

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

SILVER SPRING PHARMACY, INC.,
THOMAS G. PIRE, R.Ph., AND
WALTER J. GRUSZEWSKI, R.Ph.,
RESPONDENTS.

FINAL DECISION AND ORDER
ADOPTING STIPULATION
CASE NO. 89 PHM 76

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

Silver Spring Pharmacy, Inc.
5626 N. 91st St.
Milwaukee, Wisconsin 53225

Thomas G. Pire, R.Ph.
18585 Woodberry Ct.
Brookfield, WI 53005

Walter J. Gruszewski, R.Ph.
416 W. Willow Ct.
Fox Point, WI 53217

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 and Order in 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. Thomas G. Pire, R.Ph., Respondent, DOB April 21, 1955, of
18585 Woodberry Court, Brookfield, Wisconsin 53005, was at all times relevant
to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to
practice as a registered pharmacist in the State of Wisconsin, license #9468,
issued on December 9, 1978, except as suspended and otherwise disciplined by
order of the Pharmacy Examining Board on September 12, 1989. The license to
practice pharmacy of Thomas G. Pire, R.Ph. is currently in suspended status

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pursuant to the terms of the September 12, 1989 Order of the Pharmacy Examining Board.

2. Silver Spring Pharmacy, Inc., Respondent, doing business as "Silver Spring Pharmacy", of 5626 North 91st Street, Milwaukee, Wisconsin 53225, is and was at all times relevant to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to operate as a licensed pharmacy in the State of Wisconsin, license #6539, first granted on March 8, 1984, except as disciplined by order of the Pharmacy Examining Board dated September 12, 1989.

3. Walter J. Gruszewski, R.Ph., Respondent, of 416 West Willow Court, Fox Point, Wisconsin 53217, is and was at all times relevant to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #5989, first granted on November 4, 1950.

4. Thomas G. Pire, R.Ph., is and was at all times relevant to this matter 100% owner and President of Silver Spring Pharmacy, Inc.

5. Walter J. Gruszewski, R.Ph., was at all times relevant to this matter employed as a staff pharmacist of Silver Spring Pharmacy, Inc.

6. On September 12, 1989, pursuant to stipulation between the Department of Regulation and Licensing, Division of Enforcement, Silver Spring Pharmacy, Inc. and Thomas G. Pire, R.Ph., by their attorney and the Pharmacy Examining Board, the Pharmacy Examining Board issued a Final Decision And Order Adopting Stipulation, (hereinafter, "Board Order") a copy of which is attached hereto as Exhibit A. Said Board Order, among other things, imposed the following discipline:

a. That the pharmacy license of Silver Spring Pharmacy, Inc. be suspended for a period of 210 days, effective 60 days following the date of the order, which suspension was stayed conditionally upon compliance by Silver Spring Pharmacy, Inc. and Thomas G. Pire with all terms and conditions of the order.

b. Effective 60 days following the date of the Board Order, which was November 11, 1989, Thomas G. Pire was suspended for a period of one year, and eligible for stay of suspension after 150 days, conditioned upon full compliance with all terms and conditions of the order by each of Silver Spring Pharmacy, Inc. and Thomas G. Pire.

c. During the period of suspension, Thomas G. Pire is prohibited from performing any pharmacy services as defined in Ch. 450, Wis. Stats., and Phar Ch. 1, Wis. Adm. Code, and is further prohibited from being in the professional area of any pharmacy.

7. Thomas G. Pire, R.Ph., and Silver Spring Pharmacy, Inc. withdraw their Answer to the Complaint and hereby neither admit nor deny and choose not to contest the allegations of the Amended Complaint.

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8. Thomas G. Pire, R.Ph. and Silver Spring Pharmacy, Inc. further neither admit nor deny and choose not to contest additional allegations that:

a. Thomas G. Pire, R.Ph., entered the professional area of the pharmacy of Silver Spring Pharmacy, Inc., and at times engaged in the practice of pharmacy, on a frequent basis on and after November 11, 1989, through May 22, 1990.

b. Thomas G. Pire, R.Ph. removed certain pharmacy records from Silver Spring Pharmacy, Inc. on or before December 19, 1989 which records constituted evidence that he was practicing after his license suspension.

c. Thomas G. Pire, R.Ph. filled prescription orders after the date of his suspension through December 18, 1989, typed up prescription orders therefor on house prescription blanks, did not sign or initial them and filed them in the pharmacy prescription file, all to avoid detection that he had, in fact, been practicing after suspension.

9. Silver Spring Pharmacy, Inc. and Thomas G. Pire, R.Ph. as owner and president thereof, admit they did not appoint Walter J. Gruszewski as managing pharmacist, nor anyone else, upon or after the effective date of the suspension of the pharmacist license of Thomas G. Pire, and Thomas G. Pire continued to operate the pharmacy as defacto managing pharmacist through February 26, 1990 after his license suspension on November 11, 1989.

10. Walter J. Gruszewski, R.Ph., in cooperation with Thomas G. Pire, R.Ph., participated in the representation to the investigator for the Pharmacy Examining Board that Walter J. Gruszewski was pharmacy manager of Silver Spring Pharmacy, when, in fact, he had not been so appointed by Thomas G. Pire, Walter J. Gruszewski had no intent to assume responsibility for the professional operations of Silver Spring Pharmacy and did not ever function in that capacity.

CONCLUSIONS OF LAW

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

2. Thomas G. Pire, R.Ph. violated paragraph 4, page 5 of the September 12, 1989 Order of the Pharmacy Examining Board in that on frequent occasions, Respondent Pire was present in the professional area of Silver Spring Pharmacy, Inc., at times alone, and at times engaged in the practice of pharmacy, which conduct constitutes unprofessional conduct under sec. 450.10(1)(a)8., Wis. Stats., and sec. PHAR 10.03(22), Wis. Adm. Code, and therefore subjects Respondent Pire to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

3. Silver Spring Pharmacy, Inc., violated sec. 450.09(2), Wis. Stats. by remaining open for business and providing pharmaceutical service on several occasions when no currently licensed pharmacist was present in the professional area of the pharmacy, which violation is substantially related to the practice of pharmacy, constitutes unprofessional conduct under sec. 450.10(1)(a)2., Wis. Stats. and sec. PHAR 10.03(1), Wis. Adm. Code and

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therefore subjects the license of Silver Spring Pharmacy, Inc. to discipline pursuant to sec. 450.10(1)(b) and (2), Wis. Stats.

4. Silver Spring Pharmacy, Inc., in employing Respondent Pire and permitting Respondent Pire to engage in the practice of pharmacy on frequent occasions while the pharmacist license of Respondent Pire was suspended, aided and abetted the unlicensed practice of pharmacy by Respondent Pire in violation of sec. 450.03(1), Wis. Stats., which constitutes unprofessional conduct under sec. PHAR 10.03(14), Wis. Adm. Code, and sec. 450.10(1)(a) and therefore subjects Respondent Silver Spring Pharmacy, Inc. to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

5. Silver Spring Pharmacy, Inc., failed to maintain on file and available for inspection original serial numbered prescriptions, and profile records therefore, in violation of sec. 450.11(2), 450.09(6), and sec. 161.38(2), Wis. Stats. and secs. PHAR 7.05(1) and (2), 8.02(1), (2) and (3), and 8.03(1), (2) and (3), Wis. Adm. Code, which violations are substantially related to the practice of pharmacy, constitute unprofessional conduct under sec. 450.10(1)(a)2., Wis. Stats., and sec. PHAR 10.03(1), Wis. Adm. Code: and therefore subject the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

6. On and after November 11, 1989, Silver Spring Pharmacy, Inc., and Respondent Pire as owner and president thereof, failed to appoint a managing pharmacist of Silver Spring Pharmacy, Inc., in violation of sec. PHAR 6.03, Wis. Adm. Code, which violation is substantially related to the practice of pharmacy, constitutes unprofessional conduct under sec. 450.10(1)(a)2., Wis. Stats., and sec. PHAR 10.03(1), Wis. Adm. Code, and therefore subjects the license of Silver Spring Pharmacy, Inc., to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

7. Silver Spring Pharmacy, Inc., violated paragraph 2, page 3 of the Pharmacy Examining Board Order dated September 12, 1989 by having sold a Schedule V controlled substance without a prescription from a practitioner on each of November 20, 1989 and December 18, 1989, which conduct constitutes unprofessional conduct under sec. 450.10(1)(a)8., Wis. Stats., and sec. PHAR 10.03(22), Wis. Adm. Code, and therefore subjects the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

8. Silver Spring Pharmacy, Inc., violated in numerous instances sec. PHAR 7.01(1)(d) and 8.05(2), Wis. Adm. Code by having failed to record on prescription orders the name or initials of the pharmacist dispensing such prescriptions, which violations are substantially related to the practice of pharmacy, constitute unprofessional conduct under sec. 450.10(1)(a)2., Wis. Stats. and sec. PHAR 10.03(1), Wis. Adm. Code, and therefore subject the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under sec. 450.10(1)(b) and (2), Wis. Stats.

9. The conduct of Walter J. Gruszewski, R.Ph. of having represented to an agent of the Pharmacy Examining Board that he was managing pharmacist of Silver Spring Pharmacy, Inc., when in fact he was not, constitutes

unprofessional conduct under sec. PHAR 10.03(11), Wis. Adm. Code and therefore subjects the pharmacist license of Walter J. Gruszewski to discipline pursuant to sec. 450.10(1)(b) and (2), Wis. Stats.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Stipulation of the parties is hereby accepted.

THOMAS G. PIRE AND SILVER SPRING PHARMACY, INC.

