

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

OSCO DRUG #1325
RESPONDENT.

95 PHM 79

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

Oscos Drug #1325
3567 W. Howell Ave.
Milwaukee, WI 53207

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 Oscos Drug #1325 is licensed as a community pharmacy in the State of Wisconsin pursuant to license #7484, originally granted on 9/15/95.

2. On or about 9/12/95, as part of the application process for Oscos Drug #1325, respondent submitted a "Pharmacy Self-Inspection Report" to the Pharmacy Examining Board. This report is a required part of the application process, and respondent's managing pharmacist signed an affidavit before a Notary Public that all statements contained in the Report were "strictly true in every respect."

3. Included in the Pharmacy Self-Inspection Report are the following printed statements, each of which was indicated by a mark hand-placed by respondent's agent as being true:

"The professional service area has at least the following equipment:

"6.06(1)(j) Latest available revision of federal and state pharmacy laws consisting of: 1. DEA Regulations, 21 CFR 1300 to end. 2. Wisconsin Pharmacy Laws (Ch.450 Statutes). 3. Wisconsin Controlled Substances Act (Ch.161 Statutes). 4. Wisconsin Administrative Code (Rules of the Pharmacy Examining Board).

"6.06(1)(L) Telephone number of a poison center (conspicuously posted in the prescription department)."

4. On 11/10/95, Osco Drug #1325 was inspected by department staff. At that time, respondents did not have any copy of the state or federal regulations referred to in ¶4, above, either current or out-of-date, on the premises.

5. On 11/10/95, department staff observed a subordinate pharmacist to permit unlicensed persons transfer prescribed medications or devices to several patients, without a consultation by a pharmacist.

6. On 11/10/95, department staff observed that the Schedule V Register was not readily available to the pharmacist on duty, and when it was found it was noted that respondent's managing pharmacist had recorded an entry of a sale which respondent had failed to date.

7. On 11/10/95, department staff observed that a controlled substance prescription for acetaminophen #3 was filed with the non-controlled prescription records, but did not have a red "C" stamped upon it.

8. On 1/11/96, department staff reinspected Osco Drug #1325, and observed that none of the state and federal regulations described in ¶4, above, were present on the premises, and that there was no number of a poison center posted. The pharmacist on duty apparently did not know that the center number was in a card file near the telephone. The Schedule V Register was not readily available to the pharmacist on duty.

9. Respondent assures the Board that on the date of the self-inspection, the required statutes and regulations were on the premises, but were inadvertently removed by former staff after that date and had not been replaced at the time of the inspections. Since the above violations were noted, respondents have ordered and received the state statutes and regulations, and posted the number of a poison center. The deficiencies were noted when only a small number of the self-inspection items were spot-checked by department staff.

CONCLUSIONS OF LAW

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

11. The conduct described in ¶3, above, violated §450.10(1)(a)1., Wis. Stats., and § Phar 10.03(8), Wis. Adm. Code. The conduct described in ¶¶4 and 8, above, violated § Phar 6.06(1)(j) and (L), Wis. Adm. Code. The conduct described in ¶5 above, violated § Phar 7.01(1)(e), Wis. Adm. Code. Each and every patient (or patient's agent) must receive a face-to-face consultation from a registered pharmacist (or supervised intern) at the time a prescribed drug or device is transferred to the patient in the pharmacy, whether the prescription is new or a refilled or renewed prescription. This duty is non-delegable and is not satisfied by having auxiliary staff ask if the patient has questions. The conduct described in ¶6, above, violated §161.23 and §450.10(1)(a)2., Wis. Stats., and 21 CFR §1306.32(e). The conduct described in ¶7, above, violated § Phar 8.03(2), Wis. Adm. Code, and 21 CFR §1304.04(h)(2). 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 license to be a community pharmacy of Osco Drug #1325 is LIMITED effective immediately in that, within 45 days of this Order, respondent's corporate owner shall provide the following:

- The certification of a Wisconsin licensed Registered Pharmacist, who has practiced community pharmacy for more than 10,000 hours in Wisconsin as a managing pharmacist, and who has been approved in advance by the Board. The certification shall state that he or she has personally inspected Osco Drug #1325 in the company of the managing pharmacist and all full-time pharmacists, and that the pharmacy appears to be in compliance with the rules and regulations of the Board, and state and federal laws related to the practice of pharmacy.
- The certification (in a form acceptable to the Board) that respondent's corporate owner has undertaken to require all of its Wisconsin licensees of the requirements of the consultation rule and the importance of maintaining the minimum standards set forth in the Wisconsin Statutes and the rules of the Board. have been received and approved, staff may reissue the license of the pharmacy without further action by the Board. All expenses of compliance with this paragraph shall be born by respondent Osco Drug.

IT IS FURTHER ORDERED, that respondent Osco Drug #1325 shall FORFEIT \$500, to be paid within 30 days of this Order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$600, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that either respondent has violated any term of this Final Decision and Order, the Board may order that the license of that respondent be summarily suspended pending investigation of the alleged violation.

Dated this 17 day of MAY, 1996.

WISCONSIN PHARMACY EXAMINING BOARD

by: George J. Christensen
a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

OSCO DRUG #1325,
RESPONDENT.

STIPULATION

95 PHM 79

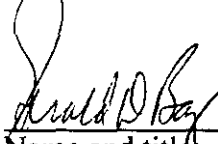
It is hereby stipulated between each above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:


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 agreement and without the issuance of a formal complaint.
2. 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. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.
4. 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. 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 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 views of the case acquired during the investigation.

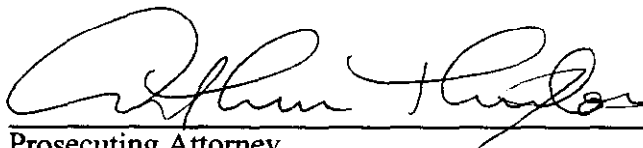
8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. 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.

OSCO DRUG # 1325, by:


Name and title: VP of Pharmaceutical Sales Date 4/26/96
GERALD D BAY, Vice President for


Larry Anderson, Attorney for Osco Drug Date 4/25/96


Prosecuting Attorney Date 4/30/96
Division of Enforcement

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:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

May 17, 1996

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.)