

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>TH</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

MAR - 9 2011

**Division of Consumer Affairs**

By: Jeffrey Koziar  
Deputy Attorney General  
(973) 648-7819

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

COMMUNITY SURGICAL SUPPLY,  
INC.

Administrative Action

**ASSURANCE OF VOLUNTARY  
COMPLIANCE**

**WHEREAS** this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14 et seq. (“Refund Policy Act”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq., including the Regulations Governing Disclosure of Refund Policy in Retail Establishment, N.J.A.C. 13:45A-15.1 et seq. (“Refund Regulations”) have been or are being committed by Community Surgical Supply, Inc., with a main business address of 1390 Route 37 West, Toms River, New Jersey 08754-4686, as well as its owners, officers, directors, managers, agents, representatives, employees, successors, assigns and/or independent contractors (collectively, “CSS”) (hereinafter referred to as the “Investigation”).

WHEREAS CSS has voluntarily and fully cooperated with the Division and provided information to assist with the Investigation;

WHEREAS CSS denies that it has committed any violation of the CFA, Refund Policy Act and/or Refund Regulations;

WHEREAS the Division and CSS (collectively, the “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding this Investigation without the need for further action, and CSS having consented to the entry of this Assurance of Voluntary Compliance (“AVC”) without having admitted any violation of law or finding of fact, and for good cause shown;

### **1. EFFECTIVE DATE**

1.1 This AVC shall be effective on the date that it is filed with the Division (“Effective Date”).

### **2. DEFINITIONS**

As used in this AVC, the following words or terms shall have the following meanings:

2.1 “ADR Unit” refers to the Alternative Dispute Resolution Unit of the Division.

2.2 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through CALA or another agency, after the Effective Date, a complaint concerning CSS’s business practices.

2.3 “Advance Beneficiary Notice” shall refer to a written notice given to a Medicare beneficiary by a physician, provider or supplier when he or she believes that Medicare will deny

some or all of the Merchandise because of medical necessity or the frequency of the supply of such Merchandise.

2.4 “Affected Consumer” shall refer to those Consumers listed on Exhibit A.

2.5 “Attorney General” shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

2.6 “CALA” shall refer to Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

2.7 “Concerning” means relating to, pertaining to, referring to, describing, evidencing or constituting.

2.8 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.9 “CSS Website” shall refer to the website located at [www.communitysurgical.com](http://www.communitysurgical.com)

2.10 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes oxygen, respiratory and home medical equipment.

2.11 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.12 “Policy” or “Policies” shall refer to any procedures, practices, directives and/or established courses of action, whether written or oral.

2.13 “Represent” means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed.

2.14 “Restitution” shall refer to all methods undertaken by CSS to resolve Consumer complaints including, but not limited to, the issuance of refunds, reversal of credit card or debit card charges and/or the replacement of defective Merchandise.

2.15 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.16 “State” shall refer to the State of New Jersey.

### **3. AGREED UPON BUSINESS PRACTICES**

3.1 CSS shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereinafter be amended, including, but not limited to, the CFA, Refund Policy Act and Refund Regulations.

3.2 In accordance with N.J.S.A. 56:8-2.16 and N.J.A.C. 13:45A-15.2(a), CSS shall conspicuously post its refund and return policy as to all Merchandise at any and all of its retail establishments in the State on a sign in at least one of the following locations:

- a. Attached to the Merchandise itself, or
- b. Affixed to each cash register or point of Sale, or
- c. So situated so as to be clearly visible to the buyer from the cash register, or
- d. Posted at each store entrance used by the public.

3.3 In accordance with N.J.S.A. 56:8-2.16 and N.J.A.C. 13:45A-15.2(a), CSS shall conspicuously display a link to its refund and return policy on the CSS Website as follows: (a) on the home page; and (b) on each individual page where Merchandise can be ordered. Consumers shall not be required to view a pop-up window in order to view the full refund and return policy.

