

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST:

WALLACE L. SIMONS, R.Ph.,	ORDER DENYING PETITION
CAROL L. PETERSEN, R.Ph., and	FOR REHEARING
WOMEN'S INTERNATIONAL PHARMACY, INC.,	
RESPONDENTS	LS9806121PHM

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats., and Wis. Adm. Code section RL 2.037, and for purposes of review under sec. 227.53, Wis. Stats., are:

Disciplinary Authority:

Pharmacy Examining Board
1400 East Washington Ave.
Madison, WI 53703

The board and the division are represented by:

Attorney Arthur Thexton
Division of Enforcement
Department of Regulation and Licensing
1400 E. Washington Ave.
Madison, WI 53703

Complainant:

Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondents:

Wallace L. Simons, R.Ph.
5852 East Dalea Drive
P.O. Box 2125
Carefree, AZ 85377

Carol L. Petersen, R.Ph.

5708 Monona Drive

Madison, WI 53716

Women's International Pharmacy, Inc.

5708 Monona Drive

Madison, WI 53716

The respondents are represented by:

Attorney Colleen O'Connor Patzer

Michael Best & Friedrich, LLP

100 E. Wisconsin Ave.

Milwaukee, WI 53202

On January 22, 2001, the Wisconsin Pharmacy Examining Board adopted a Final Decision and Order ("*Order*") in the above referenced matter.

At its March 14, 2001 meeting, the Wisconsin Pharmacy Examining Board considered a petition for rehearing in a contested case timely filed on behalf of the respondents pursuant to sec. 227.49 (1), Wis. Stats., seeking modifications to the *Order*. Not present during the deliberation of this matter and abstaining from participating in the decision were Cynthia Benning, R.Ph., professional member, and John P. Bohlman, R.Ph., professional member and chairman. After review and consideration of the petition and the state's response thereto the board under the authority of sections 227.49 (3) and (5), Wis. Stats., denies the petition and enters the following order with reference to the petition:

FINDINGS OF FACT

1. Based upon the Findings of Fact as set forth in the *Order* the state's burden of proof to establish a violation regarding paragraph 8 of the Conclusions of Law was not met.
2. Based upon the pro-rata allocation of the forfeiture as contained in the *Order*, the forfeiture must be reduced by \$2000.

CONCLUSIONS OF LAW

1. The petition for rehearing presents a sufficient basis for modification of the *Order* based upon a material error of law and fact. Sec. 227.49 (3), Wis. Stats.
2. The board may enter an order with reference to the petition for rehearing without a hearing. Sec. 227.49 (5), Wis. Stats.

ORDER

IT IS HEREBY ORDERED that the petition for rehearing in a contest case is denied and that the *Order* shall be amended in the following manner:

1. Conclusion of Law, paragraph 8, as contained in the *Order* is to be stricken in its entirety.
2. The *Explanation of Variance* as contained in the *Order* shall be amended to read that based upon the board's review of applicable law and the Findings of Fact the burden of proof for a violation as contained in Conclusion of Law, paragraph 8, is not met.
3. The forfeiture assessed by the *Order* shall correspondingly be reduced from \$10,000 to \$8,000.

4. The *Explanation of Variance* as contained in the *Order* shall be amended to read that the assessed forfeiture is correspondingly reduced from \$10,000 to \$8,000 based upon the elimination of the pro rata forfeiture share represented by the striking of Conclusion of Law, paragraph 8, from the Conclusions of Law.

Dated: March 28, 2001

STATE OF WISCONSIN

PHARMACY EXAMINING BOARD

Susan L. Sutter, R.Ph.

Vice Chair