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STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION INVOLVING

PROPOSED DECISION

LS0208261UNL

**PHILIP D. KUEHNL and PREMIUM
DISCOUNT PHARMACEUTICAL SERVICES,
RESPONDENTS.**

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Philip D. Kuehnl

Premium Discount

Pharmaceutical Services

500 West Bradley Road, Apt., B-305

Fox Point, Wisconsin 53217

Department of Regulation & Licensing

P.O. Box 8935

Madison, Wisconsin 53708

Division of Enforcement

Department of Regulation & Licensing

P.O. Box 8935

Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Petition for Administrative Injunction on August 26, 2002. Respondents' Answer was filed on September 9, 2002. A Stipulation of Facts was filed by the parties on January 29, 2003. Closing arguments were filed by the parties on or before February 20, 2003. Attorney Claudia Berry Miran appears in this matter on behalf of the Division of Enforcement, Department of Regulation and Licensing. Attorney Paul E. Sicula, Law Offices of Atinsky, Kahn, Sicula & Teper, appears in this matter on behalf of the respondents.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Philip D. Kuehnl ("Kuehnl") (d.o.b. 5/2/77), resides at 500 West Bradley Road, Apartment B-305, Fox Point, WI 53217.

2. Kuehnl is not now licensed, and never has been licensed, in the state of Wisconsin as a Pharmacist.

3. In October 2001, Kuehnl began providing a service in Wisconsin for individuals to purchase prescription drugs from Canada at a discount price. At that time, he was doing business out of his apartment.

4. In January 2002, Kuehnl named his business Premium Discount Pharmaceutical Services ("Premium"). Premium is not now licensed, and never has been licensed, in the state of Wisconsin as a pharmacy.

5. To order a prescription drug, a customer contacts Kuehnl either by telephone or in person. The customer provides information such as name and strength of medication, quantity of prescription, and the prescribing physician's name and telephone number.

6. Kuehnl informs the customer of the price he is charging. If the customer agrees to the quoted price, Kuehnl transfers the information he received from the customer to a form headed "Physician Order Form".

7. Kuehnl then faxes the form containing the information to the customer's physician for verification. The physician verifies the information, provides further information (including DEA number), signs the form and returns the signed form to Kuehnl.

8. Once the customer's health care provider has returned the order form, Kuehnl faxes the form to one of two or three pharmacies in Canada. At the doctor's direction, the Canadian pharmacy sends the medication either to the doctor's office or to the client's home address. Kuehnl never sees or handles the medicine.

9. Once Kuehnl has faxed the order to the Canadian pharmacy, either the pharmacy or Kuehnl sends an invoice to the customer. The pharmacy does invoicing in approximately 70% of the cases. If the customer has given Kuehnl a credit card number, that account is charged. If the customer has not given a credit card number, the customer sends Kuehnl payment at the time of the order. Kuehnl's commission is included in the drug prices shown on the invoice.

10. Kuehnl advertises his business in Wisconsin and Illinois newspapers. He also provides printed literature and business cards. One page of literature dated February 1, 2002, is printed on paper with a mortar and pestle in the background. On the second page of the literature there is an Rx on one side. A copy of the literature dated February 1, 2002, was attached to the Petition for Administrative Injunction as Exhibit 2. Kuehnl voluntarily discontinued use of the literature and business cards with an Rx or a mortar and pestle after meeting with a Department of Regulation and Licensing (DRL) investigator in April 2002.

11. Kuehnl claimed in his literature that "The Premium Discount Pharmaceutical Services has extensive experience in managing the medication needs of persons with Chronic Medical Conditions, Acute Medical Conditions requiring prolonged drug therapy, with couples that are undergoing Fertility Treatments, and those living with HIV and/or the AIDS Virus." Kuehnl voluntarily discontinued use of that literature after meeting with a DRL investigator in April 2002.

12. Kuehnl refers any customer questions about the medication, its use or dosage,

side effects, etc., to the customer's physician. As of the date of this stipulation, there have been no questions.

13. Among the drugs that customers have ordered through Kuehnl are Lotensin, Lipitor, Fosamax, Casodex, Zocor, Plavix, Celebrex, Paxil, Prilosec, Advair, Glucophage, Furosemide, Premarin, Metoprolol, and Prevacid.

14. Many people are traveling to Canada or using the Internet to procure medication from Canada at a reduced price. Operations similar to Premium exist in other states, and it is alleged that other operations exist in Wisconsin as well.

15. Without agreeing that the phrase "pharmaceutical" in Premium's name is a violation of Wis. Stats. chapter 450, Kuehnl has discontinued using the word in his business name, on business cards, or in literature and advertising.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 440.21, Wis. Stats.

2. Respondent Philip Kuehnl's conduct, as described in Findings of Fact 10 and 15, constitutes the use and display of a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without having obtained a pharmacy license, as required under s. 450.06 (1), Stats.

3. Respondent Premium Discount Pharmaceutical Services' conduct, as described in Findings of Fact 10 and 15, constitutes the use and display of a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without having obtained a pharmacy license, as required under s. 450.06 (1), Stats.

ORDER

NOW THEREFORE, IT IS ORDERED that Philip D. Kuehnl be, and hereby is, enjoined from using or displaying a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without obtaining a pharmacy license, as required under s. 450.06 (1), Stats.

IT IS FURTHER ORDERED that Premium Discount Pharmaceutical Services be, and hereby is, enjoined from using or displaying a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without obtaining a pharmacy license, as required under s. 450.06 (1), Stats.

This order is effective as of the date it is signed by the Department's designee.

OPINION

The parties filed a Stipulation of Facts on January 29, 2003; therefore, the hearing scheduled in this matter for February 4-5, 2003 was not held. The evidence of record consists of the Stipulation of Facts and the admissions contained in the respondents' Answer. The documents attached to respondents' closing arguments are not considered part of the evidence in this proceeding.