3.4 CSS shall ensure that Consumers sign Advance Beneficiary Notices when such notices are required.

3.5 CSS shall provide Consumers with a thirty (30) day grace period to return unused Merchandise, excluding garments and rental Merchandise. Special orders may be returned at CSS' discretion.

3.6 Within sixty (60) days of the Effective Date, CSS shall develop written Policies Concerning the return of rental Merchandise. CSS shall provide the Division with all such Policies.

3.7 CSS shall ensure that all correspondence or other documents used for billing and collection purposes includes a specific payment due date, which shall be conspicuously noted.

3.8 CSS shall ensure that all correspondence or other documents used for billing and collection purposes does not contain any misrepresentations.

3.9 CSS shall provide Consumers with twenty (20) days' notice of any outstanding Merchandise balances before filing any actions in small claims court.

3.10 Within thirty (30) days of the Effective Date, CSS shall designate a Person to be its Consumer Liaison, who will report directly to the Chief Executive Officer of CSS. The responsibilities of the Consumer Liaison will be to ensure that the Policies of CSS take into account the interests and needs of its Consumers and their designated representatives. CSS shall maintain the Consumer Liaison position for a minimum of two (2) years from the Effective Date.

3.11 Within thirty (30) days of the Effective Date, CSS shall notify the Division, in writing, of the full name, business address (street and mailing), telephone number, facsimile number

and electronic mail address for the Consumer Liaison. For a period of two (2) years from the Effective Date, CSS shall provide the Division with written notification of a change in any of the information relating to the Consumer Liaison within thirty (30) days of any such change.

3.12 Within sixty (60) days of the Effective Date, CSS shall develop written Policies Concerning the return or other disposition of Merchandise sold to a Consumer once notified of the death of such Consumer. CSS shall provide the Division with all such Policies.

3.13 CSS shall maintain a full time Compliance Officer, who shall be responsible for ensuring compliance with all applicable State and/or Federal laws, rules and regulations. For a period of two (2) years from the Effective Date, CSS shall provide the Division with written notification of a change in the identity of the Compliance Officer within 30 days of any such change.

3.14 For a period of two (2) years from the Effective Date, CSS shall conduct quarterly internal audits to ensure compliance with the CFA, the Refund Policy Act and the Refund Regulations and pursuant to the terms of an audit working plan to be submitted to the Division within thirty (30) days of the Effective Date.

3.15 For a period of two (2) years from the Effective Date, CSS shall make available to the Division the results of the audits referenced in Section 3.14, within thirty (30) days of the Division's written request.

3.16 For a period of two (2) years from the Effective Date, CSS shall provide the Division with a sample of all correspondence and other documents to be used for billing and collections purposes.

3.17 CSS shall maintain complete Consumer files for a minimum of seven (7) years, including all documents Concerning actions filed in small claims court.

#### **4. RESTITUTION AND EXISTING CONSUMER COMPLAINTS**

4.1 Attached as Exhibit A is a list prepared by the Division that identifies each Affected Consumer.

4.2 Within thirty (30) days of the Effective Date, the Division shall transfer the Affected Consumers' complaints to the ADR Unit for binding arbitration. CSS agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. CSS further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing both the Affected Consumer and CSS's designated representative of the referral of the Affected Consumers' Complaints to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit B).

4.3 If an Affected Consumer refuses to participate in the ADR program, that Affected Consumer's Complaint shall be deemed closed for purposes of this AVC.

4.4 If CSS fails or refuses to participate in the ADR program, the arbitrator may render a default against CSS. Unless otherwise specified in the arbitration award, CSS shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. CSS's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this AVC.

4.5 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

## **5. ADDITIONAL CONSUMER COMPLAINTS**

5.1 For a period of one (1) year from the Effective Date, the Division shall forward to CSS copies of any Additional Consumer complaints. The Division shall forward to CSS such complaints within thirty (30) days of the Division's receipt thereof. The Division acknowledges that as of the Effective Date, it is not in possession of any Additional Consumer Complaints.