2. As to Thomas G. Pire and Silver Spring Pharmacy, Inc., effective immediately, this Order shall supersede all continuing elements of discipline, limitation or conditions specified in the September 12, 1989 Order of the Pharmacy Examining Board concerning Thomas G. Pire and Silver Spring Pharmacy, Inc.

3. The pharmacist license of Thomas G. Pire is hereby SUSPENDED for a period of not less than three (3) years, to be effective immediately. Thomas G. Pire, R.Ph. may, upon a showing by Thomas G. Pire of compliance by himself and Silver Spring Pharmacy, Inc. with all terms and conditions of this Order, petition for reinstatement of his license following the period of suspension imposed in this Order. The Pharmacy Examining Board may impose conditions which it deems appropriate in its discretion for consideration of such petition or for granting of such petition, including any or all requirements for original licensure as a pharmacist in the State of Wisconsin. Thomas G. Pire during the period of suspension of his license to practice as a pharmacist, shall not be present in the professional service area of any pharmacy for any purpose, and may not perform any pharmacy services, as defined in Chapter 450, Wis. Stats. and Chapter PHAR 1, Wis. Adm. Code, in any capacity whether as a clerk, technician or intern, or whether or not under the supervision of another licensed pharmacist.

4. Effective immediately, the license of Thomas G. Pire is hereby LIMITED to permanently prohibit Thomas G. Pire from dispensing any Schedule V controlled substances without a prescription from a practitioner.

5. Thomas G. Pire shall pay to the Department of Regulation and Licensing, not later than 60 days following the date of this Order, a FORFEITURE in the amount of \$6,000.00, pursuant to sec. 450.10(2), Wis. Stats.

6. Thomas G. Pire shall pay to the Department of Regulation and Licensing not later than 60 days following the date of this Order costs of this investigation and proceeding pursuant to sec. 440.22, Wis. Stats., in the amount of \$3,680.00.

7. Thomas G. Pire shall divest himself of any and all direct or indirect ownership interest in the licensed pharmacy operation of Silver Spring Pharmacy, Inc. and any other pharmacy, effective not later than ~~90~~ ¹²⁰ days following the date of this Order, and shall not acquire any interest, direct or indirect, in any pharmacy operation until reinstatement of his license to

practice as a pharmacist and express written approval of the Pharmacy Examining Board.

8. Effective upon the date of this Order, the license to operate as a pharmacy of Silver Spring Pharmacy, Inc. shall be SUSPENDED for a period of not less than three (3) years, imposition of which suspension shall be stayed for 180 days following the date of this Order. Silver Spring Pharmacy, Inc. may, upon a showing by Silver Spring Pharmacy, Inc. of compliance by itself and Thomas G. Pire with all terms and conditions of this Order, petition for reinstatement of its license to operate as a pharmacy following the period of suspension imposed in this Order. The Pharmacy Examining Board may impose conditions which it deems appropriate in its discretion for consideration of such petition or for granting of such petition.

9. Effective immediately, Silver Spring Pharmacy, Inc. shall not allow Thomas G. Pire to enter the professional area of Silver Spring Pharmacy in any capacity or for any purpose.

10. Effective immediately, the pharmacy license of Silver Spring Pharmacy, Inc. is hereby permanently limited to prohibit Silver Spring Pharmacy, Inc. from dispensing any Schedule V controlled substance without a prescription from a practitioner.

11. Silver Spring Pharmacy, Inc. shall be jointly and severally liable for the costs and Forfeiture imposed upon Thomas G. Pire under this Order.

12. Silver Spring Pharmacy, Inc. shall immediately appoint a new managing pharmacist pursuant to sec. 450.09(1), which appointment shall be subject to approval of the Board.

13. The parties hereto understand and agree that Thomas G. Pire may sell or transfer ownership of the Silver Spring Pharmacy, Inc. pharmacy before or following the suspension of license of Silver Spring Pharmacy, Inc. Any such sale or transfer shall not affect the suspension of pharmacy license of Silver Spring Pharmacy, Inc. under this Order. The new owner of the pharmacy business shall apply for a new pharmacy license pursuant and subject to all applicable statutes and rules. Thomas G. Pire shall not be involved directly or indirectly with any ownership operation of any pharmacy operation beginning 180 days following the date of the attached Order, until reinstatement of his pharmacist license and express written approval of the Pharmacy Examining Board.

14. No sale or other disposition of the inventory or records of Silver Spring Pharmacy, Inc. shall be made without prior written notice and approval by the Pharmacy Examining Board. Any such disposition of medications and/or records shall be made only in accordance with the terms and conditions specified by the Pharmacy Examining Board, and sec. 450.11(6), Wis. Stats. and other applicable federal and state laws and regulations. Not later than 180 days following the date of this Order, the managing pharmacist of Silver Spring Pharmacy, Inc. shall conduct an inventory of all controlled substances and prescription medications in stock at Silver Spring Pharmacy, Inc. which inventory shall be verified and attested to in writing by another Wisconsin

licensed pharmacist, the selection of which shall be approved at least 30 days in advance by the Pharmacy Examining Board. The original of said inventory shall be delivered or mailed forthwith to the Pharmacy Examining Board, not later than 5 days following the date of the inventory. A copy of the original inventory shall be retained by the independent pharmacist verifying and attesting to the inventory and an additional copy thereof shall be sent to the Pharmacy Examining Board directly by said independent pharmacist, not later than 5 days following the date of the inventory. Upon reinstatement, if any, of the pharmacy license of Silver Spring Pharmacy, Inc., an opening inventory shall be conducted by the managing pharmacist and verified and attested to by an independent Wisconsin licensed pharmacist, selection of whom shall be approved at least 30 days in advance by the Pharmacy Examining Board. The original of said inventory of all controlled substances and prescription medications shall be sent to the Pharmacy Examining Board within 5 days of the date of the inventory. The independent verified pharmacist shall retain a copy of the original inventory, and shall mail an additional copy thereof directly to the Pharmacy Examining Board within 5 days of the date of the inventory. In the event of any closure of Silver Spring Pharmacy, Inc., any and all pharmacy signs, symbols or insignia shall be immediately removed from display.

15. The suspension of the pharmacist license of Thomas G. Pire shall remove all rights of Thomas G. Pire to practice pharmacy. In the event of closure or any sale of Silver Spring Pharmacy, Inc., or any of its inventory other than in the course of normal business or practice, Thomas G. Pire shall remain responsible, pursuant to applicable state and federal laws, for the security, appropriate disposition and accounting of all prescription medications and controlled substances of Silver Spring Pharmacy, Inc. and all pharmacy records required to be maintained under state and federal laws relating to prescription medications, controlled substances, patient profiles and all purchase, inventory and disposition records.

16. A copy of this Order shall be provided immediately to the managing pharmacist of Silver Spring Pharmacy.

17. If any term or condition of this Order is violated by Silver Spring Pharmacy, Inc., for Thomas G. Pire, upon filing with the Board of an affidavit, setting forth the facts of such violation which affidavit may be made upon information and belief, and service of a copy of said affidavit upon Silver Spring Pharmacy, Inc. and Thomas G. Pire, the Board may summarily revoke the stay of suspension of license of Silver Spring Pharmacy and direct that further disciplinary proceedings be instituted.

WALTER J. GRUSZEWSKI

18. As to Walter J. Gruszewski, R.Ph., the pharmacist license of Walter J. Gruszewski is hereby REPRIMANDED.

19. It is further ordered that effective immediately, the pharmacist license of Walter J. Gruszewski shall be LIMITED to prohibit Walter J. Gruszewski from accepting any appointment as, or serving as, a managing pharmacist at any pharmacy.

20. Walter J. Gruszewski shall pay to the Department of Regulation and Licensing not later than 60 days following the date of this Order costs of this proceeding pursuant to sec. 440.22, Wis. Stats. in the amount of \$300.00.

AS TO ALL PARTIES

21. Counts III, IV, VIII and XII of the Complaint are hereby dismissed.

WISCONSIN PHARMACY EXAMINING BOARD

By: [Signature] 6/13/90
A Member of the Pharmacy Examining Board

I, Thomas G. Pire, R.Ph. personally, and as owner and agent of Silver Springs Pharmacy, Inc., pursuant to the attached Stipulation hereby consent to the issuance of the foregoing Final Decision and Order by the Pharmacy Examining Board.

[Signature] Date: June 5, 1990
Thomas G. Pire, R.Ph., personally and as owner and agent of Silver Spring Pharmacy, Inc.

[Signature] Date: 6/5/90
Steven R. Kohn, Attorney for Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., Respondents.

I, Walter J. Gruszewski, R.Ph., pursuant to the attached Stipulation hereby consent to the issuance of the foregoing Final Decision and Order by the Wisconsin Pharmacy Examining Board.

[Signature] Date: 6-7-90
Walter J. Gruszewski, R.Ph.

[Signature] Date: 6/8/90
Paul J. Milaeger, Attorney for Walter J. Gruszewski

RTG:bmj
ATY-1064

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SILVER SPRING PHARMACY, INC.,
THOMAS G. PIRE, R.Ph., AND
WALTER J. GRUSZEWSKI, R.Ph.,
RESPONDENTS.

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STIPULATION

It is hereby stipulated by and between Silver Spring Pharmacy, Inc., by its owner and agent, Thomas G. Pire, R.Ph., Thomas G. Pire, R.Ph., personally on his own behalf, and by their attorney, Steven R. Kohn, and Walter J. Gruszewski, R.Ph., personally on his own behalf, and by his attorney, Paul J. Milaeager, Respondents; and Robert T. Ganch, attorney for the Department of Regulation and Licensing, Division of Enforcement, Complainant, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against the above-named Respondents, 89 PHM 76. Each Respondent consents to resolution of the disciplinary proceeding by stipulation and without further proceedings.

