

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

HORIZON PHARMACY--TOMAH.
RESPONDENT.

96 PHM 47

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

Horizon Pharmacy
1009 Superior Street
Tomah, WI 54660

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 Horizon Pharmacy is and was at all times relevant to the facts set forth herein a community pharmacy licensed in the State of Wisconsin pursuant to license #7558, originally granted on 7/8/96. Horizon Pharmacy is owned by Horizon Pharmacies, Inc., of Texas, and corporate personnel were in the pharmacy when the below observations were made.
2. On August 9, 1996, an investigator observed an unlicensed person transfer prescribed a drug or device to a patient, without a consultation by a licensed pharmacist.
3. On August 9, 1996, an investigator observed the pharmacy to be operating without sufficient counter space, without a mortar and pestle and funnel in the professional area (they were ultimately discovered to be in the basement), and with dirty graduate cylinders. The pharmacy had submitted a self-inspection form on July 3, 1996, showing that it was in compliance with the Board's requirements in each of these respects.

CONCLUSIONS OF LAW

4. 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.

5. The conduct described in paragraph 2. above, violated § Phar 7.01(1)(e), Wis. Adm. Code. The conduct described in paragraph 3. above, violated §§450.09(4) and 450.10(1)(a)1., Wis. Stats., and §§ Phar 6.04 (2), 6.06(1)(e) and (g), and 10.03(8), 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 Horizon Pharmacy, of Tomah, Wisconsin, is REPRIMANDED for its unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$1,000, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter, in the amount \$1000, 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 respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 11th day of February, 1996.

WISCONSIN PHARMACY EXAMINING BOARD

Cynthia Sinner RPL
a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

HORIZON PHARMACY--TOMAH.
RESPONDENT.

STIPULATION
96 PHM 47

It is hereby stipulated between the above Respondent, the trade name for Horizon Pharmacies, Inc., 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 been provided the opportunity to seek 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 *Report of Decisions* 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.

HORIZON PHARMACIES, INC., by:

Ricky D. McCord - President 1-13-97
Name and title: Ricky D. McCord - President Date

Anthony Thexton 1/23/97
Prosecuting Attorney Date
Division of Enforcement

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On February 11, 1997, the Pharmacy Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$1,000.00 Case #: 96PHM47

The amount of the forfeiture is: \$1,000.00 Case # 96PHM47

Please submit a check or a money order in the amount of \$ 2,000.00

The costs and/or forfeitures are due: March 13, 1997

NAME: Horizon Pharmacy LICENSE NUMBER: 7558

STREET ADDRESS: 1009 Superior Street

CITY: Tomah STATE: WI ZIP CODE: 54660

Check whether the payment is for costs or for a forfeiture or both:

X COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

INDIVIDUAL X ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:
See payment plan above.

For Receipting Use Only

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935**

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Horizon Pharmacy - Tomah,

AFFIDAVIT OF MAILING

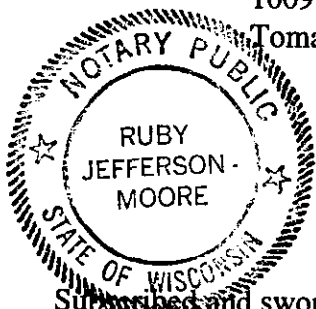
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On February 12, 1997, I served the Final Decision and Order dated February 11, 1997 upon the Respondent Horizon Pharmacy - Tomah by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 377 314.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Horizon Pharmacy - Tomah
1009 Superior Street
Tomah WI 54660



Subscribed and sworn to before me

this 12th day of February, 1997.

Ruby Jefferson-Moore

Notary Public, State of Wisconsin
My commission is permanent.

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

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:

February 12, 1997

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.)