

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE	:	LS9710141PHM
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
SUPERSAVER #6065,	:	96 PHM 50
RESPONDENT.	:	97 PHM 31

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

Fleming Companies, Inc.
d/b/a SuperSaver #6065
1200 W. Sunset Drive
Waukesha, WI 53186-6597

Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
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 decision of this matter, subject to the 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. Respondent Fleming Companies, Inc., d/b/a SuperSaver #6065, is and was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., as a community pharmacy at 4140 W. Greenfield Avenue, West Milwaukee, WI 53215, in the State of Wisconsin, under license number 6913, originally granted on 9/15/88.

2. On or about October 18, 1996, Respondent's owner, Fleming Companies, Inc., discovered that its employee pharmacist, Robert Dennis Dermody, was filling purported prescriptions for a female friend for carisoprodol, although there was no valid prescription order on file. Such incidents were found to have occurred on June 13, and July 21, 1996. These prescriptions were then each refilled by Respondent on several subsequent dates through October 10, 1996, and all of this activity occurred at another Wisconsin pharmacy owned by Fleming. As a result, Dermody was counseled by Fleming supervisory staff, and transferred to the Respondent pharmacy.

4. On or soon after March 12, 1997, Respondent became aware that Dermody received prescription orders, one each for a mother and her daughter. He labeled both of them as being for the daughter, and transferred them to the mother who discovered the error after leaving the pharmacy.

5. On March 13, 1997, Dermody admitted to supervisory staff of Respondent that he had taken without consent or prescription a number of carisoprodol for the purpose of self-medicating and for the purpose of providing them to the female friend. Respondent also had in his possession three tablets of hydrocodone, for which he had no valid current prescription. The pharmacy was also missing 52 alprazolam, 11 methylphenidate, and 20 hydrocodone tablets or capsules, which Respondent denied taking. Dermody was terminated from employment with Respondent on that date.

6. Respondent addressed a notice of the theft of these substances to the Board on April 22, 1997, which notice was received on May 6, 1997, and notified the Board of Dermody's termination on that date. Respondent did cooperate with the Board in its subsequent investigation of Dermody.

CONCLUSIONS OF LAW

7. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to §450.10(1), Wis. Stats. and ch. Phar 10, Wis. Adm. Code .

8. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

9. § Phar 8.02(3)(f), Wis. Adm. Code, states: "Any pharmacy, practitioner or other drug enforcement administration registrant authorized to possess controlled substances shall notify the regional office of the drug enforcement administration, the local police, and the pharmacy examining board of the theft or loss of any controlled substances upon discovery of such theft or loss." By delaying the report of the theft of the substances set forth in paragraph 5, above, respondent violated this regulation. Such conduct is unprofessional conduct under the statutes and Code.

10. § Phar 10.03(7), Wis. Adm. Code, defines unprofessional conduct to include "Failing to report to the pharmacy examining board any pharmacy practice which constitutes a danger to the health, safety or welfare of patient or public." The course of Dermody's actions, as set forth in paragraphs 2-6, above, clearly demonstrate that his practice was a danger to the health, safety, or welfare of patients and the public. By failing to report Dermody's actions to the Board promptly no later than upon Dermody's termination, respondent violated this regulation. Such conduct is unprofessional conduct under the statutes and Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED: that the STIPULATION of the parties, attached hereto, is ACCEPTED.

IT IS FURTHER ORDERED that respondent SuperSaver #6065 shall FORFEIT \$1,000, to be paid within 30 days of this Order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS of \$300, to be paid within 30 days of this Order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this ~~September 9, 1997.~~ *October 14, 1997*

PHARMACY EXAMINING BOARD

By: *Cynthia A. Berry RPh*
A Member of the Board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

SUPERSAVER #6065, :
RESPONDENT. :

STIPULATION

96 PHM 50
97 PHM 31

It is hereby stipulated between the above Respondent and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision 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 to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board, and in particular to abide by paragraph 2(a) of the Order as of the date respondent signs this Stipulation. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

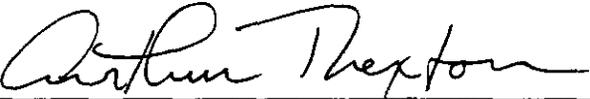
8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

FLEMING COMPANIES, INC., d/b/a SuperSaver #6065:



Name and title: Bill Elliott, Drug Division Sales Manager
Date: 9-24-97



Prosecuting Attorney
Division of Enforcement
Date: 9/30/97

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416¹ hearing or speech
TRS# 1-800-947-3529¹ impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On October 14, 1997, the Pharmacy Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$300.00 Case #: LS9710141PHM

The amount of the forfeiture is: \$1,000.00 Case # LS9710141PHM

Please submit a check or a money order in the amount of \$ 1,300.00

The costs and/or forfeitures are due: November 13, 1997

NAME: Fleming Companies, Inc. dba SuperSaver 6065 LICENSE NUMBER: 6913

STREET ADDRESS: 1200 West Sunset Drive

CITY: Waukesha STATE: WI ZIP CODE: 53186-6597

Check whether the payment is for costs or for a forfeiture or both:

X COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

INDIVIDUAL X ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G\BDLS\FM2145 DOC

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Supersaver #6065,

AFFIDAVIT OF MAILING

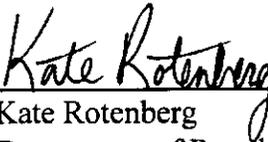
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On October 15, 1997, I served the Final Decision and Order dated October 14, 1997, and Guidelines for Payment of Costs and/or Forfeitures, LS9710141PHM, upon the Respondent Supersaver #6065 by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 158 242.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

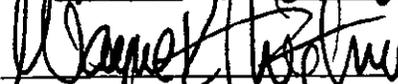
Supersaver #6065
Fleming Companies, Inc.
1200 W. Sunset Drive
Waukesha WI 53186-6597



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 15th day of October, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

October 15, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)