2. Each of the Respondents understands by the signing of this Stipulation that he/it voluntarily and knowingly waives all rights including: the right to a hearing on the allegations against him/it, at which the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his/its behalf and to compel their attendance by subpoena; the right to testify themselves; 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 a rehearing; and all other applicable rights afforded to him/it under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Thomas G. Pire, R.Ph., and Silver Spring Pharmacy, Inc. in consideration of resolution of this proceeding, withdraw their Answer to the Complaint and neither admit nor deny and choose not to contest the allegations of the Amended Complaint, a copy of which without exhibits is attached hereto as Exhibit A. Respondents Pire and Silver Spring Pharmacy, Inc. each further neither admit nor deny, except as otherwise noted, and choose not to contest the additional allegations in paragraph 8, and admit the additional allegation in paragraph 9, in the attached Findings of Fact, and each agree to and accept the adoption, entry and issuance of the attached Findings of Fact, Conclusions of Law and Order Adopting Stipulation by the Pharmacy Examining Board.

4. Walter J. Gruszewski, R.Ph., in consideration of resolution of this proceeding, withdraws his Answer to the Complaint and neither admits nor denies and chooses not to contest the statements in the attached Findings of

Fact relating specifically to him, and agrees to and accepts the adoption, entry and issuance of the attached Findings of Fact, Conclusions of Law and Order Adopting Stipulation by the Pharmacy Examining Board.

5. Complainant, in consideration of this Stipulation, hereby agrees to dismissal of Counts III, IV, VIII and XII of the Complaint.

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

7. If the Board accepts the terms of the 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.

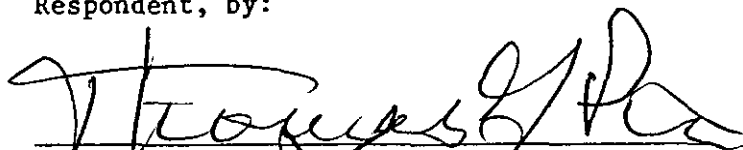
8. This Stipulation and the attached Final Decision and Order Adopting Stipulation shall not prejudice the Pharmacy Examining Board from taking any further action regarding any conduct of any of the Respondents not stated in the Complaint or the attached Final Decision and Order Adopting Stipulation.

9. Each of the Respondents understand that violation of the attached Order may result in further action and discipline including, but not limited to, revocation of stay of suspension, further suspension or revocation of license.

10. The Complainant 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 Complainant and the Board Advisor to this case may appear before the Pharmacy Examining Board in support of this Stipulation and the attached Final Decision and Order Adopting Stipulation.

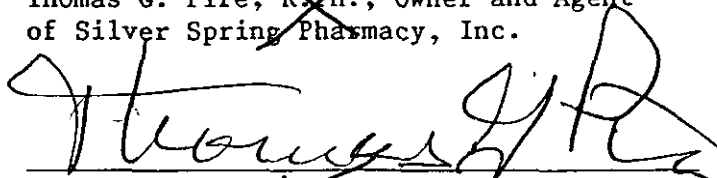
11. All parties agree that this proposed Stipulation and Final Decision and Order shall be presented directly to the Pharmacy Examining Board for its consideration in resolution of this proceeding.

Silver Spring Pharmacy, Inc.,
Respondent, by:


Thomas G. Pire, R.Ph., Owner and Agent
of Silver Spring Pharmacy, Inc.

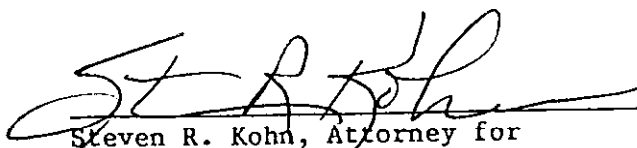
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Thomas G. Pire, R.Ph., Respondent

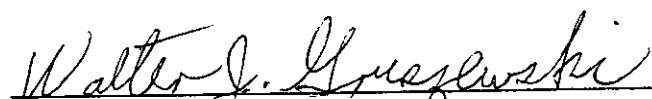
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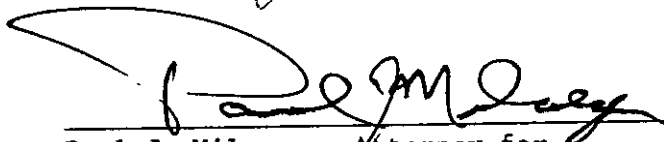

Steven R. Kohn, Attorney for
Silver Spring Pharmacy, Inc. and
Thomas G. Pire, R.Ph., Respondents.

Date: 6/5/90

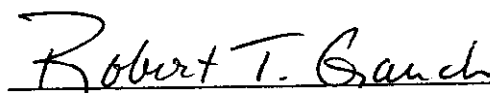
Stipulation, Disciplinary Proceeding
Against Silver Spring Pharmacy, et al,
Case No. 89 PHM 76


Walter J. Gruszewski, R.Ph., Respondent

Date: 6-7-90


Paul J. Milaeger, Attorney for
Walter J. Gruszewski, R.Ph., Respondent

Date: 6/8/90


Robert T. Ganch, Attorney for Complainant,
Department of Regulation and Licensing
Division of Enforcement

Date: June 12, 1990

Wisconsin Pharmacy Examining Board, by:


A Member of the Board

Date: 6/13/90

RTG:bmg
ATY:1063

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 June 14, 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 employee 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 day 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 respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties 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. 227.57 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 petitions 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.

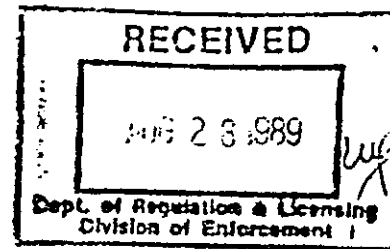
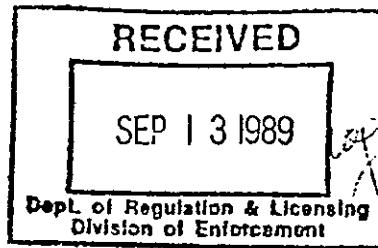
3. The credit union review board, the commissioner of credit unions.

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.



STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

SILVER SPRING PHARMACY, INC., AND
THOMAS G. PIRE, R.Ph.,

RESPONDENTS.

FINAL DECISION
AND ORDER
ADOPTING STIPULATION

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

Thomas G. Pire, R.Ph.
2505 North 91st Street
Wauwatosa, Wisconsin 53226

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

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 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 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. That Thomas G. Pire, R.Ph. Respondent, was at all times relevant to
this proceeding duly licensed under the provisions of Chapter 450, Wis.
Stats., to practice as a registered pharmacist in the State of Wisconsin.
Thomas G. Pire holds license #9468, issued on December 9, 1978.
2. That Silver Spring Pharmacy, Inc., Respondent, was at all times
relevant to this matter duly licensed under the provisions of Chapter 450,
Stats., to operate as a licensed pharmacy in the State of Wisconsin. Silver
Spring Pharmacy holds license #6539, which was granted on March 8, 1984.
3. That Pharmacist A, now deceased, was at all times relevant to this
proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to
practice as a registered pharmacist in the State of Wisconsin and was employed
as a pharmacist at Silver Spring Pharmacy, Inc.

4. That Pharmacist B, now deceased, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, and was employed as a pharmacist at Silver Spring Pharmacy, Inc.

5. That Thomas G. Pire, R.Ph. was at all times relevant to this matter 100% President owner, and managing pharmacist of Silver Spring Pharmacy, Inc., and responsible for the professional operations of the pharmacy, and responsible for the professional supervision of Pharmacist A and Pharmacist B, former employees of Silver Spring Pharmacy, Inc.

6. That from about November, 1985 through February, 1986, Thomas G. Pire, R.Ph., managing pharmacist of Silver Spring Pharmacy, Inc., together with members of his pharmacy staff who were under his supervision and control, knowingly and willfully submitted claims for payment to the agent and representative of a health maintenance organization (HMO), knowing such claims to be false, and which false claims resulted in payment to Silver Spring Pharmacy, Inc., to which it was not legally or rightfully entitled. Said claims were false in that they were represented to be for quantities and/or kinds of prescription drugs that were not in fact dispensed to participants of the HMO, and also included claims represented to be for medications prescribed by practitioners covered by the HMO, who in fact were not covered by the HMO. Said false claims resulted in overpayments to Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., as owner of Silver Spring Pharmacy, Inc. amounting to at least \$2,000 to \$2,500.

7. That the Schedule V exempt narcotic sales record for Silver Spring Pharmacy, Inc. was examined for the period of June 1, 1987 to July 30, 1987 and revealed the following:

- a. That during the period from June 1, 1987 to July 30, 1987, Silver Spring Pharmacy made 1,071 sales of Schedule V Controlled Substances to customers without a prescription.
- b. That there were 45 customers who made six or more purchases of Schedule V Controlled Substances within the 60 day period between June 1, 1987 and July 30, 1987.
- c. That the 45 customers who had made six or more purchases within the aforesaid 60 day period made a total of 639 of the 1,071 purchases of Schedule V Controlled Substances at Silver Spring Pharmacy, Inc. during that period.
- d. That the average frequency of purchases for particular customers ranged from six purchases in 54 days for an average of one purchase every nine days to 36 purchases in 59 days for an average frequency of one purchase every 1.6 days.

