

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION
STONE'S PHARMACY, and	:	AND ORDER
RUSSELL O. STONE, R.Ph.,	:	ADOPTING STIPULATION
RESPONDENTS.	:	86 PHM 66
	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Stone's Pharmacy  
14105 West Greenfield Avenue  
New Berlin, Wisconsin 53151

Russell O. Stone, R.Ph.  
13380 Kenmar Court  
Brookfield, Wisconsin 53005

Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Pharmacy Examining Board  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Stone's Pharmacy, Respondent, of 14105 West Greenfield Avenue, New Berlin, Wisconsin 53151, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to operate as a pharmacy in the State of Wisconsin, license #5269 first granted on May 19, 1971.

2. Russell O. Stone, R.Ph., Respondent, of 13380 Kenmar Court, Brookfield, Wisconsin 53005, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #6848, first granted on April 10, 1959.

3. Russell O. Stone, R.Ph., was at all times relevant to this matter owner and managing pharmacist of Stone's Pharmacy, and responsible for the professional operations of the pharmacy, and responsible for the professional supervision of all personnel working in said pharmacy.

4. Section 161.23, Wis. Stats. and Title 21, Code of Federal Regulations, section 1306.32, among other things, provide that Schedule V controlled substances, including codeine cough syrups, may be sold without a prescription from a practitioner only in good faith as a medicine, not for the purpose of evading Chapter 161 and may not be sold or purchased in excess of 4 ounces of any Schedule V Controlled Substance containing codeine or in excess of 8 ounces of any Schedule V Controlled Substance containing opium, within a 48 hour period.

5. On October 28, 1986, Investigator James P. Krudwig of the Wisconsin Department of Regulation and Licensing, Division of Enforcement, assigned to investigate this matter on behalf of the Pharmacy Examining Board, visited Stones Pharmacy to request and inspect controlled substances dispensing records for Stones Pharmacy. Russell O. Stone provided Investigator Krudwig with Stones Pharmacy's Schedule V controlled substances sales record required to be kept for nonprescription sales of Schedule V controlled substances under sec. 161.23, Wis. Stats., and sec. 21 CFR 1306.32.

6. The Schedule V controlled substances sales record for Stone's Pharmacy was examined and revealed the following:

a. That the records of sales of Schedule V controlled substances from January 21, 1985 through April 27, 1986 were examined for purposes of detecting repeat sales to the same customer within 48 hours of 4 ounce bottles of Schedule V controlled substances. The examination of said records revealed 15 instances of repeat sales to the same customer of 4 ounce bottles of Schedule V controlled substances within 48 hours.

b. Russell O. Stone, R.Ph. in twelve instances had personally made repeat sales of Schedule V controlled substances to the same customer within 48 hours within the period of January 22, 1985 through April 7, 1986.

7. Customer S.H. purchased Schedule V controlled substances 143 times in 15 months between January 26, 1985 and April 22, 1986, for an average of one purchase every 3.15 days.

8. Customer R.P. purchased Schedule V controlled substances 124 times in the 12½ month period between January 31, 1985 and February 16, 1986, for an average of one purchase every 3.07 days.

9. Customer J.H. purchased Schedule V controlled substances 19 times in the 2½ month period from January 26, 1985 to April 6, 1985, for an average of one purchase every 3.73 days.

10. Customer D.P. purchased Schedule V controlled substances 54 times in the 12 month between January 25, 1985 and January 21, 1986, for an average of one purchase every 6.68 days.

11. Customer C.B. purchased Schedule V controlled substances 89 times in the 7½ month period between January 24, 1985 and September 7, 1985, for an average of one purchase every 2.51 days.

12. Customer M.T. purchased Schedule V controlled substances 68 times in the 11 month period between March 11, 1985 and February 11, 1986, for an average of one purchase every 4.85 days.

13. Customer A.J. purchased Schedule V controlled substances 68 times in the 12 month period between February 4, 1985 and February 14, 1986, for an average of one purchase every 5.51 days.

14. The aforesaid seven customers, S.H., R.P., J.H., D.P., C.B., M.T., and A.J., made 565 purchases of the 1,215 total purchases in the period from January 21, 1985 to April 22, 1986, accounting for approximately 46% of all Schedule V purchases.

