

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
CAROL L. PETERSEN, R.Ph., and	:	STAY
	:	
WOMEN'S INTERNATIONAL PHARMACY, INC.,	:	LS9806121PHM
RESPONDENTS.	:	

PARTIES

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

Disciplinary Authority:

Wisconsin Pharmacy Examining Board

1400 East Washington Ave.

Madison, WI 53703

Complainant:

Division of Enforcement

P.O. Box 8935

Department of Regulation and Licensing

Madison, WI 53708-8935

Respondents:

Wallace L. Simons, R.Ph.

P.O. Box 5290

Carefree, AZ 85377

Carol L. Petersen, R.Ph.

2 Marsh Court

Madison, WI 53718

Women's International Pharmacy, Inc. #8131

2 Marsh Court

Madison, WI 53718

The respondents are represented by:

Attorney Colleen O'Connor Patzer

Michael Best & Friedrich, LLP

100 E. Wisconsin Ave

Milwaukee, WI 53202

Attorney Jason T. Lundy

Duane Morris LLC

227 West Monroe Street

Chicago, IL 60606

Milwaukee, WI 53202

Non-party CC to:

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Wisconsin Attorney General's Office

123 W. Washington- 4th Fl.

Madison, WI 53707-7857

At its August 20, 2002, meeting, the Wisconsin Pharmacy Examining Board considered a motion for a stay filed on behalf of the respondents on July 22, 2002, seeking a stay from the imposition of costs, forfeitures and all other sanctions imposed by the board in contested case LS-9806121-PHM and the board's Second Amended Final Decision and Order, until a final order after administrative review and all appeals thereof, if any. 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.

FINDINGS OF FACT

1. On March 25, 2002, the Honorable Robert A. DeChambeau ordered a stay of the imposition of all costs, fines, fees, forfeitures, and all other sanctions imposed by the Amended Final Decision and Order of the State of Wisconsin, Pharmacy Examining Board, case number, LS -9806121-PHM, until a final order after Administrative Review and all appeals thereof, if any, in Circuit Court case number 01 CV 1155.

2. On June 12, 2002, the Wisconsin Pharmacy Examining Board adopted a Second Amended Final Decision and Order in the above referenced matter, following remand from the State of Wisconsin, Circuit Court, Dane County, Branch 1, the Honorable Robert A. DeChambeau, presiding. (Case No. 01 CV 1155, Memorandum Decision and Order dated May 3, 2002, remanding the board's Amended Final Decision and Order and the Order Fixing Costs for further action consistent with the court's order of remand.)

3. On June 19, 2002, the respondents filed a notice of appeal in the State of Wisconsin, Court of Appeals District IV, (case number 02-1631), appealing that part of the Circuit Court of Dane County's order that affirmed the board's Amended Final Decision and Order in Circuit Court case number 01 CV 1155.

CONCLUSIONS OF LAW

1. The institution of the proceeding for review shall not stay enforcement of the agency decision. The reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43, 253.06(7), 448.02(9) and 551.62. Wis. Stats., § 227.54.

2. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the court of appeals within the time period specified in s. 808.04(1). Wis. Stats., § 227.58.

ORDER

IT IS HEREBY ORDERED that the respondents' motion for a stay is denied.

OPINION

The board is mindful of its limited jurisdiction in the administrative law process. Statutory law provides for the provision of the granting of stays for matters to which judicial jurisdiction has attached. The Circuit Court has issued such a stay in the present matter. Therefore, as a jurisdictional matter, the board does not wish to intrude into the jurisdiction of the Circuit Court, which has ordered a stay currently in effect; and the Court of Appeals, to which this matter has also been appealed. It is not clear from the respondent's moving papers what issues will be raised on appeal of the Amended Final Decision and Order in relation to potential issues and paths of judicial review related to the Second Amended Final Decision and Order. The Circuit Court's March 25, 2002 stay, currently in effect, could in fact be read to apply to the Second Amended Final Decision and Order in any event, which would make the present motion to the board, moot. However, given the board's desire not to inadvertently exceed its jurisdiction, it will leave to the respondents the prerogative to seek judicial orders to consolidate issues and obtain stays as may be deemed proper by the appropriate reviewing court.

Dated: August 20, 2002

STATE OF WISCONSIN

PHARMACY EXAMINING BOARD

Susan L. Sutter, R.Ph.

Chairperson

