

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 AND ORDER

LOOK DRUG STORE #2
RESPONDENT.

97 PHM 33

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

Look Drug Store #2
1919 E. Main
Kaukauna, WI 54130

Wisconsin 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 Look Drug Store #2 (Look Drug Store, Inc.) is and was at all times relevant to the facts set forth herein a pharmacy licensed in the State of Wisconsin pursuant to license #6276. Respondent has, since at least 1990, been a provider of prescription drugs for area nursing homes.

2. During the years 1990 to the present, respondent has routinely permitted more than one unlicensed person per pharmacist to select, count and otherwise prepare prefabricated dosage forms for nursing home patients, without obtaining approval of the Board for a higher ratio of pharmacists to auxiliary personnel. The pharmacy does not have sufficient records to show by how much the 1:1 ratio was exceeded, or at which times. It appears, from what records are available, that on occasion the ratio was 3 auxiliary personnel engaging in dispensing functions, per pharmacist.

3. The Board finds that this action placed patients at risk of medication errors, and gave respondent an unfair competitive advantage over other pharmacies who were in compliance with the Board's rules. It is not practicable to determine whether the savings, if any, realized by respondent through not hiring or contracting for pharmacist services resulted in reduced prices for patients, increased profits for respondent, or both. If the Board fails to respond strongly to such activities, other pharmacies may be tempted to obtain economic advantage by failing to fully comply with the Board's rules. Irrespective of whether this respondent achieved financial

gain from these acts, the Board must make it clear that no licensee can hope to achieve gain by such acts.

4. During the years 1990 to 1997, respondent has routinely permitted nonpharmacists to receive prescription orders via telephone from nursing home staff or other agents of the prescriber. Since some time in 1997, the pharmacy has changed its practice, and now requires all orders to be in writing, via fax.

5. During the years 1990 to the present, respondent has routinely stored their hardcopies of prescription orders for Schedule III, IV, and V controlled substances with prescriptions for non-controlled substances, without stamping each with a red "C."

6. At a time unknown, but before June 1, 1997, respondent changed its managing pharmacist but failed to notify the Board of such change until February 18, 1998.

CONCLUSIONS OF LAW

A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraph 2, above, violated § Phar 7.01(3), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in paragraph 4, above, violated § Phar 7.01(1)(a), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. The conduct described in paragraph 5, above, violated § Phar 8.03(3), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

E. The conduct described in paragraph 6, above, violated § Phar 6.03, Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Look Drug Store #2 is REPRIMANDED for its unprofessional conduct in this matter.

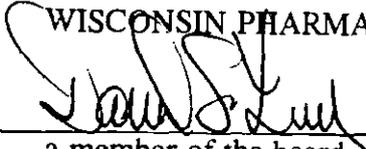
IT IS FURTHER ORDERED, that respondent shall FORFEIT \$10,000, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$800, 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 12th day of MAY, 1998.

WISCONSIN PHARMACY EXAMINING BOARD, by:



a member of the board

akt

i:\lookdrug.stp

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LOOK DRUG STORE #2,
RESPONDENT.

STIPULATION
97 PHM 33

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

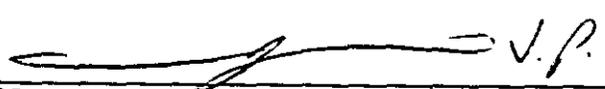
1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.
2. Respondent understands that by signing this 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 obtained legal advice before signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. 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 stipulates that there is an adequate factual basis for the discipline imposed herein, although the Findings of Fact may not appear to justify the entire outcome. The language of the Findings has been negotiated as a matter of compromise between the parties, and respondent agrees not to claim in any forum that the discipline imposed was not justified by the Findings of Fact stated.

10. 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. Other reporting as required by law will occur. This is standard department procedure and in no way specially directed at Respondent.

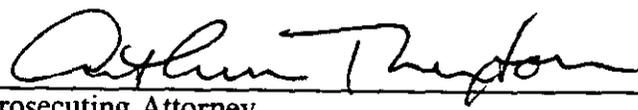
LOOK DRUG STORE #2 by:

 V.P. 4/22/98

Name and title: Date
Michael MASCALI, SA V.P.



David Levine, Attorney for Respondent 4.20.98
Date



Prosecuting Attorney 4/29/98
Division of Enforcement Date

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935
(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On May 12, 1998, 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: \$800.00 Case #: _____

The amount of the forfeiture is: \$10,000.00 Case # _____

Please submit a check or a money order in the amount of \$ 10,800.00

The costs and/or forfeitures are due: June 11, 1998

NAME: Look Drug Store #2 LICENSE NUMBER: 6276

STREET ADDRESS: 1919 East Main

CITY: Kaukauna STATE: WI ZIP CODE: 54130

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

COSTS FORFEITURE

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

INDIVIDUAL 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.

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For Receipting Use Only

Committed to Equal Opportunity in Employment and Licensing+

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

In the Matter of Disciplinary Proceedings Against

Look Drug Store #2 ,

Respondent.

AFFIDAVIT OF MAILING

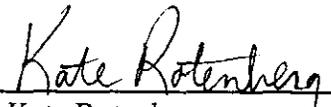
STATE OF WISCONSIN)
)
COUNTY OF DANE)

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.

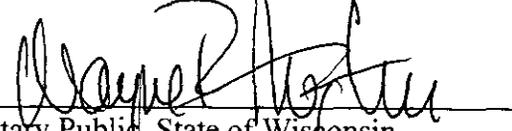
2. On May 21, 1998, I served the Final Decision and Order dated May 12, 1998, and Guidelines for Payment of Costs and/or Forfeitures, upon the Respondent Look Drug Store #2's attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney 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 221 158 913.

David Levine, Attorney
200 Public Square
2300 BP American Bldg.
Cleveland OH 44114-2378



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 21st day of May, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: DAVID LEVINE ATTY

You have been issued a Final Decision and Order For purposes of service the date of mailing of this Final Decision and Order is 5/21/98 Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review

B. JUDICIAL REVIEW

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935