

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION INVOLVING

SUBURBAN VIDEO, INC., DBA	
SUPERB VIDEO, DANIEL LEE BISHOP,	ADMINISTRATIVE INJUNCTION
MARK CHARLES PHILLIPS,	LS9707111RAL
CITY NEWS & NOVELTY, INC.	LS9707121RAL
RESPONDENTS.	96 PHM 25

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

Suburban Video, Inc., dba Superb Video
6005 120th Ave
Kenosha, WI 53142

City News & Novelty, Inc.
245 W. Main St.
Waukesha, WI 53186

Daniel Lee Bishop
17235 Two Mile Rd.
Franksville, WI 53126

Mark Charles Phillips
1605 Fireside Dr.
Racine, WI 53402

Department of Regulation and Licensing
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 Secretary. The Secretary has reviewed the Stipulation and considers it acceptable.

Accordingly, the Secretary adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondents Suburban Video, Inc., and City News & Novelty, Inc., are businesses regularly engaged in the retail sale of adult merchandise. Respondent Bishop is the owner of these and other similar businesses in Wisconsin. Respondent Phillips is an employee of Bishop and is general manager of DLB Purchasing Co., which stocks and distributes these and other items to Bishop's retail stores and is also owned by respondent Bishop.
2. Throughout 1996-98, respondents were regularly engaged in the wholesale distribution and retail sale of small cartridges of a compressed gaseous substance known as nitrous oxide. Nitrous oxide is commonly used in the food industry as a food additive, in particular to make whipped cream when placed in a sealed container under pressure with whipping cream, and shaken. Nitrous oxide is also used in industrial manufacturing. Nitrous oxide also has mood altering effects upon human beings when inhaled, and is used in dentistry in conjunction with analgesics, in the form of a gas inhaled by a patient.
3. When intended for use in human beings as other than a food additive, nitrous oxide is a "drug" within the meaning of § 450.01(10), Stats., and is a "prescription drug" within the meaning of § 450.01(20), Stats.
4. During 1996-98, respondents did not sell nitrous oxide for legitimate industrial or manufacturing use.
5. At no time has any respondent been licensed by the Pharmacy Examining Board as a distributor, under ch. 450, Stats., nor does any respondent employ any person licensed as a pharmacist or other health care practitioner licensed to prescribe prescription drugs or to dispense such drugs.
6. During 1996-98, respondents' employees sold nitrous oxide to a number of consumers under circumstances such that one reasonable inference is that the purchasers intended to inhale the contents and not to use the contents for making whipped cream or for any other legitimate use. Respondents deny any such intent.
7. Since the Petition in this matter was filed, the legislature has passed and the governor has signed 1997 Wisconsin Act 336, which regulates the sale of nitrous oxide.

CONCLUSION OF LAW

The department is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats., and has authority to issue this Administrative Injunction as a special order under § 440.21, Wis. Stats., and ch. RL 3, Wis. Adm. Code.

ORDER

IT IS ORDERED, that each and every above-named respondent is ENJOINED AND PROHIBITED from the sale or delivery of nitrous oxide, personally or through employees, agents (including business entities owned or controlled by any of them), and contractors, when such sale violates § 134.63 or § 941.315, Wis. Stats., as created by 1997 Act 336; and from doing any act which may constitute the sale or delivery of a prescription drug or controlled substance, unless and until properly credentialed to do so.

Violation of this special order may result in a **forfeiture** of up to \$10,000 for each day of violation, § 440.21(4)(a), Wis. Stats.

Issued at Madison, Wisconsin this: 10th day of February, 2000

s/ Marlene A. Cummings, Secretary

February 25, 2000

Department of Regulation & Licensing