

Proposed Administrative Consent Agreement

Background Summary

Subject: Northeast Patients Group, d/b/a
Wellness Connection of Maine
PO Box 1058
Augusta, Maine 04332-1058

Date of Incident(s): May 2012 through March 2013

Background Narrative: That on February 22, 2013, the Board received a phone call from a concerned person who alleged that a pesticide was being applied to the medical marijuana being grown at the Wellness Connection medical marijuana cultivation site in Auburn. On March 4, 2013, two Board inspectors conducted a joint inspection with DHHS personnel at the company's Auburn cultivation site.

From that inspection, Board staff documented seven pesticides at the Company's Auburn cultivation site: Serenade Disease Control Concentrate, Gnatrol WDG Biological Larvicide, Monterey Garden Insect Spray, Actinovate Lawn & Garden Fungicide, Forbid 4F Ornamental Insecticide/Miticide, Monterey Take Down Garden Spray and CX Hydroponics Tanlin Drops. A company employee stated that all but Forbid 4F Ornamental Insecticide/Miticide and Monterey Take Down Garden Spray were used on the site. Various combinations of these products were applied on a weekly basis.

Actinovate Lawn & Garden Fungicide and CX Hydroponics Tanlin Drops were not registered in the state of Maine. None of the pesticides the company applied to medical marijuana were registered for use on marijuana.

On March 14, 2013, a Board inspector assisted in a joint inspection with DHHS at the Wellness Connection of Maine's Thomaston cultivation site and documented that four pesticides found at the Company's Auburn cultivation site were also found at the Thomaston site. These were: Serenade Disease Control Concentrate (EPA # 69592-12); Actinovate Lawn & Garden Fungicide (EPA # 73314-1); and Monterey Take Down Garden Spray (EPA # 67702-5-54705); and Monterey Garden Insect Spray (62719-314-54705).

There were three additional pesticides found at the Thomaston site that were not found at the Auburn site: Doktor Doom Total Release Fogger (EPA registration # 72804-1); Organocide 3 in 1 Garden Spray (no EPA registration #); and Gnatrol WDG (EPA registration # 73049-56). Although Board staff documented the existence of Monterey Take Down Garden Spray at the Thomaston cultivation site, this pesticide was never used by the Company and has since been returned to the vendor.

Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 1(B)—prohibits the use of registered pesticides for other than registered uses.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F)—prohibits the use of a pesticide inconsistent with its label.
- CMR 01-026 Chapter 20 Section 1(A)—prohibits the use of any pesticide not registered by the Maine Board of Pesticides Control.

- 22 M.R.S. § 1471-D (8)(C) - Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.

Rationale for Settlement: The staff considered the number and duration of pesticide applications. None of the pesticides were registered for use on medical marijuana and several of the pesticides were not registered in Maine. The pesticide applications were potentially harmful to patients using the medical marijuana.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY
BOARD OF PESTICIDES CONTROL**

Northeast Patients Group, d/b/a)	ADMINISTRATIVE CONSENT AGREEMENT AND FINDINGS OF FACT
Wellness Connection of Maine)	
PO Box 1058)	
Augusta, Maine 04332 1058)	

This Agreement, by and between Northeast Patients Group, d/b/a Wellness Connection of Maine (hereinafter called the Company) and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company operates two medical marijuana cultivation sites and four medical marijuana dispensaries in Maine and its corporate office in Maine is located at 685 Congress Street in Portland.
2. That on February 22, 2013, the Board received a phone call from a concerned person who alleged that a pesticide was being applied to the medical marijuana being grown at the Wellness Connection medical marijuana cultivation site in Auburn.
3. That in response to the call the Board received in paragraph two, Board staff conveyed this information to personnel in the Division of Licensing and Regulatory Services section of the Department of Health and Human Services (DHHS), the licensing agency for medical marijuana facilities in Maine.
4. That on March 4, 2013, two Board inspectors conducted a joint inspection with DHHS personnel at the Company's Auburn cultivation site located in Auburn. DHHS also arranged to have law enforcement present.
5. That from the inspection described in paragraph four, Board staff documented seven pesticides at the Company's Auburn cultivation site: Serenade Disease Control Concentrate (EPA registration # 69592-12); Gnatrol WDG Biological Larvicide (EPA registration # 73049-56); Monterey Garden Insect Spray (EPA registration # 62719-314-54705); Actinovate Lawn and Garden Fungicide (EPA registration # 73314-1); Forbid 4F Ornamental Insecticide/Miticide (EPA registration # 432-1279); Monterey Take Down Garden Spray (EPA registration # 67702-5-54705); and CX Hydroponics Tanlin Drops (no EPA registration #). A Company employee stated that all but Forbid 4F Ornamental Insecticide/Miticide and Monterey Take Down Garden Spray were used on the site.
6. That, although Board staff documented the existence of Forbid 4F Ornamental Insecticide/Miticide and Monterey Take Down Garden Spray at the Auburn cultivation site, these pesticides were never used by the Company and have since been returned to the vendor.
7. That during the inspection described in paragraph four, a Board inspector interviewed a Company employee who was directed to make pesticide applications at the facility. In a written statement the Company employee disclosed that when he started employment at this facility in May of 2012, Gnatrol and Monterey Garden spray were sprayed once a week to the medical marijuana; and that beginning on or about September 2012, Serenade Garden Disease Control was applied once per week in addition to the aforementioned two products. The employee's written statement further indicated that beginning in approximately October 2012,