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- e. That the records of sales of Schedule V Controlled Substances from June 1, 1987 to July 30, 1987 were examined for purposes of detecting repeat sales to the same customer within 48 hours of four ounce bottles of Schedule V exempt narcotics. The examination of said records revealed 47 repeat sales to the same customer of four ounce bottles of Schedule V exempt narcotics within 48 hours.
- f. That Thomas G. Pire, R.Ph. in 27 instances had personally made repeat sales of Schedule V exempt narcotic controlled substances to the same customer within 48 hours within the 60 day period between June 1, 1987 and July 30, 1987.
- g. That Pharmacist A in 15 instances had personally made repeat sales of Schedule V exempt narcotic controlled substances to the same customer within 48 hours within the 60 day period between June 1, 1987 and July 30, 1987.
- h. That Pharmacist B in 5 instances had personally made repeat sales of Schedule V exempt narcotic controlled substances to the same customer within 48 hours within the 60 day period between June 1, 1987 and July 30, 1987.
- i. That on July 30, 1987 and August 19, 1987, an investigator of the Wisconsin Department of Regulation and Licensing in investigative visits to Silver Spring Pharmacy brought to the attention of Thomas G. Pire, R.Ph., managing pharmacist of Silver Spring Pharmacy, the requirements of Section 161.23, Wis. Stats., in particular that Schedule V Controlled Substances may be dispensed and sold only in good faith as a medicine, and not for the purpose of evading Chapter 161, and that frequent repetitive purchasers of Schedule V Controlled Substances who may be abusing such substances should be referred to their physician for medical attention and that sales of such Schedule V Controlled Substances to such frequent repetitive purchasers should be discontinued unless prescribed by a physician. Examination of the Schedule V Controlled Substances sales record at Silver Spring Pharmacy, Inc. on August 19, 1987 and October 20, 1987 revealed that Silver Spring Pharmacy continued frequent repetitive sales to the same frequent repetitive purchasers as had been pointed out in previous investigative visits.
- j. On October 20, 1987, a notice of violation was issued to Silver Spring Pharmacy, Inc. relating to, among other things, the sale of Schedule V Controlled Substances in good faith for use as a medicine in accordance with Section 161.23, Wis. Stats., and that frequent purchasers should be referred to a physician, which was returned signed by Thomas G. Pire on October 20, 1987.

CONCLUSIONS OF LAW

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

2. That by engaging in the activities described above in paragraph 6 of the Findings of Fact, Respondent Silver Spring Pharmacy and Respondent, Thomas G. Pire, R.Ph., individually and as owner and managing pharmacist of Silver Spring Pharmacy, violated sec. 450.10(1)(a)7., Wis. Stats., and sec. Phar 10.03(13), Wisconsin Administrative Code, by obtaining or attempting to obtain any compensation by fraud or deceit.

3. That by engaging in the conduct described in paragraph 7.a.,b.,c.,d.,e. and i. of the Findings of Fact, Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., individually and as owner and managing pharmacist of Silver Spring Pharmacy, Inc., engaged in unlawful and unprofessional conduct contrary to secs. 161.23(1), 161.38(4) and 450.10(1)(a)2., Wis. Stats., secs. Phar 8.02 and 10.03(1)(3) and (4), Wis. Adm. Code, in that as a pattern of practice each Respondent failed to ensure and determine that Schedule V Controlled Substances were dispensed and sold in good faith as a medicine, and such conduct constituted a danger to the health, welfare and safety of patient or public and substantially departed from the standard of care ordinarily exercised by a pharmacist.

4. That by engaging in the conduct described in paragraph 7.e.,f.,g. and h. of the Findings of Fact, Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., individually and as owner and managing pharmacist of Silver Spring Pharmacy, Inc., engaged in unlawful and unprofessional conduct contrary to secs. 161.23(5), 161.38(4), 450.10(1)(a)2. Wis. Stats., Title 21, CFR sec. 1306.32 and sec. PHAR 8.02 and 10.03(1),(3) and (4), Wis. Adm. Code, in that each Respondent dispensed and sold Schedule V Controlled Substances in violation of the 48 hour rule, and as prohibited by law.

THEREFORE IT IS HEREBY ORDERED:

1. That the Pharmacy license of Silver Spring Pharmacy, Inc. shall be suspended for a period of 210 days, effective 60 days following the date of this Order, which suspension shall be STAYED conditioned upon compliance by Silver Spring Pharmacy and Thomas G. Pire with all terms and conditions of this Order.

2. That effective immediately, Silver Spring Pharmacy, Inc., shall not sell or dispense any Schedule V Controlled Substances without a prescription from a practitioner for a period of not less than 5 years. At the end of the 5 year period, Silver Spring Pharmacy may petition the Pharmacy Examining Board for removal of this limitation. The Pharmacy Examining Board may impose any conditions which it deems appropriate in its discretion for consideration of such petition or for granting such petition.

3. Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., as legal and constructive owner of Silver Spring Pharmacy, Inc., are hereby assessed a forfeiture in the amount of \$5,840.00 which shall be paid by Silver Spring Pharmacy, Inc., and/or Thomas G. Pire, R.Ph., as legal and constructive owner of Silver Spring Pharmacy, Inc. within 60 days of the date of this Order. Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., as legal and

constructive owner of Silver Spring Pharmacy, Inc., are hereby assessed costs of this investigation and proceeding pursuant to sec. 440.22, Wis. Stats., in the amount of \$1,660.00 which shall be paid within 60 days of the date of this Order.

4. That effective 60 days from the date of this Order, the pharmacist license of Thomas G. Pire shall be suspended for a period of one year, which suspension shall be stayed after 150 days, conditioned upon full compliance with all terms and conditions of this Order by each of Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., as owner, President and Managing Pharmacist thereof, and by Thomas G. Pire, R.Ph., individually as Respondent. During the period of imposed suspension and prior to reinstatement, Thomas G. Pire shall not be physically present in the professional area of any pharmacy and shall not perform any pharmacy services as defined in Chapter 450 Wis. Stats., and PHAR Chap. 1, Wis. Adm. Code. Thomas G. Pire may petition for reinstatement of his license following the 150 day period of imposed suspension. The Pharmacy Examining Board may impose conditions which it deems appropriate in its discretion for consideration of such petition or for granting of such petition.

5. That effective immediately, the pharmacist license of Thomas G. Pire is hereby limited to permanently prohibit Thomas G. Pire from dispensing any Schedule V Controlled Substance without a prescription from a practitioner.

6. Thomas G. Pire is hereby assessed a forfeiture in the amount of \$3,840.00, which shall be paid by Thomas G. Pire within 60 days of the date of this Order. Thomas G. Pire is hereby assessed costs of this investigation and proceeding pursuant to sec. 440.22, Wis. Stats., in the amount of \$1,660.00 which shall be paid within 60 days of the date of this Order.

7. No sale or other disposition of the inventory or records of Silver Spring Pharmacy, Inc., shall be made without prior written notice and approval by the Pharmacy Examining Board. Any such disposition of medications and/or records shall be made only in accordance with the terms and conditions specified by the Pharmacy Examining Board, and sec. 450.11(6), Wis. Stats. It is further ordered that if Silver Spring Pharmacy, Inc. does not comply with the terms and conditions of this Order for Stay of Suspension, then not later than 60 days following the date of this Order, Thomas G. Pire shall conduct an inventory of all controlled substances in stock at Silver Spring Pharmacy, which inventory shall be verified by and attested to by another Wisconsin licensed pharmacist, the selection of which shall be approved in advance by the Pharmacy Examining Board. The original of said inventory shall be delivered or mailed forthwith to the Pharmacy Examining Board, not later than five days following the effective date of suspension of the pharmacy license of Silver Spring Pharmacy, Inc. A copy of the original inventory shall be retained by the independent pharmacist verifying and attesting to the inventory, and an additional copy thereof shall be sent to the Pharmacy Examining Board directly by said independent pharmacist, not later than five days following the effective date of the suspension of the pharmacy license of Silver Spring Pharmacy, Inc. Upon reinstatement of the pharmacy license of

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Silver Spring Pharmacy, Inc. an opening inventory shall be conducted by Thomas G. Pire, and verified and attested to by an independent Wisconsin licensed pharmacist, selection of whom shall be approved in advance by the Pharmacy Examining Board. The original of said opening inventory of all controlled substances shall be sent to the Pharmacy Examining Board within five days of the reinstatement of the pharmacy license of Silver Spring Pharmacy, Inc. The independent verifying pharmacist shall retain a copy of the original inventory, and shall mail an additional copy thereof directly to the Pharmacy Examining Board within five days of the reinstatement of the license of Silver Spring Pharmacy, Inc.

8. The suspension of the pharmacist license of Thomas G. Pire shall remove all rights of Thomas G. Pire to practice pharmacy, except that Thomas G. Pire shall remain responsible, in the event of the suspension of license and closing of Silver Spring Pharmacy, Inc., for the security, appropriate disposition and accounting of all prescription medications and controlled substances in the closing inventory of Silver Spring Pharmacy, Inc. and all pharmacy records required to be maintained under state and federal laws relating to prescription medications, controlled substances, patient profiles and all purchase, inventory and disposition records.

By: W.R. M. 9/12/89
Wisconsin Pharmacy Examining Board

I, Thomas G. Pire, R.Ph., personally, and as owner and agent of Silver Spring Pharmacy, Inc., pursuant to the attached Stipulation hereby consent to the issuance of the foregoing Final Decision and Order by the Wisconsin Pharmacy Examining Board.

Thomas G. Pire, R.Ph.
Thomas G. Pire, R.Ph., personally
and as owner and agent of Silver
Spring Pharmacy, Inc.

