

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARDIN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINSTLIGNELL REXALL DRUG, and
CLIFFORD R. BEAUTO, R.Ph.
RESPONDENTS.: FINAL DECISION
: AND ORDER
: ADOPTING STIPULATION
: 86 PHM 38

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

Lignell Rexall Drug
1022 Tower Avenue
Superior, WI 54880

Clifford R. Beauto, R.Ph.
2822 East 4th Street
Superior, WI 54880

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

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

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

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

FINDINGS OF FACT

1. Lignell Rexall Drug, Respondent, of 1022 Tower Avenue, Superior, Wisconsin, 54880, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to operate as a pharmacy in the State of Wisconsin, license #5144 first granted on March 31, 1970.

2. Clifford R. Beauto, R.Ph., Respondent, of 2822 East 4th Street, Superior, Wisconsin, 54880, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #7143 first granted on April 30, 1962.

3. Clifford R. Beauto, R.Ph., was at all times relevant to this matter part owner and managing pharmacist of Lignell Rexall Drug, and responsible for the professional operations of the pharmacy, and responsible for the professional supervision of its staff pharmacists.

4. On June 11, 1985, an investigator of the Wisconsin Department of Regulation and Licensing, Division of Enforcement on behalf of the Pharmacy Examining Board, incident to investigation, inspection and audit of pharmacy records at Lignell Rexall Drug, examined the nonprescription Schedule V controlled substances sales record, which revealed that certain violations of sec. 161.23, Wis. Stats. had occurred, to wit: that customers were making all entries in the Schedule V sales record except for pharmacist's names or initials and sometimes leaving out required information; and frequent repetitive sales to the same customer were occurring over substantial periods of time. These violations were noted to the pharmacy manager, Clifford R. Beauto.

5. On July 7 and 8, 1986, an investigator for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, on behalf of the Pharmacy Examining Board incident to investigation, audit and inspection of Lignell Rexall Drug, examined the nonprescription Schedule V controlled substances sales record for Lignell Rexall Drug and noted additional and continuing violations of sec. 161.23, Wis. Stats.

6. The nonprescription Schedule V controlled substances sales records for Lignell Rexall Drug for the period July 19, 1984 to February 3, 1988 have been analyzed and reveal the following:

a. On November 7 and 8, 1984, Lignell Rexall Drug made sales of more than 4 ounces of a codeine based cough syrup, a Schedule V Controlled Substance, without a prescription from a practitioner to the same individual within a 48 hour period and, that the same individual had also been sold 4 ounces of a Schedule V codeine based cough syrup 13 times within 33 days, averaging one purchase every 2.5 days.

b. There were at least 29 customers to whom Lignell Rexall Drug had made multiple sales of 4 ounce bottles of Schedule V controlled substances without a prescription ranging in number from 5 to 42 times per customer and averaging from every 3 days to every 14 days.

c. In numerous instances, required record entries of addresses for purchasers of Schedule V controlled substances were incomplete.

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

8. Respondents hereby represent that since July 3, 1990, Respondents have voluntarily ceased nonprescription dispensing of Schedule V controlled substances.

CONCLUSIONS OF LAW

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

2. That by engaging in the conduct described in the Findings of Fact, Lignell Rexall Drug, and Clifford R. Beauto, R.Ph., individually and as owner and managing pharmacist of Lignell Rexall Drug, violated secs. 161.23(1), (4) and (5), Wis. Stats. and Title 21, Code of Federal Regulations, sec. 1306.32(b) and (e), in that as a pattern of practice, each Respondent failed to insure and determine that Schedule V controlled substances were dispensed and sold in good faith as a medicine and in conformity with the law, and such conduct constitutes unprofessional conduct under sec. 450.10(1)(a)2, Wis. Stats., and sec. Phar 10.03(3), Wis. Adm. Code and, therefore subjects each of the Respondents to discipline pursuant to sec. 450.10(1)(b) and (2), Wis. Stats.

