

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

EDWARD D. CARR, R.PH., and
BERG'S PHARMACY
RESPONDENTS

88 PHM 52

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

Edward D. Carr, R.Ph.
2315 Adams
La Crosse, WI 54601

Berg's Pharmacy
1225-27 Caledonia Street
La Crosse, WI 54601

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

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

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

FINDINGS OF FACT

1. Respondent is Edward D. Carr, (dob 6/17/36), and was at all times material to this complaint licensed as a Registered Pharmacist in the state of Wisconsin with license number 6869. Respondent Berg's Pharmacy is and was at all times material to this complaint licensed as a pharmacy establishment in the state of Wisconsin with license number 5719. At all times material to this complaint, respondent Carr was the managing pharmacist of

respondent Berg's Pharmacy, and owned 100% of the stock in the M.J. Berg La Crosse Pharmacy, Inc. corporation, which owned and operated Berg's Pharmacy. Respondent was disciplined by the board on February 11, 1987 for medicaid fraud, in file # 84 PHM 43.

2. On April 30 and May 1, June 8 and 9, June 13 and 14, June 19 and 20, June 26 and 27, June 30 and July 1, July 3, 4, and 5, July 18 and 19, August 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, August 31 and September 1, 2 and 3, 1986, respondent sold 4 ounce bottles of Schedule V codeine-containing substance to Pat V., without a prescription.

3. On and between October 5, 1985 and June 4, 1988, respondent sold 208 bottles of Schedule V codeine-containing substance to the Pat V. referred to above (of which 163 bottles were sold in a 15 month period between October 5, 1985 and December 31, 1986) without a prescription and not for a valid medical purpose or in good faith.

4. On December 7 and 8, and December 29 and 30, 1986, respondent sold 4 ounce bottles of Schedule V codeine-containing substance to Jill T., without a prescription and within a 48 hour period.

5. On and between April 13, 1986 and June 3, 1988, respondent sold 98 bottles of Schedule V codeine-containing substance to the same Jill T. referred to above (of which 69 were sold in an 8 month period between April 13 and December 31, 1986), without a prescription and not for a valid medical purpose or in good faith.

6. On December 24, 1986, respondent sold two 4 ounce bottles of Schedule V codeine-containing substance to Willard B., without a prescription and within a 48 hour period.

7. On and between November 26, 1985 and December 28, 1987, respondent sold 103 bottles of Schedule V codeine-containing substance to the same Willard B. referred to above (including 72 bottles in a 13 month period between November 26 1985 and December 30, 1986), without a prescription and not for a valid medical purpose or in good faith.

8. On January 24 and 25, 1987, respondent sold two 4 ounce bottles of Schedule V codeine-containing substance to Mike B., without a prescription and within a 48 hour period.

9. On and between July 7, 1986 and December 14, 1987, respondent sold 37 bottles of Schedule V codeine-containing substance to the same Mike B. referred to above, without a prescription and not for a valid medical purpose or in good faith.

10. On and between October 7, 1985 and May 23, 1988, respondent sold 99 bottles of Schedule V codeine-containing substance to Dean K. (of which 68 were sold in a 6 month period between September 15, 1986 and March 9, 1986), without a prescription and not for a valid medical purpose or in good faith.

11. On December 7 and 8 and December 28 and 29, 1986, respondent sold 4 ounce bottles of Schedule V codeine-containing substance to the same Dean K. referred to above, without a prescription and within a 48 hour period.

Final Order

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12. On and between February 18, 1986 and March 11, 1987, respondent sold 122 bottles of Schedule V codeine-containing substance to Michael Du., without a prescription and not for a valid medical purpose or in good faith.
13. On and between July 7, 1986 and February 12, 1987, respondent sold 27 bottles of Schedule V codeine-containing substance to "Mrs. R.W.Du.," of the same address as the Michael Du. referred to above, without a prescription and not for a valid medical purpose or in good faith.
14. On and between June 6, 1986 to January 31, 1987, respondent sold 43 bottles of Schedule V codeine-containing substance to Michael Do., without a prescription and not for a valid medical purpose or in good faith.
15. On August 8 (twice on this day), August 18 and 19, August 27 (twice on this day), August 28, and September 6 and 7, 1986, respondent sold 4 ounce bottles of Schedule V codeine-containing substance to the same Michael Do. referred to above, without a prescription.
16. On and between October 11, 1985 and March 8, 1987, respondent sold 162 bottles of Schedule V codeine-containing substance to Peggy A., without a prescription and not for a valid medical purpose or in good faith.
17. On and between September 24 and December 31, 1986, respondent sold 31 bottles of Schedule V codeine-containing substance to Scott D., without a prescription and not for a valid medical purpose or in good faith.
18. On July 11 and 12, 1986, respondent sold 4 ounce bottles of Schedule V codeine-containing substance to Jeanne S., without a prescription and within a 48 hour period.

CONCLUSIONS OF LAW

19. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to § 450.10(1), Wis. Stats.
20. The Board is authorized to enter into the attached Stipulation pursuant to § 227.44(5), Wis. Stats.
21. The conduct described in paragraphs 2-18, above, violated one or more of the following: §§161.23(2) and (5) and 161.38(4), Wis. Stats., 21 CFR §1306.23(b), and § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that the licenses of both respondents are limited in the following respect: neither shall dispense any Schedule V controlled substance to any person without a valid prescription, effective the date of this order.

IT IS FURTHER ORDERED, that respondents shall jointly and severally pay a civil forfeiture in the amount of \$12,600 within 60 days of this Order. The forfeiture is assessed as \$3300 for the 48 hour violations and \$9600 for the repeated sales to probable abusers.

IT IS FURTHER ORDERED, that respondents shall jointly and severally pay the costs of the investigation and prosecution of this matter, in the amount of \$1200, within 30 days of this order.

Dated this 13th day of October, 1992.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas A. M. Grogan
a member of the Board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
EDWARD D. CARR, R.PH., and	:	
BERG'S PHARMACY	:	
RESPONDENTS	:	88 PHM 52
	:	

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

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

2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses 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. By entering to this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.

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

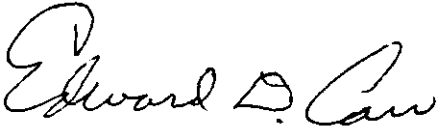
7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

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

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

Berg's Pharmacy, by:



Edward D. Carr, Managing Pharmacist

9/8/92
Date



Edward D. Carr, individually

9/8/92
Date



Prosecuting Attorney
Division of Enforcement

9/14/92
Date

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 October 14, 1992.