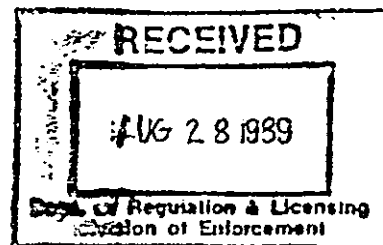
August 25, 1989
Date

Steven R. Kohn
Steven R. Kohn, Attorney for
Silver Spring Pharmacy, Inc.,
and Thomas G. Pire, R.Ph.,
Respondents.

8/25/89
Date

RTG:skv
DOEATTY-838

EXHIBIT A
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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
SILVER SPRING PHARMACY, INC., AND	:	STIPULATION
THOMAS G. PIRE, R.Ph.,	:	
	:	
RESPONDENTS.	:	

It is hereby stipulated between Silver Spring Pharmacy, Inc., by its owner and agent Thomas G. Pire, R.Ph., Thomas G. Pire, R.Ph., personally on his own behalf, and their attorney, Steven R. Kohn, Respondents; and Robert T. Ganch, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

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 pharmacy, as applicable, in the State of Wisconsin, investigative file #86 PHM 42. Each Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
2. Each of the Respondents understands that by the signing of the Stipulation, he voluntarily and knowingly waives his rights including: the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Thomas G. Pire, R.Ph., and Silver Spring Pharmacy, Inc., each neither admits nor denies the facts and conduct described in the attached Findings of Fact except each admits paragraph 6, and each agree to the adoption, entry and issuance of the attached Findings of Fact, Conclusions of Law and Order by the Pharmacy Examining Board.
4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this 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 without further notice, pleading, appearance or consent of the parties.

6. This Stipulation and the attached Final Decision and Order 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, 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, Part 1306.32, after October 20, 1987.

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. 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.

Silver Spring Pharmacy, Inc., Respondent, by:

Thomas G. Pire, R.Ph. August 25, 1989
Thomas G. Pire, R.Ph. Date
Owner and agent

Thomas G. Pire, R.Ph. August 25, 1989
Thomas G. Pire, R.Ph., Respondent Date

Steven R. Kohn 8/25/89
Steven R. Kohn, Attorney for Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., Respondents. Date

Robert T. Ganch August 28, 1989
Robert T. Ganch, Attorney Date
Division of Enforcement

Pharmacy Examining Board by:

[Signature] 9/12/89
A Member of the Board Date

RTG:skv
DOEATTY-839

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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 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 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: State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is September 13, 1989.

WLD:dms
886-490

EXHIBIT A
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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 employee 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 day 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 respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties 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. 227.57 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 petitions 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.

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

SILVER SPRING PHARMACY, INC.;
THOMAS G. PIRE, R.PH.;
WALTER GRUSZEWSKI, R.PH.;
RESPONDENTS.

AMENDED
COMPLAINT

Faye Krebs, an Investigator for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, Madison, Wisconsin, upon information and belief, complains and alleges as follows:

1. Thomas G. Pire, R.Ph., Respondent, DOB April 21, 1955, of 18585 Woodberry Court, Brookfield, Wisconsin 53005, was at all times relevant to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #9468, issued on December 9, 1978, except as suspended and otherwise disciplined by order of the Pharmacy Examining Board on September 12, 1989.
2. Silver Spring Pharmacy, Inc., Respondent, doing business as "Silver Spring Pharmacy", of 5626 North 91st Street, Milwaukee, Wisconsin 53225, is and was at all times relevant to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to operate as a licensed pharmacy in the State of Wisconsin, license #6539, first granted on March 8, 1984, except as disciplined by order of the Pharmacy Examining Board dated December 12, 1989.
3. Walter J. Gruszewski, R.Ph., Respondent, of 416 West Willow Court, Fox Point, Wisconsin 53217, is and was at all times relevant to this matter duly licensed under the provisions of Ch. 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #5989, first granted on November 4, 1950.
4. Thomas G. Pire, R.Ph., is and was at all times relevant to this matter 100% owner and President of Silver Spring Pharmacy, Inc.
5. On September 12, 1989, pursuant to stipulation between the Department of Regulation and Licensing, Division of Enforcement, Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., by their attorney and the Pharmacy Examining Board, the Pharmacy Examining Board issued a Final Decision And Order Adopting Stipulation, (hereinafter, "Board Order") a copy of which is attached hereto as Exhibit A. Said order, among other things, imposed the following discipline:
 - a. That the pharmacy license of Silver Spring Pharmacy, Inc., be suspended for a period of 210 days, effective 60 days following the date of the order, which suspension was stayed conditionally upon compliance by Silver Spring Pharmacy, Inc., and Thomas G. Pire with all terms and conditions of the order.

EXHIBIT A (TO STIPULATION)

b. Silver Spring Pharmacy, Inc., and Thomas G. Pire as owner, were assessed a forfeiture in the amount of \$5,840 and costs in the amount of \$1,660, which were required to be paid by November 11, 1989.

c. Effective 60 days following the date of the Board Order, which was November 11, 1989, Thomas G. Pire was suspended for a period of one year, stayed after 150 days, conditioned upon full compliance with all terms and conditions of the order by each of Silver Spring Pharmacy, Inc., and Thomas G. Pire.

d. During the period of suspension, Thomas G. Pire is prohibited from performing any pharmacy services as defined in Ch. 450, Wis. Stats., and Phar Ch. 1, Wis. Adm. Code, and is further prohibited from being in the professional area of any pharmacy.

e. Thomas G. Pire was assessed a forfeiture in the amount of \$3,840 and costs in the amount of \$1,660, which were required to be paid by November 11, 1989.

6. The Board Order was served by certified mail, return receipt requested, certified #P044813307, on September 13, 1989, to Steven R. Kohn, 212 West Wisconsin Avenue, Milwaukee, WI 53203, attorney for each of Respondent Silver Spring Pharmacy, Inc., and Respondent Thomas G. Pire, R.Ph. The Board Order was received by the Office of Attorney Kohn on September 14, 1989. Attached hereto as Exhibit B is a true and accurate copy of the Receipt and Return Receipt for Certified Mail #P044813307.

7. The Board Order was served by certified mail, return receipt requested, certified #P044813324, on September 20, 1989, to Respondent Silver Spring Pharmacy, Inc., at 5626 North 91st Street, Milwaukee, WI 53225. The Board Order was received by Silver Spring Pharmacy, Inc., by its owner and President, Thomas G. Pire, on September 22, 1989. Attached hereto as Exhibit C is a true and accurate copy of the Receipt and Return Receipt for Certified Mail #P044813324.

8. The Board Order was served by certified mail, return receipt requested, certified #P044813323, on September 20, 1989, to Respondent Thomas G. Pire, R.Ph., at 18585 Woodberry Court, Brookfield, WI 53005. The Board Order was received by Respondent Thomas G. Pire, R.Ph., on September 23, 1989. Attached hereto as Exhibit D is a true and accurate copy of the Receipt and Return Receipt for Certified Mail #P044813323.

COUNT I - THOMAS G. PIRE

9. Complainant realleges and incorporates in this Count I paragraphs 1 through 8 of this complaint.

10. Thomas G. Pire, R.Ph., (hereinafter, "Respondent Pire") violated the Board Order all as more specifically enumerated in the following paragraphs.

11. The Board Order in paragraph 4., page 5, provides in pertinent part:

"4. That effective 60 days from the date of this order, the pharmacist license of Thomas G. Pire shall be suspended for a period of one year, which suspension shall be stayed after 150 days, conditioned upon full compliance with all terms and conditions of this order by each of Silver Spring Pharmacy, Inc., and Thomas G. Pire, R.Ph., as owner, President and Managing Pharmacist thereof, and by Thomas G. Pire, R.Ph., individually as Respondent. During the period of imposed suspension and prior to reinstatement, Thomas G. Pire shall not be physically present in the professional area of any pharmacy and shall not perform any pharmacy services as defined in Ch. 450, Wis. Stats., and Phar Ch. 1, Wis. Adm. Code. ..."

12. The Board Order was dated September 12, 1989, and therefore the effective date of the suspension of license of Respondent Pire was November 11, 1989.

NOVEMBER 11, 1989

13. On November 11, 1989, Respondent Pire was present in the professional area of Silver Spring Pharmacy, Inc., and engaged in the practice of pharmacy by having filled and dispensed prescriptions.

14. Attached hereto as Exhibit E is a true and accurate copy, except for the patient name which has been covered, of prescription #303604 filled and dispensed on November 11, 1989, by Respondent Pire.

NOVEMBER 16, 1989

15. On November 16, 1989, at about 11:00 a.m., Investigator Jeffrey G. Lewitzke of the Wisconsin Department of Justice entered Silver Spring Pharmacy at 5626 North 91st Street, Milwaukee, Wisconsin. The pharmacy area of Silver Spring Pharmacy, Inc., was open for business. Respondent Pire was physically present in the professional area of Silver Spring Pharmacy. No other pharmacist was present.

16. Upon Investigator Lewitzke's entry into Silver Spring Pharmacy, Inc., on November 16, 1989, at 11:00 a.m., Respondent Pire was standing in the professional area at the prescription compounding area wearing a light blue professional smock. On the counter in front of Respondent Pire were a "bale" of prescriptions opened to a previously filed prescription order, two medication bottles, and a prescription label ready for typing in the typewriter.

17. Attached hereto as Exhibit F is a true and accurate copy, except for the patient name which has been covered, of prescription serial #303668 filled and dispensed by Respondent Pire at Silver Spring Pharmacy on November 15, 1989.