in addition to the previous pesticides, Actinovate was also applied weekly; and that in January 2013, they switched from Gnatrol to Tanlin and applied it once a week.

8. That during the inspection described in paragraph four, a Board inspector conducted detailed inspections on two of the products listed in in paragraph five, Serenade Garden Disease Control and CX Hydroponics Tanlin Drops. These use inspections confirmed extensive use of these products both in frequency and duration.
9. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
10. That none of the pesticides the Company applied to medical marijuana as summarized in paragraphs four, five, seven and eight were registered for use on marijuana.
11. That the circumstances in paragraphs one through five and seven through ten constitute multiple violations of CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
12. That CMR 01-026 Chapter 20 Section 1(A) prohibits the use of any pesticide not registered by the Maine Board of Pesticides Control.
13. That Actinovate Lawn & Garden Fungicide and CX Hydroponics Tanlin Drops are not registered in the state of Maine.
14. That the circumstances in paragraphs one through five, seven, eight, twelve and thirteen constitute multiple violations of CMR 01-026 Chapter 20 Section 1(A).
15. That at the request of DHHS, on March 14, 2013, a Board inspector assisted in a joint inspection with DHHS at the Wellness Connection of Maine's Thomaston cultivation site located in Thomaston.
16. That from the inspection described in paragraph fifteen, the inspector documented that four pesticides found at the Company's Auburn cultivation site were also found at the Thomaston site. These were: Serenade Disease Control Concentrate (EPA # 69592-12); Actinovate Lawn & Garden Fungicide (EPA # 73314-1); and Monterey Take Down Garden Spray (EPA # 67702-5-54705); and Monterey Garden Insect Spray (62719-314-54705).
17. That from the inspection described in paragraph fifteen, the inspector documented three additional pesticides found at the Thomaston site that were not found at the Auburn site, specifically Doktor Doom Total Release Fogger (EPA registration # 72804-1); Organocide 3 in 1 Garden Spray (no EPA registration #); and Gnatrol WDG (EPA registration # 73049-56).
18. That, although Board staff documented the existence of Monterey Take Down Garden Spray at the Thomaston cultivation site, this pesticide was never used by the Company and has since been returned to the vendor.
19. That none of the pesticides summarized in paragraphs sixteen and seventeen were registered for use on marijuana and the Doktor Doom Total Release Fogger label specifies that the pesticide is for residential/homeowner use only.
20. That the circumstances described in paragraphs fifteen through nineteen constitute violations of CMR 01-026 Chapter 20 Section 1(A) and (B) and 22 M.R.S.A § 1471-D(8)(F).

21. The Board finds that the use of pesticides in the production of medical marijuana was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).
22. That the Board has regulatory authority over the activities described herein.
23. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
24. That this Agreement shall not become effective unless and until the Board accepts it.
25. That in assessing a penalty in this circumstance, the Board recognized that the Company was producing a medicinal product intended for use by patients with serious and/or chronic illnesses. The Board further finds the number of violations alleged against the Company and the frequency of the applications as documented by the Board inspections showed a pattern of consistent pesticide applications on the medical marijuana in violation of the pesticide laws.
26. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs eleven, fourteen, twenty and twenty-one, the Company agrees to pay to the State of Maine a penalty in the amount of \$18,000. This penalty amount takes into consideration, as mitigating factors, the fact that the Company cooperated with the Board and readily admitted the violations described in this Agreement; returned unused pesticides to the vendor; and has taken corrective action to avoid future violations, address safety concerns, and provide for employee education and training. A copy of a letter from the Company dated June 12, 2013, describing its corrective actions, is attached to this Agreement. Penalty payments will be made in equal installments of \$6,000 per month, with the first payment being made on the date of the Company's signature of this Agreement and will continue for consecutive months until the full penalty amount has been paid. All payments must be by check, made payable to the Treasurer, State of Maine.

