

**CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS**

**DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainant,**

**-against-**

**DAILY MEDICAL EQUIPMENT  
DISTRIBUTION CENTER, INC.,**

**Respondent.**

**DECISION AND ORDER**

**Violation No.: LL005286405**

**License No.: 1391842**

**Respondent's Address:  
2660 Gerritsen Avenue  
Brooklyn, NY 11229**

A hearing on the above-captioned matter was held on November 28, 2011.

Appearances: For the Department: Inspector E. Garcia. For the Respondent: Greg Miller, corporate officer.

The respondent is charged with violating the following:

- 1) Title 6 of the Rules of the City of New York ("6 RCNY") Section 5-37 by failing to have a refund policy posted.
- 2) Title 20 of the N.Y.C. Administrative Code ("Administrative Code") Section 20-430(a) by failing to provide an invoice containing its Department of Consumer Affairs license number that is delivered to the customer.
- 3) 6 RCNY Section 2-275(c) by failing to post the customer notice sign required for sellers of products for the disabled.

Based on the evidence in this case, I **RECOMMEND** the following:

**Findings of Fact**

At the time of inspection the respondent failed to post a refund policy and the required sign relating to products for the disabled. Respondent also failed to produce a business invoice containing respondent's license number. Respondent is a dealer as defined by 6 RCNY 2-271 and Administrative Code 20-425 (d) and (e), in that "he is engaged in the fitting, repairing or servicing of or making adjustments to products for the disabled whether done for compensation, other consideration, or under a warranty."

**Opinion**

Mr. Miller does not deny the violations but argues that they are not applicable because the respondent does not actually sell, fit or service products for the disabled from his place of business and receives compensation exclusively from a patient's insurance company. Mr. Miller testified that once a doctor sends him a patient's prescription he then arranges for a home visit to fill the prescription. The argument is not meritorious as there is no exemption under the law for dealers that only provide devices via insurance companies. In any event, although he testified that he does not sell to or service "walk-ins" at his place of business, he nevertheless displays orthotic products in his window without a sign indicating no sales or services to "walk-ins". Moreover, when the Inspector inquired about an orthotic product, one of respondent's employees quoted a price even though insurance companies are the only ones who purportedly compensate respondent.

In addition, respondent completes a NF3 insurance form which contains his license number and information regarding the product he has supplied the patient which he gives the insurance company. The insurance company may or may not give this to the patient and therefore this does not satisfy the requirement under Section 430(a).

Furthermore, although Mr. Miller testified that he did not post a refund policy or notice about products for the disabled because he never sells to or bills patients, respondent did have his DCA license and complaint sign posted in his establishment. Thus, as a licensee respondent is obliged to conform to the requirements of the law and rules.

Accordingly, the violations are sustained. However, in light of respondent's prompt correction of the violations immediately following the inspection mitigation is warranted.

**Order**

The respondent is found **guilty** of the charges and is, hereby, ordered to pay to the Department a **TOTAL FINE of \$1,200** as follows:

Charge 1: \$300

Charge 2: \$450

Charge 3: \$450

**This constitutes the recommendation of the Administrative Law Judge.**

**N. Tumelty**  
**Administrative Law Judge**

**DECISION AND ORDER:**

The recommendation of the Administrative Law Judge is approved.

**This constitutes an Order of the Department.**

**Date: 15 December 2011**

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**James M. Plotkin**  
**Principal Administrative Law Judge**

cc: [DailyMedC@gmail.com](mailto:DailyMedC@gmail.com)

<p><b><u>Mail payment in the enclosed envelope addressed to:</u></b> NYC Department of Consumer Affairs Collections Division 42 Broadway, 9<sup>th</sup> Floor New York, NY 10004</p>
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**APPEAL INFORMATION**

<p>You have <b>30 days</b> to file an <b>APPEAL</b> of this decision. You must include with your appeal <b>all</b> of the following: (1) a check or money order payable to DCA for the sum of \$25; and (2) a check or money order payable to DCA for the amount of the fine imposed by the decision, or an application for a waiver of the requirement to pay the fine as a requisite for an appeal, based upon financial hardship. The application must be supported by evidence of financial hardship, including the most recent tax returns you have filed.</p>
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<p><b>BY EMAIL:</b> Send your appeal to <a href="mailto:myappeal@dca.nyc.gov">myappeal@dca.nyc.gov</a> and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at <a href="http://www.nyc.gov/consumers">www.nyc.gov/consumers</a>, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.</p>
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<p><b>BY REGULAR MAIL:</b> Mail your appeal and the appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Compliance and Fitness Division, 42 Broadway, 9<sup>th</sup> Floor, New York, NY 10004. Make sure to include in your appeal some indication or proof that you have sent a copy of the appeal to DCA's Legal Compliance and Fitness Division. You may pay the fine online at <a href="http://www.nyc.gov/consumers">www.nyc.gov/consumers</a>, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.</p>
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