

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

MOORE MEDICAL CORP.,
RESPONDENT.

97 PHM 40
LS 9802101 PHM

The parties to this action for the purposes of §227 53, Wis. Stats., are:

Moore Medical Corp.
389 John Downey Dr.
New Britain CT 06050-1500

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 Moore Medical Corp., is and was at all times relevant to the facts set forth herein a licensed distributor of prescription drugs, licensed in the State of Wisconsin pursuant to license #237, originally granted on 1/15/86, with other locations licensed pursuant to licenses #369 (Lemont, IL), #768 (Visalia, CA), and #769 (Jacksonville, FL).

2. Respondent did, on or about October 25, 1990, receive an authorization by a licensed Wisconsin physician purportedly to permit the Elroy Area Fire & Ambulance Association to purchase prescription drugs for the use of licensed ambulance attendants (EMT's) for patients. Based upon this document, respondent made the following prescription drug sales (among others for non-prescription items) to the Association:

12/27/90	Niacin 250mg TR.
5/6/91	Silvadene Cream.
2/14/92	Tetracycline 500mg, Erythromycin 400mg.
6/4/92	Amoxicillin 500mg, Amoxicillin 205 mg, Tetracycline 500mg, Erythromycin 250mg.
4/28/93	Vitamin E 1000 IU.
7/26/93	Nizoral 2% cream.
11/11/93	Triamcin ACET 0.1% cream, Poly Vi Flor 0.5mg.
1/18/94	Penicillin VK 500mg, Amoxicillin 250mg.

2/3/94 Amoxicillin 500mg, Amoxicillin 250mg, Penicillin VK 500mg,
Medroxyprogesterone 10mg.
2/4/94 Erythromycin 400mg.
2/15/94 Habitrol 21mg, Habitrol 14mg.
12/13/94 Sulfacetamid SOC 10% Ophthalmic solution, Tobrex solution, Penicillin
VK 500mg, Amoxicillin.
1/23/95 Amoxicillin 500mg, Neo/Poly/Baci/HC ophthalmic ointment, Triamcin
ACET 0.1% ointment, Nizoral 2% cream, Penicillin VK 500mg, and multi-
vitamins with fluoride.
1/24/95 Premarin 0.625mg.

3. In fact, a drug distributor is not authorized to sell prescription drugs to an ambulance association under any circumstances, with or without a practitioner's authorization. Additionally, it should have been obvious to respondent that many of the items purchased were not legitimate purchases for an ambulance service.

4. Respondent stated in writing that it permits, as a matter of policy, purchases by non-licensed practitioners as long as there is a signed authorization by a licensed practitioner.

5. Since this matter came to the Board's attention, respondent has changed its policies and now assures the Board that it will ship only to a licensed practitioner or other person authorized by law to receive prescription drugs or devices.

CONCLUSIONS OF LAW

A. 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.

B. An ambulance association is not any of the persons or entities listed in §450.07(3), Wis. Stats., and thus is not a legitimate purchaser of prescription items from a distributor. The policy enumerated in par. 4, above, is not permitted by Wisconsin law.

C. The conduct described in paragraphs 2-4, above, violated §§450.07(3) and 450.10(1)(a)2., Wis. Stats., and §§ Phar 13.17(1) and (2), 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.

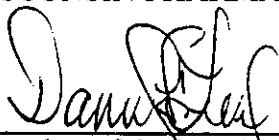
IT IS FURTHER ORDERED, that Moore Medical Corp., respondent, shall FORFEIT \$250 for each sale made to the Elroy Ambulance Association, for a total of \$3,500, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay all the COSTS in this matter in the amount of \$300, 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 February 10, 1998,

WISCONSIN PHARMACY EXAMINING BOARD, by:



a member of the board

akt

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

MOORE MEDICAL CORP., :
RESPONDENT. :

STIPULATION
97 PHM 40

It is hereby stipulated between the 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 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.

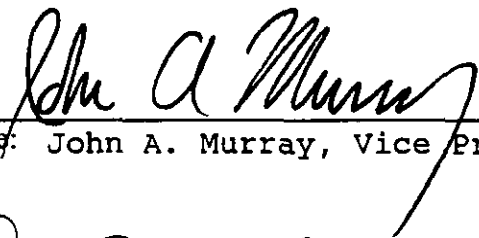
7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

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 stipulates that there is an adequate factual basis for the discipline imposed herein, and respondent agrees not to claim in any forum that the discipline imposed was not justified by the Findings of Fact stated.

10. 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. Other reporting as required by law will occur. This is standard department procedure and in no way specially directed at Respondent.

Moore Medical Corp., by:



Name and title: John A. Murray, Vice President

Date January 24, 1998



Prosecuting Attorney
Division of Enforcement

2/3/98
Date

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 10, 1998, 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: \$300.00 Case #: LS9802101PHM

The amount of the forfeiture is: \$3,500.00 Case # LS9802101PHM

Please submit a check or a money order in the amount of \$ \$3,800.00

The costs and/or forfeitures are due: March 12, 1998

NAME: Moore Medical Corp. LICENSE NUMBER: 237 (369, 768, 769)

STREET ADDRESS: 389 John Downey Drive

CITY: New Britain STATE: CT ZIP CODE: 06050-1500

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

COSTS FORFEITURE

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

INDIVIDUAL ESTABLISHMENT

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

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.

G\BDLS\FM2145.DOC

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

In the Matter of Disciplinary Proceedings Against

Moore Medical Corp.,

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, 1998, I served the Final Decision and Order dated February 10, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9802101PHM, upon the Respondent Moore Medical Corp. by enclosing true and accurate copies of the above-described documents 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 221 158 342.

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:

Moore Medical Corp.
389 John Downey Drive
New Britain CT 06050-1500

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 12th day of February, 1998.

John Schweitzer
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MOORE MEDICAL CORP

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 2/12/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935