18. Respondent Pire filled and/or refilled prescription orders in the professional area of Silver Spring Pharmacy, Inc., on November 16, 1989, which constitutes engaging in the practice of pharmacy as defined in Sec. 450.01(16), Stats., and Phar 1.02(8), Wis. Adm. Code.

DECEMBER 1, 1989

19. On December 1, 1989, at about 11:00 a.m., Complainant in an undercover capacity entered Silver Spring Pharmacy, 5626 North 91st Street, Milwaukee, Wisconsin.

20. On December 1, 1989 at 11:00 a.m., Respondent Pire and another pharmacist were present, each wearing a professional smock, in the professional area of Silver Spring Pharmacy.

21. Complainant first consulted with the pharmacist other than Respondent Pire regarding over-the-counter remedies other than Schedule V controlled substances for her son who Complainant advised was suffering a bad cough. The pharmacist advised Complainant he would have to consult with his "boss" regarding stronger remedies and thereupon approached Respondent Pire who was at that time working at the prescription compounding counter area within the professional area of the pharmacy.

22. Complainant approached Respondent Pire and requested "Robitussin AC or Cheracol" for her son's cough, which was not helped by "Ny-Quil". Respondent Pire declined to sell such medications without a prescription from a physician, citing past problems with out of town customers purchasing such remedies.

23. Complainant indicated to Respondent Pire that she was visiting her sister in Milwaukee who recently had surgery. Respondent Pire inquired of Complainant whether her sister was taking any pain medication, to which Complainant answered "most likely".

24. Respondent Pire then stated in substance that "her pain medication probably has Codeine in it," suggesting by implication that Complainant could give her son her sister's pain medication with codeine to help his cough.

25. Respondent Pire then recommended to Complainant that she take her son to a physician, stated it would cost \$25 to \$30 for the visit, and referred her to a 24 hour walk-in clinic at Capital Drive and Hwy. 100.

26. Respondent Pire also indicated that if Complainant knew her sister's doctor, Respondent Pire could call the physician by telephone and get a prescription order for the requested Schedule V cough medicine.

27. Complainant indicated to Respondent Pire that she did not know who her sister's family doctor was, but that she would ask her, and set up an appointment for her son.

28. Respondent Pire then advised in substance that "well, if you have been using 'Ny-Quil' and it has not helped, you probably need something stronger" and further indicated to Complainant that he could not "do anything without a prescription".

29. Complainant thereupon thanked Respondent Pire and exited Silver Spring Pharmacy at about 11:15 a.m.

30. On December 1, 1989, as herein alleged, Respondent Pire provided to Complainant consultation regarding pharmaceutical remedies for her son's medical condition, which constitutes the practice of pharmacy as defined in Sec. 450.01(16), Wis. Stats., and Sec. Phar. 1.02(a), Wis. Adm. Code.

DECEMBER 6, 1989, A.M.

31. For undercover investigation purposes, Complainant obtained a prescription for "Brad Krebs", dated December 4, 1989, for Dimetane-DC, four ounces, with directions to take "one teaspoon every four to six hours for cough", which prescription was signed by Stanley G. Cupery, M.D. A true and accurate copy of the aforesaid prescription for Brad Krebs is attached hereto as Exhibit G.

32. On December 6, 1989, at approximately 9:10 a.m., Complainant in an undercover capacity entered Silver Spring Pharmacy located 5626 North 91st Street, Milwaukee, Wisconsin.

33. On December 6, 1989, at about 9:10 a.m., Respondent Pire was standing in the professional area of Silver Spring Pharmacy, wearing a professional smock, and was typing at the prescription compounding counter. Walter J. Gruszewski, R.Ph., (hereinafter, "Respondent Gruszewski") was also present in the pharmacy area.

34. Complainant refreshed Respondent Pire's recollection regarding her visit on the previous Friday, December 1, 1989. Complainant advised Respondent Pire that she had called her family physician with whom she was more comfortable and got a prescription for her son.

35. Respondent Pire reached out and took the prescription from Complainant and again began to type. At this time, the Respondent Gruszewski was attending a customer outside of the pharmacy area.

36. When Respondent Gruszewski returned to the pharmacy area, Respondent Pire put his coat on and advised Respondent Gruszewski that he needed to get home because movers were coming, and as Respondent Pire was leaving the front door of the pharmacy, he stated that he would be back later.

37. Thereupon, Respondent Gruszewski asked Complainant to repeat Complainant's son's name, stating that he could not read his boss's handwriting. Respondent Gruszewski completed filling the prescription for Complainant and dispensed the same to Complainant at which time she paid for the prescription and exited Silver Spring Pharmacy at approximately 9:30 a.m.

38. The prescription for Brad Krebs dispensed to Complainant on December 6, 1989, by Silver Spring Pharmacy was serial #304078.

39. A true and accurate copy of the receipt for prescription #304078 issued to Complainant by Silver Spring Pharmacy on December 6, 1989, is attached hereto as Exhibit H.

DECEMBER 6, 1989 P.M.

40. On December 4, 1989, Sue Schaut, an Investigator with the Wisconsin Department of Regulation and Licensing, Division of Enforcement, obtained for purposes of undercover investigation, a prescription from A.R. Delp, D.O., of W186 S8055 Racine Avenue, Muskego, Wisconsin 53150. Said prescription is made out to "Sue Schout", dated December 4, 1989, for "V Cillin K 250 mg., #30, Sig take (1 tablet) QID", and signed by A.R. Delp, D.O. A true and accurate copy of the aforesaid prescription is attached hereto as Exhibit I.

41. On December 6, 1989, at approximately 4:05 p.m., Investigator Schaut entered in an undercover capacity Silver Spring Pharmacy located at 5626 North 91st Street, Milwaukee, Wisconsin.

42. When Investigator Schaut entered Silver Spring Pharmacy on December 6, 1989, at about 4:05 p.m., the professional area of Silver Spring Pharmacy was open for business.

43. On December 6, 1989, at approximately 4:05 p.m., Respondent Pire was present in the professional area of Silver Spring Pharmacy, and was wearing a professional smock. No other person was present in the professional area of Silver Spring Pharmacy.

44. On December 6, 1989, shortly after 4:05 p.m., Respondent Pire, after ending a telephone conversation in the professional area of the pharmacy, came out to the cash register counter and asked Investigator Schaut if he could help her. Investigator Schaut then handed the prescription from Dr. Delp to Respondent Pire, who accepted the prescription. Respondent Pire then asked for the spelling of Investigator Schaut's name and Investigator Schaut responded "S-C-H-O-U-T". Respondent Pire then asked Investigator Schaut for an address and Investigator Schaut gave a fictitious address for North 92nd Street.

45. Respondent Pire then took the prescription and went back behind the counter of the professional area of the pharmacy and started typing on a typewriter.

46. As Respondent Pire completed the typing, Respondent Gruszewski entered the drug store from the side door and entered the professional area of the pharmacy.

47. Respondent Pire then stated to Respondent Gruszewski, "you can finish this for me". Respondent Gruszewski then completed the dispensing of the prescription and provided the prescription to Investigator Schaut in a prescription bag. Investigator Schaut paid for the prescription and exited Silver Spring Pharmacy at approximately 4:18 p.m.

48. The prescription dispensed by Silver Spring Pharmacy to Investigator Schaut on December 6, 1989, was for Pen VK 250, bearing prescription serial #304090.

49. A true and accurate copy of the original prescription order filled and dispensed to Investigator Schaut by Respondent Pire and Respondent Gruszewski on December 6, 1989, serial #304090 is attached hereto as Exhibit J.

DECEMBER 18, 1989, AFTERNOON

50. On December 18, 1989, at approximately 2:00 p.m. in the afternoon, W. Patrick Lynch, Auditor with the investigative staff of the Wisconsin Department of Regulation and Licensing, Division of Enforcement, entered in an undercover capacity the premises of Silver Spring Pharmacy, Inc., at 5626 North 91st Street, Milwaukee, Wisconsin.

51. On December 18, 1989, at approximately 2:00 p.m., Respondent Pire was present in the professional area of the pharmacy, speaking on the telephone.

52. Auditor Lynch observed that another pharmacist besides Respondent Pire was present in the professional area of Silver Spring Pharmacy on December 18, 1989 at approximately 2:00 p.m.

53. On December 18, 1989, from approximately 2:30 p.m. to 4:30 p.m., Auditor Lynch, pursuant to agreement by Respondent Pire and Respondent Silver Spring Pharmacy, Inc., through their attorney, and the Division of Enforcement, made an inspection of the pharmacy records in the professional area of Silver Spring Pharmacy, relating to allegations that Respondent Pire and Silver Spring Pharmacy, Inc., had violated the Board Order.

DECEMBER 18, 1989, EVENING

54. Silver Spring Pharmacy closed for business on December 18, 1989, at approximately 7:00 p.m.

55. On December 18, 1989, between approximately 8:10 p.m. and 8:30 p.m., Auditor Lynch stopped outside the premises of Silver Spring Pharmacy, 5626 North 91st Street, Milwaukee, Wisconsin.

56. On December 18, 1989, between approximately 8:10 p.m. and 8:30 p.m., as observed by Auditor Lynch, Respondent Pire was present within the professional area of Silver Spring Pharmacy. No other person was present in the professional area or outer drugstore area of Silver Spring Pharmacy.