IN WITNESS WHEREOF, the parties have executed this Agreement of three pages.

NORTHEAST PATIENTS' GROUP

By:  Date: 07.22.13

Type or Print Name: PATRICIA Rosi, COO

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

JUN 17 2013



Wellness Connection
of Maine

June 12, 2013

Mr. Raymond Connors, Manager of Compliance
Board of Pesticides Control
Department of Agriculture, Conservation and Forestry
State of Maine
28 State House Station
Augusta, ME 04333-0028

RE: Northeast patients Group d/b/a Wellness Connection of Maine Consent Decree

Dear Mr. Connors,

First, I would like to thank you, Mr. Jennings, and Mr. Randlett for meeting with Dan Walker and I last Friday, June 7th, and offering us an opportunity to further discuss with you why we believe there is a basis for revision to the draft consent agreement and, therefore, why there should be a reduction in the penalty.

During this meeting, it was mutually agreed upon that you, Mr. Jennings, and Mr. Randlett would amend the consent agreement and potentially propose a reduction in the penalty after reviewing the list of corrective actions implemented by WCM since March 4, 2013—the date of the Board's inspection of the WCM cultivation facility.

Please find hereafter the extensive summary of corrective actions undertaken by WCM:

1. No more pesticides used.
2. All pesticides have been returned to vendors, as demonstrated by vendors' credits, which have been provided to Board staff.
3. Implementation of an integrated pest management ("IPM") program at the WCM cultivation site is in-progress, which includes but is not limited to the following actions:
 - a. Sealing the base of the building;
 - b. Planting bankers plants;
 - c. Wearing uniforms;
 - d. Limiting contamination from the outside via:
 - i. Sanitizing foot pads,
 - ii. Establishing screening process for visitors as to potential contamination risk,

685 Congress Street,
Portland, ME 04102

221 Dirigo Drive,
Brewer, ME 04412

149 New County Road,
Thomaston, ME 04861

115 Water Street,
Hallowell, ME 04347

Patient Inquiry: 1 855 848 6740 | General Inquiry: 207 358 8833
info@mainewellness.org



Wellness Connection
of Maine

- iii. Development and implementation of SOPs for pest prevention and course of action in the case of an outbreak.
4. Increase cultivation employees awareness, education, and training about workplace safety via collaboration with SafetyWorks!, an OSHA training program of the Maine Department of Labor.
5. Outreach to develop collaboration with local experts such as the Maine Organic Farmers and Gardeners Association ("MOFGA"), Backyard Farms, IPM Labs, and EcoLab.
6. Participation in weekly meeting with the Maine Association of Dispensary Operators (MEADO), DHHS, and the Board of Pesticides since April 2013. This initiative led to the development of LD 1531, an Emergency Bill sponsored by Senator Saviello to allow usage of certain section 25(b) pesticides.
7. Development of plan to require all WCM cultivation supervisors to become Maine Licensed Pesticide applicators.
8. Temporary closure of WCM's Thomaston cultivation facility in order to consolidate cultivation at the Auburn facility and to better focus on compliance and IPM in one location.

Thank you again for meeting with us to discuss the proposed consent decree and penalty, and for offering us the opportunity to provide you with further information to demonstrate the numerous corrective actions undertaken by WCM. As a result of these corrective actions and WCM's responsiveness to Board inquiries, WCM respectfully requests that you propose lowering the penalty.

We also look forward to working with the Board and DHHS in implementing best management practices for the use of 25(b) pesticides in the cultivation of medical marijuana, once LD 1531 passes and becomes effective.

Sincerely,

Patricia Rosi
COO, Wellness Connection of Maine

cc: Henry Jennings, Mark Randlett, Esq., Dan Walker, Esq.
885 Congress Street,
Portland, ME 04102

221 Dingo Drive,
Brewer, ME 04412

149 New County Road,
Thomaston, ME 04861

115 Water Street,
Hallowell, ME 04347