

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
OZAUKEE APOTHECARY, INC., and,	:	91 PHM 037 and 91 PHM 054
ARTHUR G. SUELFLOW, R.Ph.,	:	
RESPONDENTS	:	

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

Ozaukee Apothecary, Inc.
250 Oak Street
Grafton, WI 53024

Arthur G. Suelflow, R.Ph.
167 Lake Drive
Random Lake, WI 53075

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. Arthur G. Suelflow (D.O.B. 3/17/44) is duly licensed in the state of Wisconsin as a pharmacist (license #7999). This license was first granted on April 3, 1970.
2. Mr. Suelflow's latest address on file with the Department of Regulation and Licensing is 167 Lake Drive, Random Lake, WI 53075.
3. Ozaukee Apothecary, Inc. is duly licensed in the state of

Wisconsin as a pharmacy (license # 5799). This license was first granted February 7, 1977. At all times relevant to this action, Arthur G. Suelflow was the managing pharmacist of Ozaukee Apothecary, Inc. The latest address of the pharmacy on file with the Department of Regulation and Licensing is 250 Oak Street, Grafton, WI 53024.

4. An audit conducted by the Division of Enforcement at the Respondent pharmacy on May 9, 1991 revealed the following:

a. Schedule II controlled substance prescription orders were missing patient addresses;

b. Schedule II controlled substance prescription orders were not maintained in chronological order;

c. DEA form 222 s were not maintained in order;

d. The pharmacy failed to maintain a biennial inventory of controlled substances for 1990 on hand for review;

e. The pharmacy dispensed to one individual 75 bottles of schedule V cough syrup during the period 10/17/90 to 4/22/91.

5. A physician treating patient RM issued two written prescription orders for Nicolette gum (192 each). The prescription orders were dated 4/15/89 and 9/8/89. Respondents refilled the prescription for Nicolette gum 26 times.

6. In addition to the Nicolette gum dispensed pursuant to the prescription orders Respondents dispensed prescriptions for Nicolette gum on 67 additional occasions without a record of a prescription order.

7. The prescriber recollected that he had given verbal authorization to renew the written prescription order "several times", but he had made no notation on the record of patient RM.

8. Respondents billed all of the Nicolette gum dispensed to patient RM to Samaritan Health Plan, and received payment therefore. Following an audit and demand by the HMO, Respondents reimbursed the HMO the sum of \$ 2,800.00 for billings which were not documented in pharmacy records.

CONCLUSIONS OF LAW

The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to Wis. Stats. sec. 450.10(1).

The Board is authorized to enter into the attached stipulation pursuant

to Wis. Stats. sec. 227.44(5).

By the conduct described above, Respondents are subject to disciplinary action against their license to practice pharmacy in the state of Wisconsin, pursuant to Wis. Stats. sec. 161.23(1), 450.10(1)(a)2, 450.11(1) and 21 USC 827(a); and Wis. Adm. Code sec. Phar 7.05(1), 8.02(2), 8.03(1), 8.05(1), 10.03(1) and 10.03(13).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached stipulation is accepted.
2. Ozaukee Apothecary, Inc. and Arthur G. Suelflow, R.Ph. are each REPRIMANDED for their unprofessional conduct in this matter.
3. Arthur G. Suelflow shall, within six months next following the date of this Order, successfully complete and pass both the Federal Drug Law Examination and the Wisconsin Pharmacy Jurisprudence Examination. All examination results shall be reported directly to the Board. If the Respondent fails to pass both exams within the time period set forth, his license shall, without further action of the Board be LIMITED in that Respondent shall not act as the managing pharmacist of any pharmacy until he has passed both the Federal Drug Law Examination and the Wisconsin Pharmacy Jurisprudence Examination. Upon proof of passing both examinations, the staff of the Department shall notify Respondent, and the limitation shall be removed without further formal action by the Board.
4. Respondents shall each pay a civil forfeiture in the sum of \$ 5,000.00 to the Department of Regulation and Licensing within twenty (20) days of the date of this Order.
5. Respondents shall pay the costs of investigation and prosecution of this matter in the sum of \$ 500.00 to the Department of Regulation and Licensing within sixty (60) days of the date of this Order.

WISCONSIN PHARMACY EXAMINING BOARD

By: 

Chair

Date 3/30/94

jwh

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
OZAUKEE APOTHECARY, INC., and,	:	91 PHM 037 and 91 PHM 054
ARTHUR G. SUELFLOW, R.Ph.,	:	
RESPONDENTS	:	

It is hereby stipulated between Ozaukee Apothecary, Inc., by its duly authorized representative, and Arthur G. Suelflow, personally on his own behalf and James W. Harris, 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 Respondents' licensure by the Division of Enforcement. Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time 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 them; the right to call witnesses on their 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 rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondents are aware of their right to seek legal representation and have been provided the opportunity to seek legal advice prior to signing this stipulation.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Pharmacy Examining Board. 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. Respondents waive 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, 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 to this stipulation agree that the attorney for the Division of Enforcement may appear before the Pharmacy Examining Board for the purpose of speaking in support of this agreement and answering questions that members of the Board may have in connection with their deliberation.

7. The Division of Enforcement joins Respondents in recommending that the Pharmacy Examining Board adopt this stipulation and issue the attached Order.

Arthur G. Suelflow
Ozaukee Apothecary, Inc. by:

3-9-94
Date

Arthur G. Suelflow
Arthur G. Suelflow

3-9-94
Date

James W. Harris
James W. Harris, Attorney
Division of Enforcement

March 14, 1994
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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

MARCH 31, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)