5.2 After forwarding to CSS the complaints of the Additional Consumers, the Division shall notify the Additional Consumers, in writing, of the following: (a) that their complaints have been forwarded to CSS; (b) that they should expect a response from CSS within thirty (30) days from the date of this notice; and (c) their right to refer their complaints to the ADR Unit for binding arbitration if CSS disputes the complaint and/or requested relief.

5.3 If, prior to CSS's receipt from the Division of any Additional Consumer Complaint, CSS has filed a civil action against such Additional Consumer, CSS shall request that the court stay the civil action pending the disposition of the Additional Consumer Complaint.

5.4 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, CSS shall send a written response to each Additional Consumer, with a copy sent by first class mail, fax or email to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, fax number: 973-648-3139, [cmt@dca.lps.state.nj.us](mailto:cmt@dca.lps.state.nj.us).



5.5 If CSS does not dispute the Additional Consumer's complaint and requested relief, CSS's written response shall so inform the Additional Consumer. CSS shall forward to such Additional Consumer the appropriate Restitution upon receipt of the Additional Consumer's release of his or her claims against CSS arising out of or relating to such complaint. Where Restitution concerns the reversal of credit or debit card charges, CSS shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by bank check, money order or other guaranteed funds made payable to the Additional Consumer. Where Restitution concerns replacement of Merchandise, such Merchandise shall be forwarded with CSS's written response.

5.6 If CSS disputes the Additional Consumer's complaint and/or requested relief, CSS's written response shall include copies of all documents concerning CSS's dispute of the complaint. CSS shall have the right to present any counterclaims within the ADR proceedings.

5.7 Within forty-five (45) days of receiving from the Division an Additional Consumer complaint, CSS shall provide the Division with written notification of each Additional Consumer whose complaint has been resolved. Such notification shall also include the following:

- (a) The Restitution provided as to each such Additional Consumer;
- (b) The efforts CSS had undertaken to locate an Additional Consumer whose Restitution was returned as undeliverable; and
- (c) Confirmation that CSS sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt of such notification, the complaint of each Additional Consumer who received Restitution shall be deemed closed for purposes of this AVC.

5.8 If CSS has not notified the Division that an Additional Consumer's complaint has been resolved within sixty (60) days of receiving the Additional Consumer complaint from the Division or if an Additional Consumer refuses CSS's offer of Restitution, the Division shall forward such complaint to the ADR Unit for binding arbitration. CSS agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. CSS further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify any such Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

5.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this AVC.

5.10 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

## **6. SETTLEMENT PAYMENT**

6.1 Within ten (10) calendar days after the Effective Date, CSS shall pay the amount of Fifty-Eight Thousand Four Hundred Ninety and 19/100 Dollars (\$58,490.19) to the Division ("Settlement Payment").

6.2 From the Settlement Payment, the Division shall receive Fifty Thousand and 00/100 Dollars (\$50,000.00) in settlement of all claims by the Division of violations of the CFA, the Refund Policy Act and the Refund Regulations and for civil penalties, pursuant to N.J.S.A. 56:8-13, Three Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$3,875.00) in reimbursement of the Division's attorneys' fees, and Four Thousand Six Hundred Fifteen and 19/100 Dollars ((\$4,615.19) in reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-19 and N.J.S.A. 56:8-11.

6.3 CSS shall make the Settlement Payment by bank check, money order or other guaranteed funds payable to the "New Jersey Division of Consumer Affairs" and it shall be forwarded to the undersigned:

Jeffrey Koziar, Deputy Attorney General  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
Newark, New Jersey 07101

6.4 Upon making the Settlement Payment, CSS shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **7. GENERAL PROVISIONS**

7.1 This AVC is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this AVC.

7.2 This AVC shall be governed by, and construed and enforced in accordance with, the laws of the State.

7.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this AVC and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this AVC.

