

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF A PETITION FOR AN  
ADMINISTRATIVE INJUNCTION INVOLVING

SUBURBAN VIDEO, INC., DBA

SUPERB VIDEO, DANIEL LEE BISHOP,

MARK CHARLES PHILLIPS,

CITY NEWS & NOVELTY, INC.

RESPONDENTS.

**ADMINISTRATIVE INJUNCTION**

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

*Suburban Video, Inc., dba Superb Video*  
6005 120th Ave  
Kenosha, WI 53142

*City News & Novelty, Inc.*  
245 W. Main St.  
Waukesha, WI 53186

*Daniel Lee Bishop*  
17235 Two Mile Rd.  
Franksville, WI 53126

*Mark Charles Phillips*  
1605 Fireside Dr.  
Racine, WI 53402

*Department of Regulation and Licensing*  
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 Secretary. The Secretary has reviewed the Stipulation and considers it acceptable.

Accordingly, the Secretary adopts the attached Stipulation and makes the following:

## FINDINGS OF FACT

1. Respondents Suburban Video, Inc., and City News & Novelty, Inc., are businesses regularly engaged in the retail sale of adult merchandise. Respondent Bishop is the owner of these and other similar businesses in Wisconsin. Respondent Phillips is an employee of Bishop and is general manager of DLB Purchasing Co., which stocks and distributes these and other items to Bishop's retail stores and is also owned by respondent Bishop.
2. Throughout 1996-98, respondents were regularly engaged in the wholesale distribution and retail sale of small cartridges of a compressed gaseous substance known as nitrous oxide. Nitrous oxide is commonly used in the food industry as a food additive, in particular to make whipped cream when placed in a sealed container under pressure with whipping cream, and shaken. Nitrous oxide is also used in industrial manufacturing. Nitrous oxide also has mood altering effects upon human beings when inhaled, and is used in dentistry in conjunction with analgesics, in the form of a gas inhaled by a patient.
3. When intended for use in human beings as other than a food additive, nitrous oxide is a "drug" within the meaning of § 450.01(10), Stats., and is a "prescription drug" within the meaning of § 450.01(20), Stats.
4. During 1996-98, respondents did not sell nitrous oxide for legitimate industrial or manufacturing use.
5. At no time has any respondent been licensed by the Pharmacy Examining Board as a distributor, under ch. 450, Stats., nor does any respondent employ any person licensed as a pharmacist or other health care practitioner licensed to prescribe prescription drugs or to dispense such drugs.
6. During 1996-98, respondents' employees sold nitrous oxide to a number of consumers under circumstances such that one reasonable inference is that the purchasers intended to inhale the contents and not to use the contents for making whipped cream or for any other legitimate use. Respondents deny any such intent.
7. Since the Petition in this matter was filed, the legislature has passed and the governor has signed 1997 Wisconsin Act 336, which regulates the sale of nitrous oxide.

## CONCLUSION OF LAW

The department is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats., and has authority to issue this Administrative Injunction as a special order under § 440.21, Wis. Stats., and ch. RL 3, Wis. Adm. Code.

## ORDER

**IT IS ORDERED**, that each and every above-named respondent is ENJOINED AND PROHIBITED from the sale or delivery of nitrous oxide, personally or through employees, agents (including business entities owned or controlled by any of them), and contractors, when such sale violates § 134.63 or § 941.315, Wis. Stats., as created by 1997 Act 336; and from doing any act which may constitute the sale or delivery of a prescription drug or controlled substance, unless and until properly credentialed to do so.

**Violation** of this special order may result in a **forfeiture** of up to \$10,000 for each day of violation, § 440.21(4)(a), Wis. Stats.

Issued at Madison, Wisconsin this: 10th day of February, 2000

s/ Marlene A. Cummings, Secretary

February 25, 2000

Department of Regulation & Licensing