

JUNE 19, 2014

Confidential

College of Pharmacists of B.C
200-1765 West 8th Ave
Vancouver, B.C. V6J 5C6
Attention: [REDACTED]

Dear [REDACTED]

Re Proposed Bylaw

We write to you as leading retailers who include pharmacy services within our store operations in British Columbia. We understand that the British Columbia College of Pharmacists (the "College") is proposing to enact a bylaw, either under the provisions of the *Health Professions Act* or of the *Pharmacy Operations and Drug Scheduling Act*, which will purport to prevent the issuance of a pharmacy licence to any pharmacy operator if tobacco products are sold on the premises where the pharmacy is located.

We wish to record our strong objections to the apparent basis of, and rationale for, the proposed bylaw. While we recognize the status and authority of the College and have no concern with the College regulating those matters which fall within its objects and powers, we believe, based on legal advice, that the proposed bylaw falls well outside of the jurisdiction of the College and that its enactment will, accordingly, be open to legitimate challenge on that basis.

In our legal analysis we have considered specifically the objects and powers of the College as set out in the *Health Professions Act*, including the bylaw making powers contained in that act and in the *Pharmacy Operations and Drug Scheduling Act*, and we see no basis for the College to assert authority over this matter, either on the specific wording of the bylaw making powers or on the basis that the proposed bylaw is in some way necessarily incidental to those powers. In particular, the definition of a "pharmacy" set out in the *Pharmacy Operations and Drug Scheduling Act* makes it very clear that it is only those portions of retail premises in which drugs or devices are stored, dispensed or sold to the public that are subject to the jurisdiction of the College. In this regard we point out that pharmacists do not sell tobacco or tobacco products in British Columbia, that such products are not sold in "pharmacies" as defined in that act and that smoking cessation devices may only be sold in "pharmacies".

The suggestion that the College has the authority to regulate or prohibit the sale of any product which is legally sold in this Province in full compliance with applicable specific legislation (in this case the *Tobacco Control Act*) is untenable. The College, no matter what its intentions, cannot appropriate to itself the role of the elected government to regulate the perfectly legal activities of retailers merely because pharmacists carry out the "practice of pharmacy" (as defined in the regulations to the *Health Professions Act*) in retail settings which also offer for sale to the public products over which the College has no regulatory oversight. In attempting to do so the College

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is, in our view, seeking to set a precedent with wide ramifications for the retail industry. As retailers we all sell an extensive variety of goods and products and, except as may be specifically provided by bylaws passed by the College in accordance with its statutory powers, the College is not in a position to serve as arbitrator of what may and may not be sold in British Columbia by retailers whose offerings range from groceries to apparel to consumer electronics. The approach of the College suggests that the College believes that it has the power to regulate any goods or products which we might sell in our stores simply because of pharmacy operations are conducted in those stores, and this is quite simply not the case. If it were then the College could claim the authority to regulate the sale of, for example video games, snack foods or lottery tickets by retail operations which include pharmacies, on the basis of factors which are wholly outside of its mandate.

We suggest that the members of the board of the College will wish to carefully consider this matter, and, in particular, their individual duties and the personal responsibility which they may incur by recommending and purporting to pass a by-law which is clearly beyond the authority of the College and accordingly may be considered not to be passed in good faith. In addition, we note that the law does not take a positive view of activities which represent unwarranted restraint of trade.

You should also appreciate that the implementation of a bylaw which, without proper underlying authority, purports to prevent the sale of any product which may be sold under laws currently in effect in British Columbia will result in associated loss to retailers and we will look to the College, and to its board members personally, for recourse for such loss.

We would welcome the opportunity for our representatives to discuss this matter more thoroughly with the College but in the interim we urge the College to refrain from taking immediate and inappropriate action on this matter.

Yours truly,



Clint Mahlman
Executive Vice President & COO
London Drugs Limited



Michael Lund
Senior Vice President
Drug Trading and Medicine Shoppe
McKesson Canada



Darryl Jones
President
Overwaitea Food Group



Frank Scorpiniti
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