

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 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:

Thomas J. Balistreri, Esq.

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