THEREFORE, IT IS HEREBY ORDERED:

1. The Stipulation of the parties is hereby accepted.

2. The pharmacy license of Lignell Rexall Drug shall be LIMITED for a period of THREE YEARS such that Lignell Rexall Drugs shall not dispense any Schedule V controlled substance without a valid prescription from a practitioner. In reliance upon the representation of Respondents in the Findings of Fact that Respondents voluntarily ceased nonprescription dispensing of Schedule V controlled substances on July 3, 1990 and through the present, the limitation under this paragraph shall retroactively commence July 3, 1990. This retroactive effective date of the limitation under this paragraph is conditioned upon Respondents demonstrating to the satisfaction of the Board cessation of nonprescription dispensing of Schedule v controlled substances as of July 3, 1990 by providing the following information:

A. Respondents shall provide to the Board within 60 days of the date of this Order a copy of the Schedule V dispensing log for Lignell Rexall Drug for the period from January 1, 1990 to the present, and

B. Respondents shall provide for all of the drug suppliers for Lignell Rexall Drug during the period of January 1, 1990 to the present to send to the Board within 60 days of the date of this Order a report of all Schedule V controlled substances supplied to Lignell Rexall Drug.

3. The pharmacist license of Clifford R. Beauto, R.Ph., shall be LIMITED for a period of THREE YEARS such that Mr. Beauto shall not dispense any Schedule V controlled substance without a valid prescription from a practitioner. In reliance upon the representation of Respondents in the Findings of Fact that Respondents voluntarily ceased nonprescription dispensing of Schedule V controlled substances on July 3, 1990 and through the present, the limitation under this paragraph shall retroactively commence July 3, 1990. The retroactive effective date of the limitation under this paragraph shall be subject to the conditions stated in paragraph 2 of this Order.

4. Lignell Rexall Drug, and Clifford R. Beauto, R.Ph. as legal and constructive owner of Lignell Rexall Drug, jointly and severally, are hereby assessed costs pursuant to sec. 440.22, Wis. Stats. in the amount of \$1339.33, which costs shall be paid to the Department of Regulation and Licensing upon adoption of this Stipulation and Order by the Pharmacy Examining Board.

5. Violation of any of the terms of this Order or representations herein by Lignell Rexall Drug and/or Clifford R. Beauto, R.Ph. may result in additional or independent disciplinary action, including summary suspension or suspension or revocation of license.

Wisconsin Pharmacy Examining Board

by:

Thomas M. Grogan
Member of the Pharmacy Examining Board
March 12, 1992

I, Clifford R. Beauto, R.Ph., personally and as owner and agent of Lignell Rexall Drug, have read and understand the terms of the foregoing Order, and pursuant to the attached Stipulation hereby freely consent to the issuance of the foregoing Final Decision and Order Adopting Stipulation by the Wisconsin Pharmacy Examining Board.

3/2/92
Date

Clifford R. Beauto
Clifford R. Beauto, R.Ph., personally
and as owner and agent of Lignell
Rexall Drug.

3/2/92
Date

David M. Weiby
David M. Weiby, Attorney for
Respondents

RTG:eaj
ATY-1045
2/28/92

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
LIGNELL REXALL DRUG, and	:	86 PHM 38
CLIFFORD R. BEAUTO, R.Ph.	:	
RESPONDENTS.	:	

It is hereby stipulated between Lignell Rexall Drug, by its owner and agent, Clifford R. Beauto, R.Ph., personally on his own behalf, and their attorney, David M. Weiby, 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 pharmacist as applicable, in the State of Wisconsin, investigative file #86 PHM 38. Each Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

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

3. Each of Lignell Rexall Drug, Respondent, and Clifford R. Beauto, R.Ph., Respondent, individually and as legal and constructive owner of Lignell Rexall Drug, admits the facts and conduct described in the attached Findings of Fact and each agrees to the adoption, entry and issuance of the attached Findings of Fact, Conclusions of Law and Order Adopting Stipulation by the Pharmacy Examining Board, and agree to pay to the Department of Regulation and Licensing costs of this matter pursuant to 440.22 Wis. Stats. in the amount of \$1,339.33, payment of which costs are hereby tendered with this proposed Stipulation and Order.

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

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

6. This Stipulation and the attached Final Decision and Order 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, sec. 1306.32, after February 3, 1988.

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

3/2/92
Date

Lignell Rexall Drug, Respondent, by

Clifford R. Beauto
Clifford R. Beauto, R.Ph.,
owner and agent

3/2/92
Date

Clifford R. Beauto
Clifford R. Beauto, R.Ph., Respondent

3/2/92
Date

David M. Weiby
David M. Weiby, Attorney for
Respondents

March 10, 1992
Date

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

March 12, 1992
Date

Wisconsin Pharmacy Examining Board, by
Thomas M. Sengul
A member of the Board

RTG:eaj
ATY-1047
6/29/90

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 March 13, 1992.