinion, to convey substantial reasons justifying its denial of the PIC Reporter’s domain name application. The reasons ought to have been clearly stated, and supported with documents, reliable sources of information or data, public records, or otherwise, so that the “several connections identified” were fully explained to the PIC Reporter, even more so as the Registry Operator’s decision to close the PIC Reporter’s application was meant to be final.

As for the PIC Reporter's connection with Medisave, the Registry Operator states in its email communication of April 24, 2018, that "An example of a current affiliation (at the time of the Closure Notice) can be found in Exhibit A, page 3 of the PICDRP complaint: "Medisave Pharmacy" appears at the top of the faxed licensure information".

The Panel acknowledges that the document in question produced by the PIC Reporter does contain the reference to "Medisave Pharmacy". However, the Panel notes that the notice of closure is silent on the "Medisave Pharmacy" reference, and the April 24, 2018 email was produced during the "PICDRP Conference" held between the parties, following submission of the PIC report. In other words, the reason provided during the PICDRP email conference was not stated in the Registry Operator's notice of closure.

In fact, the Panel is of the opinion that, when the Registry Operator completed its preliminary review of the PIC Reporter's application, and requested additional information from the PIC Reporter on July 11, 2017, it could have noted the "Medisave Pharmacy" reference in the licensure information attached to the PIC Reporter's application, and could have requested clarification from the PIC Reporter at that time prior to making a final determination on the PIC Reporter's application.

The need to provide sufficient and compelling reasons for the Registry Operator's final determination was strengthened by the fact that the review and processing of the PIC Reporter's application took nearly six months, which far exceeds the 60 days normally expected.

A **second inconsistency** is that the Registry Operator expressly acknowledged in its notice of closure that "until recently", the PIC Reporter "belonged" to a group of pharmacies known as Medisave in BC, Canada. Thus, by the Registry Operator's own admission, the PIC Reporter was not associated with Medisave at the time the notice of closure was issued.

The Panel notes that the Registry Operator's licensure and legal compliance program standards make reference to current, as opposed to prior, affiliations with .pharmacy-compliant community members ("community members to which the applicant site links or with which it is affiliated").

Similarly, the "affiliated websites" program standard refer to current affiliations between the applicant website and third party websites ("must not be affiliated with or control any other website that violates these standards.")

The Panel finds that the expression "until recently" is as vague as it can be about the time frame of the connection pointed out by the Registry Operator between the PIC Reporter and Medisave. Put differently, the notice of closure does not clarify whether the PIC Reporter

belonged to Medisave at the time of the application submission, nor does it clarify until when the Registry Operator acknowledges that the PIC Operator ceased to be part of Medisave.

As such, the circumstances surrounding the Medisave connection were not clearly stated.

For these reasons, the Panels holds that the Registry Operator did not fulfil the PIC requirement to establish and adhere to clear registration standards.

A **third inconsistency** is that the Registry Operator does not demonstrate that the PIC Reporter's website or any person or entity associated with the PIC Reporter, was affiliated with, or controlled, the third-party websites listed in the notice of closure, as required by the "affiliated websites" program standard.

In the Panel's view, compliance with the "affiliated websites" program standard is premised on the assumption that, at the time of the Registry Operator's review, the applicant's website neither redirects nor includes links to third-party websites contravening .pharmacy policies and standards.

The notice of closure, however, does not affirm, much less evidence, that the PIC Reporter's website included links to, or was redirected to, the eight websites deemed to be operated by Solaris Pharmaceuticals, Inc. and Candrug Pharmacy, Inc.

Likewise, a Panelist's review of the PIC Reporter's website at "canadawidepharmacy.com" did not detect links to the third-party websites indicated in the notice of closure.

Accordingly, the Panel finds that the Registry Operator did not clearly and transparently applied its "affiliated websites" program standard, as required by the PIC, since it failed to show that the PIC Reporter's website under review actually linked to the third-party websites referenced in the notice of closure.