15. Examination of the Schedule V controlled substances sales records reveals that up through October 27, 1986 sales record entries were being made by the purchasers and Russell O. Stone, R.Ph. was merely entering his own signature, that personnel other than the pharmacists were selling Schedule V controlled substances, and in some instances Schedule V controlled substances sales had been recorded without the signature of any pharmacist being entered.

16. Codeine based cough syrups listed as Schedule V controlled substances under sec. 161.21, Wis. Stats., and Title 21, Code of Federal Regulations, 1308.15, have the potential for abuse, physical and psychological dependence and are frequently abused by drug abusing and drug dependent individuals.

#### CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction pursuant to Chapter 450, Wis. Stats. to take disciplinary action against the Respondents.

2. That by the conduct described in the Findings of Fact, each of Stone's Pharmacy, and Russell O. Stone, R.Ph., individually and as owner

and managing pharmacist of Stone's Pharmacy, did not comply with secs. 161.23(1), (4) and (5), Wis. Stats. and Title 21, Code of Federal Regulations, sec. 1306.32(a), (b) and (e), in that each Respondent did not insure and determine that Schedule V controlled substances were dispensed and sold in good faith as a medicine and in conformity with the law, and such conduct constituted a danger to the health, welfare and safety of patient or public, all of which constitutes unprofessional conduct under sec. 450.10(1)(a)2, Wis. Stats., and secs. Phar 10.03(1), (3) and (4), Wis. Adm. Code and, therefore subjects each of the Respondents to discipline pursuant to sec. 450.10(1)(b) and (2), Wis. Stats.

THEREFORE, IT IS HEREBY ORDERED:

1. The Stipulation of the parties is hereby accepted.
2. The pharmacy license of Stone's Pharmacy shall be permanently LIMITED effective five (5) days following the date of this Order such that Stone's Pharmacy shall not sell or dispense any Schedule V controlled substance to any individual except upon a valid prescription order from a practitioner.
3. Stone's Pharmacy and Russell O. Stone, as legal and constructive owner and managing pharmacist of Stone's Pharmacy, jointly and severally, are hereby assessed a FORFEITURE in the amount of \$1000.00 pursuant to sec. 450.10(2), Wis. Stats., for the violations of sec. 161.23(5), Wis. Stats., and Title 21, Code of Federal Regulations, sec. 1306.32(b). Said forfeiture shall be paid to the Department of Regulation and Licensing upon adoption of this Order by the Pharmacy Examining Board.
4. The pharmacist license of Russell O. Stone, R.Ph. is hereby permanently LIMITED effective five (5) days following the date of this Order such that Russell O. Stone, R.Ph., shall not sell or dispense any Schedule V controlled substance to any individual except upon a valid prescription order from a practitioner.
5. Stone's Pharmacy, and Russell O. Stone, R.Ph. as legal and constructive owner and managing pharmacist of Stone's Pharmacy, jointly and severally, are hereby assessed costs pursuant to sec. 440.22, Wis. Stats. in the amount of \$498.00, which costs shall be paid to the Department of Regulation and Licensing upon adoption of this Stipulation and Order by the Pharmacy Examining Board.

6. Violation of this Order by Stone's Pharmacy and/or Russell O. Stone, R.Ph. may result in additional disciplinary action, including but not limited to summary suspension or suspension or revocation of license.

Dated Dec. 11, 1990

Wisconsin Pharmacy Examining Board

by: Thomas M. Lynch R.Ph.  
Member of the Pharmacy Examining Board

I, Russell O. Stone, R.Ph., personally, and as owner and agent of Stone's Pharmacy, have read and understand the terms of the foregoing Order, and pursuant to the attached Stipulation hereby freely consent to the issuance of the foregoing Final Decision and Order Adopting Stipulation by the Wisconsin Pharmacy Examining Board.

Nov. 23, 1990  
Date

Russell O. Stone R.Ph.  
Russell O. Stone, R.Ph., personally  
and as owner and agent of Stone's  
Pharmacy.