57. On December 18, 1989, between approximately 8:10 p.m. and 8:30 p.m., while within the professional area of Silver Spring Pharmacy, Respondent Pire was talking on the telephone for approximately ten minutes. Thereafter, from approximately 8:20 p.m., to 8:30 p.m., Respondent Pire was moving back and forth at the professional work area counter and drug storage shelves of the professional area of Silver Spring Pharmacy, similar to the manner in which Respondent Gruszewski was working at filling and dispensing prescriptions earlier in the day on December 18, 1989.

ALL DATES

58. The conduct of Respondent Pire alleged above on each of November 11, 1989, November 15, 1989, November 16, 1989, December 1, 1989, December 6, 1989, at approximately 9:10 a.m., December 6, 1989, at approximately 4:05 p.m., December 18, 1989, at approximately 2:00 p.m., and on December 18, 1989, at approximately 8:10 p.m. to 8:30 p.m., violated paragraph 4, page 5 of the Board Order in that Respondent Pire was present in the professional area of Silver Spring Pharmacy, Inc., at times alone, and at times engaged in the practice of pharmacy as defined under Ch. 450, Wis. Stats., and Ch. Phar 1, Wis. Adm. Code.

59. Violation of the Board Order by Respondent Pire constitutes unprofessional conduct under Sec. 450.10(1)(a)8., Wis. Stats., and Sec. Phar 10.03(22), Wis. Adm. Code, and therefore subjects Respondent Pire to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT II - THOMAS G. PIRE

60. Complainant realleges and incorporates herein paragraphs 1 through 58 of this complaint.

61. The conduct of Respondent Pire on each of November 11, 1989, November 15, 1989, November 16, 1989, December 1, 1989, December 6, 1989, and December 18, 1989, as alleged above, violated Sec. 450.03, Wis. Stats., in that Respondent Pire engaged in the practice of pharmacy while not currently licensed as a pharmacist in the State of Wisconsin.

62. Engaging in the practice of pharmacy while not currently licensed to practice pharmacy in the State of Wisconsin in violation of Sec. 450.03, Wis. Stats., is a violation of law substantially related to the practice of pharmacy and constitutes unprofessional conduct under Sec. 450.10(1)(a)2., Wis. Stats., and Sec. Phar 10.03(1), Wis. Adm. Code, and therefore subjects Respondent to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT III - THOMAS G. PIRE

63. Complainant realleges and incorporates herein paragraphs 1 through 8 of this complaint.

64. The Board Order in paragraph 3, page 4, imposed upon Silver Spring Pharmacy, Inc., and Respondent Pire as legal and constructive owner of Silver Spring Pharmacy, Inc., a forfeiture in the amount of \$5,840 and costs in the amount of \$1,660, which were required to be paid within 60 days of the date of the order, which was September 12, 1989, therefore, requiring payment of forfeitures and costs by November 11, 1989.

65. The Board Order in paragraph 6, page 5, imposed upon Respondent Pire a forfeiture in the amount of \$3,840 and costs in the amount of \$1,660, required to be paid within 60 days of the date of the order, which was September 12, 1989, therefore requiring payment of forfeitures and costs by November 11, 1989.

66. As of November 16, 1989, neither the Department of Regulation and Licensing nor the Pharmacy Examining Board had received payment by or on behalf of Silver Spring Pharmacy, Inc., and/or Thomas G. Pire, R.Ph., of any monies with respect to forfeitures and costs imposed by the Board Order.

67. On November 17, 1989, the Department of Regulation and Licensing received a check from Silver Spring Pharmacy made out to "P.E.B." in the amount of \$13,000, signed by Thomas G. Pire, which check was dated November 11, 1989, but which was postmarked November 16, 1989.

68. Failure of Respondent Pire to pay to the Pharmacy Examining Board and/or the Department of Regulation and Licensing the forfeitures and costs imposed under paragraphs 3 and 6, pages 4 and 5, respectively, of the Board Order by November 11, 1989, constitutes a violation of the Board Order.

69. Violation of the Board Order by Respondent Pire constitutes unprofessional conduct under Sec. 450.10(1)(a)8., Wis. Stats., and Sec. Phar 10.03(22), Wis. Adm. Code, and therefore subjects Respondent Pire to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT IV - SILVER SPRING PHARMACY, INC.

70. Complainant realleges and incorporates herein paragraphs 1 through 8 and 64 through 68 of this complaint.

71. Failure of Silver Spring Pharmacy, Inc., to pay to the Wisconsin Department of Regulation and Licensing and/or the Pharmacy Examining Board by November 11, 1989, the forfeitures and costs imposed under paragraph 3, page 4 of the Board Order constitutes a violation of the Board Order.

72. Violation of the Board Order by Respondent Silver Spring Pharmacy, Inc., constitutes unprofessional conduct under Sec. 450.10(a)(1)8., Wis. Stats., and Sec. Phar 10.03(22), Wis. Adm. Code, and therefore subjects Respondent Silver Spring Pharmacy, Inc., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT V - SILVER SPRING PHARMACY, INC.

73. Complainant realleges and incorporates herein paragraphs 1 through 58 of this complaint.

74. Pursuant to paragraph 4, page 5 of the Board Order, effective November 11, 1989, the license of Respondent Pire to practice pharmacy was suspended and Respondent Pire was prohibited from being present in the professional area of any pharmacy.

75. Sec. 450.09(2), Wis. Stats., prohibits any pharmacy from being open for business and providing pharmacy services unless a pharmacist is present in the pharmacy to provide or supervise the service. Sec. 450.01(15), Wis. Stats., defines "pharmacist" to mean "a person licensed by the Board under Sec. 450.03 or 450.05".

76. Silver Spring Pharmacy, Inc., violated Sec. 450.09(2), Wis. Stats., by remaining open for business and providing pharmaceutical service on November 15, 1989, November 16, 1989, and on December 6, 1989 at approximately 4:05 p.m., when Respondent Pire was in the professional area of Silver Spring Pharmacy without any other pharmacist currently licensed to practice pharmacy in the State of Wisconsin present.

77. The violation by Silver Spring Pharmacy, Inc., of Sec. 450.09(2), Wis. Stats., is violation of a law substantially related to the practice of pharmacy, and constitutes unprofessional conduct under Sec. 450.10(1)(a)2., Wis. Stats., and Sec. Phar 10.03(1), Wis. Adm. Code, and therefore subjects the license of Silver Spring Pharmacy, Inc., to discipline pursuant to Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT VI - SILVER SPRING PHARMACY, INC.

78. Complainant realleges and incorporates herein paragraphs 1 through 58 of this complaint.

79. The conduct of Silver Spring Pharmacy, Inc., in employing Respondent Pire and permitting Respondent Pire to engage in the practice of pharmacy on November 11, 1989, November 15, 1989, December 1, 1989, December 6, 1989, and December 18, 1989, aided and abetted the unlicensed practice of pharmacy by Respondent Pire in violation of Sec. 450.03(1), Wis. Stats., which constitutes unprofessional conduct under Sec. Phar 10.03(14), Wis. Adm. Code, and Sec. 450.10(1)(a) and therefore subjects Respondent Silver Spring Pharmacy, Inc., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT VII - SILVER SPRING PHARMACY, INC.

80. Complainant realleges and incorporates herein paragraphs 1 through 58 of this complaint.

81. On December 18, 1989, at approximately 2:30 p.m. to 5:30 p.m., Auditor Pat Lynch returned to Silver Spring Pharmacy pursuant to agreement of Silver Spring Pharmacy and Respondent Pire through their Attorney, with the Division of Enforcement, to inspect pharmacy records relating to allegations of violation of the Board Order by Respondent Pire and Respondent Silver Spring Pharmacy, Inc.

82. On December 18, 1989, at approximately 2:30 p.m., when Auditor Pat Lynch entered the pharmacy for the inspection, Respondent Pire was present in the professional area of the pharmacy, together with Respondent Gruszewski.

83. In response to inquiry, Respondent Pire informed Auditor Lynch that the pharmacy manager for Silver Spring Pharmacy, Inc., is Walter J. Gruszewski, R.Ph.

84. Auditor Lynch requested for inspection all original prescriptions and original profile records for prescriptions dispensed since November 11, 1989.

85. In particular, on December 18, 1989, Auditor Lynch requested for inspection the following specific prescription records:

a. Original prescription order #304090 for patient "Sue Schout", dated December 4, 1989, and dispensed December 6, 1989.

b. Original patient profile record for Sue Schout for prescription #304090, dispensed on December 6, 1989.

c. Original prescription order #304078 for patient Brad Krebs, dated December 4, 1989, and dispensed December 6, 1989.

d. Original patient profile record for Brad Krebs for prescription #304078, dispensed on December 6, 1989.

86. Prescription #304090 for patient Sue Schout was located and produced by Silver Spring Pharmacy.

87. Neither an original nor copy of any patient profile record for Sue Schout for prescription #304090 was located or produced by Silver Spring Pharmacy in response to request by Auditor Lynch.

88. Neither the original nor any copy of prescription #304078 for patient Brad Krebs dispensed on December 6, 1989, was located or produced by Silver Spring Pharmacy, in response to request by Auditor Lynch.

89. Neither the original nor any copy of the patient profile record for patient Brad Krebs for prescription #304078 dispensed on December 6, 1989, was located or produced by Silver Spring Pharmacy in response to request by Auditor Lynch.

90. Neither Respondent Gruszewski, pharmacy manager for Silver Spring Pharmacy, nor Respondent Pire, provided an explanation for the absence of the patient profile record for "Sue Schout", prescription #304078 or patient profile record for Brad Krebs for prescription #304078.

91. Upon inspection of the pharmacy records for November 11, 1989, through December 18, 1989, of Silver Spring Pharmacy, Inc., Auditor Lynch noted that a number of other original prescription orders were absent from the prescription files.