7.4 This AVC sets forth the entire agreement among the Parties. Except as otherwise provided herein, this AVC shall be modified only by a written instrument signed by or on behalf of the Division and CSS.

7.5 Except as otherwise explicitly provided in this AVC, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this AVC is held invalid or unenforceable by operation of law, the remaining terms of this AVC shall not be affected.

7.7 This AVC shall be binding upon CSS as well as its owners, officers, directors, managers, agents, representatives, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

7.8 This AVC shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this AVC be used to avoid compliance with this AVC.

7.9 This AVC is agreed to by the Parties and entered by the Division for settlement purposes only. Neither the fact of, nor any provision contained in, this AVC nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of CSS and (b) an admission by CSS that any of its acts or practices described in or prohibited by this AVC are unfair or deceptive or violate the CFA, the Refund Policy Act and/or the Refund Regulations. This AVC is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this AVC; or (b) any action or proceeding involving a Released Claim (as defined in Section 8.1) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this AVC may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same AVC.

7.11 The Parties Represent and warrant that their signatures to this AVC have authority to act for and bind the respective Parties.

7.12 This AVC is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

## **8. RELEASE**

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this AVC and conditioned on CSS making the Settlement Payment in the manner specified in Section 6, the Division hereby agrees to release CSS from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against CSS for violations of the CFA, the Refund Policy Act and/or the Refund Regulations arising from the Investigation as well as the matters addressed in this AVC (“Released Claims”).

8.2 Notwithstanding any term of this AVC, the following do not comprise Released Claims: (a) private rights of action provided, however, that nothing herein shall prevent CSS from raising the defense of set-off, release, accord and satisfaction, or other appropriate defense against a Consumer who has received Restitution; (b) actions to enforce this AVC; and (c) any claims against CSS by any other agency or subdivision of the State.

## **9. PENALTIES FOR FAILURE TO COMPLY**

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of §3 this AVC or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations by CSS of the provisions of §3 this AVC, the CFA, the Refund Policy Act and/or the Refund Regulations shall constitute a first

violation pursuant to N.J.S.A. 56:8-13, and that CSS may be liable for civil penalties provided therein.

#### **10. COMPLIANCE WITH ALL LAWS**

10.1 Except as provided in this AVC, no provision herein shall be construed as:

- (a) Relieving CSS of its obligation to comply with all State and Federal laws, regulations, or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from CSS pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right CSS may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

#### **11. NOTICES UNDER THIS AVC**

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or CSS pursuant to this AVC shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Assistant Deputy of Enforcement  
Office of Consumer Protection  
New Jersey Division of Consumer Affairs  
124 Halsey Street - 7th Floor  
P.O. Box 45028  
Newark, New Jersey 07101

For the Respondent:

Kerry M. Parker, Esq.  
Epstein Becker and Green, P.C.  
One Gateway Center, 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311

PAULA T. DOW

ATTORNEY GENERAL OF NEW JERSEY

By: 

Thomas R. Calcagni, Acting Director  
Division of Consumer Affairs

Dated: 3/9/11, 2011

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS AVC  
ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**



FOR THE DIVISION:

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: Jeffrey Koziar

Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
(973) 648-7819

Dated: 3/9, 2011

FOR CSS:

EPSTEIN BECKER AND GREEN

By: Kerry M. Parker

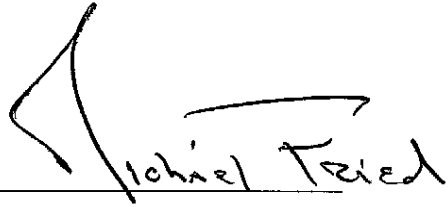
Kerry M. Parker, Esq.  
Epstein Becker and Green, P.C.  
One Gateway Center, 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311  
(973) 639-8259

Dated: 3/8, 2011

COMMUNITY SURGICAL SUPPLY, INC.

By: [Signature]  
Sign Name

Dated: 3/4, 2011



Michael Fried

---

Print Name



---

Print Title/Position

**EXHIBIT A**

1.