November 26, 1990  
Date

Jack DeWitt  
Jack DeWitt, Attorney for Respondents

NOVEMBER 26, 1990  
Date

Michael R. Davis  
Michael R. Davis, Attorney for  
Respondents

RTG:eaj  
ATY-1045  
11/8/90

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
STONE'S PHARMACY, and	:	86 PHM 66
RUSSELL O. STONE, R.Ph.	:	
RESPONDENTS.	:	

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It is hereby stipulated between Stone's Pharmacy and Russell O. Stone, R.Ph., personally and as owner and agent of Stone's Pharmacy, and by their attorneys, Jack DeWitt and Michael R. Davis, and Robert T. Ganch, attorney for the Department of Regulation and Licensing, Division of Enforcement, and the Wisconsin Pharmacy Examining Board, as follows:

1. This Stipulation is entered into as a result of a pending investigation of the licenses of the above named Respondents to operate as a pharmacy or to practice as a pharmacist as applicable, in the State of Wisconsin, investigative file #86 PHM 66. Each Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Each of the Respondents understand that by the signing of the Stipulation, the following rights are voluntarily and knowingly waived, including: the right to a hearing on the allegations against the Respondents, at which the state has the burden of proving those allegations by clear, satisfactory and convincing evidence or a preponderance of the evidence, as applicable; the right to confront and cross-examine the witnesses against the Respondents; the right to call witnesses on behalf of the Respondents and to compel their attendance by subpoena; the right of the Respondents to testify, the right to file objections to any proposed Decisions and to present briefs or oral arguments to the officials who are to render the Final Decision; the right to petition for rehearing; and all other applicable rights afforded under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Each of Stone's Pharmacy and Russell O. Stone, R.Ph. admits the facts and conduct described in the attached Findings of Fact and each agrees to the adoption, entry and issuance of the attached Findings of Fact, Conclusions of Law and Order Adopting Stipulation by the Pharmacy Examining Board, and agree to pay to the Department of Regulation and Licensing costs of this matter pursuant to 440.22 Wis. Stats. in the amount of \$498.00, and a forfeiture of \$1000.00, payment of which costs and forfeiture are hereby tendered with this proposed Stipulation and Order.

4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of the Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.

5. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order Adopting Stipulation without further notice, pleading, appearance or consent of the parties.

6. This Stipulation and the attached Final Decision and Order Adopting Stipulation shall not prejudice the Pharmacy Examining Board from taking any further action regarding any conduct of either Respondent not stated in the attached Final Decision and Order Adopting Stipulation and shall not prejudice the Board from taking any further action regarding conduct of the Respondents involving sale or distribution of Schedule V controlled substances in violation of sec. 161.23, Wis. Stats., or Title 21, Code of Federal Regulations, sec. 1306.32, after October 27, 1986.

7. The Division of Enforcement joins each of the Respondents in recommending the Pharmacy Examining Board adopt this Stipulation and issue the attached Final Decision and Order Adopting Stipulation. All parties agree that the attorney for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor to this case may appear before the Pharmacy Examining Board in support of this Stipulation and attached Final Decision and Order. All parties further agree that the attorney for the Division of Enforcement and the Board Advisor for this case may respond to questions of the Pharmacy Examining Board during its deliberation in closed session.

Stone's Pharmacy, Respondent, by

Nov. 23, 1990  
Date

Russell O. Stone R.Ph.  
Russell O. Stone, R.Ph.,  
Owner and Agent

Nov. 23, 1990  
Date

Russell O. Stone R.Ph.  
Russell O. Stone, R.Ph., Respondent

NOVEMBER 26, 1990  
Date

Jack DeWitt  
Jack DeWitt, Attorney of Respondents

NOVEMBER 26, 1990  
Date

Michael R. Davis  
Michael R. Davis, Attorney for  
Respondents

November 27, 1990  
Date

Robert T. Ganch  
Robert T. Ganch, Attorney  
Division of Enforcement

Wisconsin Pharmacy Examining Board, by

DEC. 11, 1990  
Date

Thomas M. Gungor R.Ph.  
A Member of the Board

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is December 13, 1990.

WLD:dms  
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the date after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the responder resides and except as provided in ss. 77.59 (6) (b), 182.70 (1) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If a party stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.5 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petition for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.