92. Neither Silver Spring Pharmacy Manager, Respondent Gruszewski, nor Respondent Pire, provided an explanation for the missing prescriptions.

93. Pursuant to request by Auditor Lynch on December 19, 1989, Respondent Silver Spring Pharmacy, Inc., and Respondent Gruszewski provided to Auditor Lynch, among other things, the following:

a. All prescription orders present and on file at Silver Spring Pharmacy for the period November 11, 1989 to December 19, 1989.

b. All Schedule II controlled substances prescription orders present and on file at Silver Spring Pharmacy for the period January 2, 1986 to December 19, 1989.

94. Complainant has examined the prescription orders described in paragraph 93 above, and noted 10 prescription orders missing from the numerical sequence of said prescription orders for the period of November 11, 1989 to December 19, 1989, to wit:

<u>Prescription Number</u>	<u>Date</u>
303611	11/11/89
303668	11/15/89
303733	11/17/89
304052	12/04/89
304140	12/08/89
304235	12/13/89
304240	12/13/89
304308	12/18/89
304313	12/18/89
304314	12/18/89

95. Failure of Silver Spring Pharmacy, Inc., to maintain on file and available for inspection original serial numbered prescriptions, and profile records therefore, violates Sec. 450.11(2), 450.09(6), and 161.38(2), Wis. Stats., and Sec. Phar 7.05(1) and (2), 8.02(1), (2) and (3), and 8.03(1), (2), and (3), Wis. Adm. Code.

96. Failure of Silver Spring Pharmacy, Inc., to maintain records in accordance with the statutes and rules enumerated in paragraph 95 above, are violations of laws substantially related to the practice of pharmacy and constitute unprofessional conduct under Sec. 450.10(1)(a)2., Wis. Stats., and Sec. Phar 10.03(1), Wis. Adm. Code, and therefore subjects the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT VIII - WALTER J. GRUSZEWSKI

97. Complainant realleges and incorporates herein paragraphs 1 through 58 and 81 through 95 of this complaint.

98. On and after November 11, 1989, Walter J. Gruszewski has been the managing pharmacist of Silver Spring Pharmacy, Inc., and as such, pursuant to Sec. 450.09(1), Wis. Stats., is responsible for all professional operations of Silver Spring Pharmacy, Inc.

99. Respondent Gruszewski, as pharmacy manager of Silver Spring Pharmacy, failed to assure the proper recording, filing, and maintenance of records at Silver Spring Pharmacy, Inc.

100. Respondent Gruszewski in having failed to assure the proper maintenance of pharmacy records as pharmacy manager, violated Sec. 450.11(2), 450.09(6), 161.38(2), Wis. Stats., and Phar 7.05(1) and (2), 8.02(1), (2) and (3), and 8.03(1), (2) and (3), Wis. Adm. Code.

101. That failure to maintain records in violation of statutes and rules as enumerated above in paragraph 100 constitute violations of laws substantially related to the practice of pharmacy in violation of Sec. 450.10(1)(a)(2), Wis. Stats., and Sec. Phar 2.03(1), Wis. Adm. Code, and therefore subjects the pharmacist license of Walter J. Gruszewski, R.Ph., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT IX - SILVER SPRING PHARMACY, INC.

102. Complainant realleges and incorporates herein paragraphs 1 through 8 of this complaint.

103. Effective November 11, 1989, the pharmacist license of Respondent Pire was suspended by the Board Order.

104. Prior to November 11, 1989, Respondent Pire was the designated pharmacy manager of Silver Spring Pharmacy, Inc.

105. Silver Spring Pharmacy, Inc., and Respondent Pire as owner and President thereof, appointed as managing pharmacist of the Silver Spring Pharmacy, Inc., Walter J. Gruszewski, R.Ph., who assumed responsibility therefore on and after November 11, 1989.

106. On and after November 11, 1989, Silver Spring Pharmacy, Inc., and Respondent Pire as owner and President thereof, failed to report to the Pharmacy Examining Board the change in managing pharmacist of Silver Spring Pharmacy, Inc., in violation of Sec. Phar 6.03, Wis. Adm. Code.

107. Violation of Phar 6.03, Wis. Adm. Code, constitutes a violation of law substantially related to the practice of pharmacy and is unprofessional conduct under Sec. 450.10(1)(a)2., Wis. Stats., and Sec. Phar 10.03(1), Wis. Adm. Code, and therefore subjects the license of Silver Spring Pharmacy to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT X - SILVER SPRING PHARMACY, INC.

108. Complainant realleges and incorporates herein paragraphs 1 through 8 of this complaint.

109. Under paragraph 2, page 4, of the Board Order, effective September 12, 1989, Silver Spring Pharmacy, Inc., was prohibited from selling any Schedule V controlled substances without a prescription from a practitioner, for a minimum period of five years.



110. On November 20, 1989, Silver Spring Pharmacy, Inc., sold over the counter to a customer, without a prescription from a practitioner, Terpin Hydrate with Codeine.

111. On December 18, 1989, Silver Spring Pharmacy, Inc., sold over the counter to a customer, without a prescription from a practitioner, Terpin Hydrate with Codeine.

112. Terpin Hydrate with Codeine is classified as a Schedule V controlled substance under Sec. 161.22(2)(a), Wis. Stats.

113. Silver Spring Pharmacy, Inc., violated paragraph 2, page 3 of the Board Order by having sold a Schedule V controlled substance to a customer without a prescription from a practitioner on each of November 20, 1989, and December 18, 1989.

114. Violation of the Board Order by Silver Spring Pharmacy, Inc., constitutes unprofessional conduct under Sec. 450.10(1)(a)8., Wis. Stats., and Sec. Phar 10.03(22), Wis. Adm. Code, and subjects the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

COUNT XI - SILVER SPRING PHARMACY, INC.

115. Complainant realleges and incorporates herein paragraphs 1 through 58 and 93 of this complaint.

116. Complainant has examined the prescription orders described in paragraph 93 for compliance with the requirement of Ch. Phar 8.05(2), Wis. Adm. Code, that controlled substances prescription orders be initiated and dated by the dispensing pharmacist as of the date the prescription is dispensed.

117. Thirty-eight prescription orders for controlled substances filled and dispensed by Silver Spring Pharmacy, Inc., on and after November 11, 1989, failed to have recorded on the face of said prescription orders the initials of the pharmacist filling said prescriptions.

118. Silver Spring Pharmacy, Inc., violated Sec. Phar 8.05(2), Wis. Adm. Code by failing to record on controlled substances prescription orders the initials of the pharmacist dispensing such prescriptions.

119. Violation of Sec. Phar 8.05(2), Wis. Adm. Code by Silver Spring Pharmacy, Inc., is a violation of law substantially related to the practice of pharmacy.

120. Violation by Silver Spring Pharmacy, Inc., of a law substantially related to the practice of pharmacy constitutes unprofessional conduct under Sec. 450.10(1)(a)2., Wis. Stats., and Sec. Phar 10.03(1), Wis. Adm. Code, and subjects the pharmacy license of Silver Spring Pharmacy, Inc., to discipline under Sec. 450.10(1)(b) and (2), Wis. Stats.

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COUNT XII - WALTER J. GRUSZEWSKI, R.PH.

121. Complainant realleges and incorporates herein paragraphs 1 through 58, 93, and 116 through 119 of this complaint.

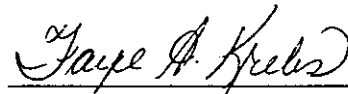
122. Effective November 11, 1989, Walter J. Gruszewski was pharmacy manager of Silver Spring Pharmacy, Inc., and responsible for the professional operations thereof, pursuant to Sec. 450.09(1), Wis. Stats.

123. Respondent Gruszewski, as pharmacy manager of Silver Spring Pharmacy, Inc., violated Sec. Phar 8.05(2), Wis. Adm. Code, by having failed to assure that all prescription orders for controlled substances had recorded thereon the initials of the pharmacist dispensing said prescriptions.

124. Violation of Sec. Phar 8.05(2), Wis. Adm. Code, by Respondent Gruszewski is a violation of law substantially related to the practice of pharmacy.

125. Violation by Respondent Gruszewski of Sec. Phar 8.05(2), Wis. Adm. Code, constitutes unprofessional conduct under Sec. 450.10(1)(a)2. and Sec. Phar 10.03(1), Wis. Adm. Code, and therefore subjects the pharmacist license of Respondent Gruszewski to discipline pursuant to Sec. 450.10(1)(b) and (2), Wis. Stats.

WHEREFORE, the Complainant demands that the Board hear evidence relevant to the matters recited herein, determine, and impose against each of Silver Spring Pharmacy, Inc., Thomas G. Pire, R.Ph., and Walter J. Gruszewski, R.Ph., the discipline warranted; and the Complainant further demands that the Board award the costs of the proceedings to the Department of Regulation and Licensing, and assess the same against each of the Respondents as appropriate, pursuant to Sec. 440.22(2), Wis. Stats.



Faye Krebs, Investigator
State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

STATE OF WISCONSIN)
)
COUNTY OF DANE)

Faye Krebs, being first duly sworn on oath deposes and says that she is an investigator for the State of Wisconsin, Department of Regulation and



Licensing, Division of Enforcement, and that she has read the foregoing Complaint and knows the contents thereof and that the same are true to her own knowledge, except as to those matters therein stated on information and belief and as to such matters, she believes them to be true.

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

Subscribed and sworn to before me
this 31 day of May, 1990.

Steven M. Gorch
Notary Public

My Commission is permanent

Robert T. Ganch
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement
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RTG:vks
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