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KENNETH W. ANDERSON, JR.
MEMBER

July 18, 2000

Mr. Scott L. Miller
Bracewell & Patterson, LLP
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

RE: American Pharmacy Cooperative, Inc.

Dear Mr. Miller:

This is in response to your letter dated April 12, 2000, and received by this Agency on April 13, 2000. Your letter was supplemented by letters dated May 1, 2000, and May 12, 2000.

Your letter and supplemental materials indicate that American Pharmacy Cooperative, Inc. ("Cooperative"), an Alabama corporation, recently received authorization to conduct business in Texas as a foreign corporation under the assumed name of American Pharmacy, Inc. You have represented that the Cooperative was formed for the purpose of enabling member retail pharmacists ("Members") to aggregate their buying power in negotiating discounts on the purchase of pharmaceutical products from the manufacturers of such products. According to your letters, the Cooperative intends to make an initial mailing to all independent retail pharmacists located in Texas, inviting them to inquire further into becoming Members of the Cooperative. The primary benefit of being a Member, as stated in your letter, is the lower prices received on pharmaceutical products.

Members of the Cooperative will be required to pay \$1,500.00 for 100 shares of the capital stock ("Shares") of the Cooperative. The articles of incorporation for the Cooperative provide that the holders of capital stock must be engaged directly or indirectly in the operation of a retail pharmacy business and that each Member has only one vote on all matters regardless of the amount of business done with the Cooperative.

The bylaws obligate the Cooperative to repurchase the Shares from a Member, at cost, when the Member: (1) no longer operates a retail pharmacy business, (2) ceases to conduct business with the Cooperative, or (3) dies or the corporation owning the shares ceases to exist. In addition, the articles and bylaws provide that the Shares are non-transferrable and certificates for the Shares will have a legend reflecting such restriction on transfer. No dividends are paid on the Shares, but Members receive "patronage" dividends which are determined by their percentage of the total dollar volume of business done with the Cooperative in its fiscal year and not based on the efforts of others. These

Mr. Scott L. Miller
July 18, 2000
Page 2

patronage dividends are considered incidental, not a primary benefit of membership in the Cooperative, and are paid out of net savings and overcharges from operations in connection with the sale of merchandise to the Members.

Based on the foregoing understanding, the staff of the State Securities Board will recommend no action to require registration of the Shares. In addition, the staff will recommend no action to require registration of the Cooperative's personnel involved in soliciting pharmacists in Texas for potential membership in the Cooperative, as described above.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the no-action position stated above would be void.

I trust this information answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD
Securities Commissioner

David Weaver
General Counsel

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