

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
89 PHM 71

JAMES T. FARRELL, R.Ph.
ROBERT U. WILDENBERG, R.Ph.
RESPONDENTS

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

James T. Farrell, R.Ph.
1263 Graham Avenue
Eau Claire, WI 54701

Robert U. Wildenberg, R.Ph.
3654 Sharon Drive
Eau Claire, WI 54701

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 James T. Farrell (dob 3/15/44) is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license #7845.
2. Respondent Robert U. Wildenberg (dob 8/25/47) is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license #8270.
3. Respondents each owned a 50% share of Badger Pharmacy, Inc., a licensed community pharmacy in Chippewa Falls, Wisconsin. On or about April 1, 1990, respondents sold Badger Pharmacy, Inc., to Group Health Cooperative of Eau Claire. The sale agreement provides that the business assets, including the goodwill, were transferred, but makes no provision for who owns or is responsible for preserving the records of Badger Pharmacy, Inc., pursuant to § Phar 7.05(1), Wis. Adm. Code. At some time in 1992, all original records of a group of prescriptions which were less than five years old, were lost or destroyed by the buyer.

CONCLUSIONS OF LAW

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

5. The conduct described in paragraph 3, above, violated §450.11(2), Wis. Stats., and § Phar 7.05(1), Wis. Adm. Code, in that without a specific assumption of the duty to preserve records by the buyer, the original licensee continues to be responsible for the records accumulated under that license.

ORDER

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

IT IS FURTHER ORDERED, that James T. Farrell, R.Ph., is REPRIMANDED for his conduct in this matter.

IT IS FURTHER ORDERED, that Robert U. Wildenberg, R.Ph., is REPRIMANDED for his conduct in this matter.

IT IS FURTHER ORDERED, that each respondent shall separately pay costs in this matter in the amount of \$500 (each, for a total of \$1,000), within 30 days of this order.

Dated this 11 day of May, 1993.

WISCONSIN PHARMACY EXAMINING BOARD

by: Charles H. Henkel, R.Ph.
a member of the board

ATY2-3865

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

STIPULATION

JAMES T. FARRELL, R.PH. :
ROBERT U. WILDENBERG, R.PH. :
RESPONDENTS :

89 PHM 71

It is hereby stipulated between each above Respondent 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 Respondents by the Division of Enforcement. Each respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.

2. Each Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Each Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Each Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Each Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

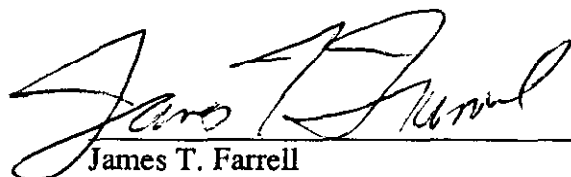
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation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

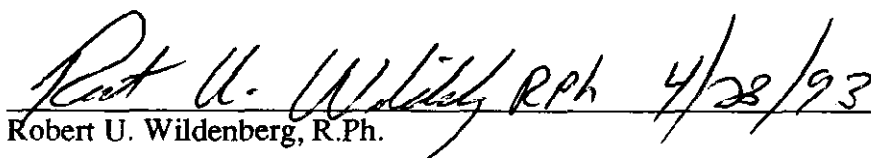
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of either Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

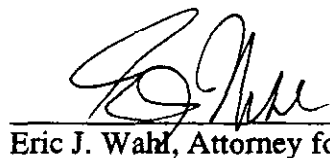
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

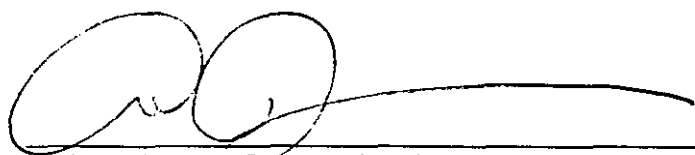
8. The Division of Enforcement joins Respondents in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Each Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

 4/28/93
James T. Farrell Date

 4/28/93
Robert U. Wildenberg, R.Ph. Date

 4-28-93
Eric J. Wahl, Attorney for Respondents Date

 4/29/93
Arthur Thexton, Prosecuting Attorney
Division of Enforcement Date

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
th 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 MAY 14, 1993.