

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.