

**BEFORE THE ARKANSAS STATE BOARD OF PHARMACY**

**IN THE MATTER OF  
AMERICAN NOVELTIES, INC.  
LIST I CHEMICAL WHOLESALER APPLICANT**

**No. 2005-006**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

On February 14, 2006, the Arkansas State Board of Pharmacy (hereafter “the Board”) conducted a hearing in the above styled matter. After being duly served with notice, American Novelties, Inc. appeared by Johnny Harris and Counsel Shawn Childs. From the testimony of witnesses, exhibits and evidence of record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Applicant held a license as a Wholesale Distributor of List I Chemicals issued by the Board in 2001. Applicant renewed that license until it allowed that license to expire on December 31, 2004. Although Applicant could have renewed the license through March 31, 2005, it failed to do so and the license became void on April 1, 2005. On or about April 12, 2005 Applicant submitted an application for a new license as a List I Chemical Wholesaler.

2. While licensed by the Board as a wholesaler of List I Chemicals, Respondent sold a variety of novelty type items and pseudoephedrine and/or ephedrine combination products primarily to convenience stores and to tobacco shops.

3. Based upon his sales of pseudoephedrine and/or ephedrine to said retailers, Respondent was required to maintain records of the chemical sales pursuant to Ark. Code Ann. § 5-64-1001 *et seq.*

4. Pseudoephedrine and ephedrine are List I Chemicals that are in great demand as ingredients to be used in the illicit manufacture of methamphetamine (“meth”), a Class II Controlled Substance. Specifically, single-ingredient, 60 mg pseudoephedrine is highly desired as an ingredient in manufacturing meth. Arkansas is well known to have a large number of illicit meth “labs” that manufacture meth.

5. In each of the transactions identified in Attachment A, incorporated by reference herein, the circumstances of the sale would lead a reasonable person to believe that the pseudoephedrine and/or ephedrine Applicant sold to its customer was likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of the Uniform Controlled Substances Act based upon the factors set forth including without limitation:

- a. The amount of pseudoephedrine or ephedrine involved in the individual transaction.
- b. The pseudoephedrine and ephedrine that Respondent sold in said transactions was predominately 36 dosage unit packages of Max Brand 60 mg single-ingredient pseudoephedrine. The package of said pseudoephedrine was labeled as “Pseudo 60s”, a prominent display of the type of chemical and its strength.
- c. In these transactions, the customer bought predominately or only listed chemicals.
- d. Individual customers of Applicant, identified in Attachment A, incorporated by reference herein, began to order pseudoephedrine and/or ephedrine products immediately as new customers and continued to purchase

pseudoephedrine and/or ephedrine continuously during the time the customer continued to do business with Applicant.

In the transactions identified in this paragraph, each sale of pseudoephedrine and/or ephedrine was a suspicious transaction. Board Regulation 08-02-0008(a) (1) and (8).

6. Applicant has failed to report to the Board, or to the Drug Enforcement Administration, as a suspicious transaction any sale of pseudoephedrine or ephedrine identified in Attachment A hereto to any of his customers.

#### CONCLUSIONS OF LAW

1. Each of Respondent's sales of pseudoephedrine and/or ephedrine identified in Finding of Fact No. 5 above was a suspicious transaction pursuant to Ark. Code Ann. § 5-64-1006.

2. Respondent's failures to report the sales of pseudoephedrine and/or ephedrine identified in Finding of Fact No. 5 above to the Board individually as suspicious transactions constitutes separate incidents, each of which violates Ark. Code Ann. § 5-64-1006 and for each of which the Board is authorized to impose a penalty not to exceed \$10,000 per violation.

3. Respondent's violations of Ark. Code Ann. § 5-64-1006 and Board regulations as set forth above constitute factors or qualifications that the Board may consider relevant to and consistent with the public health and safety in regard to determining Applicant's qualifications to be licensed as a wholesaler of List I Chemicals 08-02-0004(a) (8).

ORDER

IT IS THEREFORE ORDERED that Respondent American Novelties, Inc.'s application to be licensed as a List I chemical wholesaler be, and it is hereby, denied.

IT IS FURTHER ORDERED that Respondent American Novelties, Inc. shall pay a monetary penalty of \$188,000 to the Board within one-year from the date of this Order.

IT IS SO ORDERED this \_\_\_\_\_ day of March 2006.

ARKANSAS STATE BOARD  
OF PHARMACY

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LARRY MCGINNIS, PHARM. D.  
PRESIDENT