The evidence presented establishes that Philip D. Kuehnl and Premium Discount Pharmaceutical Services used and displayed a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without having obtained a pharmacy license, as required under s. 450.06 (1), Stats.

I. Applicable Law

440.21 Enforcement of laws requiring credential.

(1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

450. 01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

(8) "Distribute" means to deliver, other than by administering or dispensing.

(16) "Practice of pharmacy" means any of the following:

(a) Interpreting prescription orders.

(b) Compounding, packaging, labeling, dispensing and the coincident distribution of drugs and devices.

- (c) Participating in drug utilization reviews.
- (d) Proper and safe storage of drugs and devices and maintaining proper records of the drugs and devices.
- (e) Providing information on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards and uses.
- (f) Drug product substitution under s. 450.13.
- (g) Supervision of pharmacist supportive personnel.

- (h) Making therapeutic alternate drug selections in accordance with written guidelines or procedures previously established by a pharmacy and therapeutics committee of a hospital and approved by the hospital's medical staff and by an individual physician for his or her patients for the period of each patient's stay within the hospital.
- (i) Drug regimen screening, including screening for therapeutic duplication, drug-to-drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.
- (j) Performing any act necessary to manage a pharmacy.
- (k) Administering prescribed drug products and devices under s. 450.035 (1r) and, pursuant to vaccination protocols, vaccines.

(18) "Prescribed drug or device" means any drug or device prescribed by a practitioner.

450.03 Pharmacist; licensure. (1) No person may engage in the practice of pharmacy or use the title "pharmacist" or sell, give away or barter drugs unless the person is licensed as a pharmacist by the board. This subsection does not apply to:

- (a) The offer to sell or sale of contraceptive articles, as defined under s. 450.155 (1) (a), by a registered nurse licensed under s. 441.06.

- (b) The sale of any nonprescription drug product, in an original unbroken package, which complies with 21 USC 301 to 392.
- (c) The sale of pesticides which comply with ss. 94.67 to 94.71.
- (d) The delivery of complimentary samples of drug products or devices to a practitioner by a manufacturer or its agent acting in the usual course of business.
- (e) Any person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted to practice professional or practical nursing or nurse-midwifery under ch. 441, to practice dentistry or dental hygiene under ch. 447, to practice medicine and surgery under ch. 448, to practice optometry under ch. 449 or to practice veterinary medicine under ch. 453, or as otherwise provided by statute.
- (f) A person who has successfully completed his or her second year in, and is enrolled at, an accredited school of pharmacy and whose practice of pharmacy is limited to performing duties under the direct supervision of a person licensed as a pharmacist by the board.
- (g) A person who has applied for a license under s. 450.05 whose practice of pharmacy is limited to performing duties under the direct supervision of a person licensed as a pharmacist by the board and during the period before which the board takes final action on the person's application.

450.06 Pharmacy; licensure. (1) No pharmacist may dispense at any location which is not licensed as a pharmacy by the board. No person may use or display the title "pharmacy", "drugstore", "apothecary" or any other title, symbol or insignia having the same or similar meanings, except for a place of practice which is licensed as a pharmacy by the board.

450.07 Manufacturers and distributors; licensure.

- (2) No person may engage in the sale or distribution at wholesale

of a prescription drug or device in this state without first obtaining a distributor's license from the board. For the issuance of a license under this subsection, the applicant shall pay the fee specified in s. 440.05 (1).

(3) No manufacturer or distributor may sell or distribute a prescription drug or device at wholesale to any person other than:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure prescription drugs or devices for the purpose of lawful research, teaching or testing and not for resale.

(d) Hospitals and other institutions which procure prescription drugs or devices for administration to patients.

(e) Officers or employees of the federal government who are authorized to receive prescription drugs or devices in the performance of their official duties.

(f) Distributors.

450.11 Prescription drugs and prescription devices.

(7) PROHIBITED ACTS.

(d) No person may, for the purpose of obtaining a prescription drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, distributor, pharmacist or practitioner.

Phar 7.01 Minimum procedures for compounding

and dispensing. (1) Except as provided in sub. (4), a pharmacist or pharmacist-intern who compounds or dispenses according to a prescription order shall follow the procedures described in this rule and other applicable procedures. The pharmacist or pharmacist-intern as directed and supervised by a pharmacist shall:

(a) Receive electronic or oral prescription orders of a prescriber, review all original and renewal prescription orders, whether electronic, written or oral, and determine therapeutic compatibility and legality of the prescription order. The review shall include, when indicated or appropriate, consultation with the prescriber.

(b) Read and interpret a prescriber's directions for use for the purpose of accurately transferring the instructions to the prescription label.

(f) Receive, when required by law and standard professional practice, permission to renew from authorized prescribers, and note on the prescription order, medication profile record or uniformly maintained and readily retrievable document the following information:

1. Date renewed.
2. Name of practitioner authorizing renewal, if different from the original prescriber.
3. Quantity of drug dispensed.
4. Identification of the pharmacist renewing the prescription.

II. Summary of Evidence

In October 2001, Mr. Kuehnl began providing a service in Wisconsin for individuals to purchase prescription drugs from Canada at a discount price. Mr. Kuehnl is not now licensed, and never has been licensed, in the state of Wisconsin as a Pharmacist. At that time, Mr. Kuehnl was doing business out of his apartment.

In January 2002, Mr. Kuehnl named his business Premium Discount Pharmaceutical Services ("Premium"). Premium is not now licensed, and never has been licensed, in the state of Wisconsin as a pharmacy. Other than Mr. Kuehnl, there is no evidence in the record indicating that any other individual is involved with the ownership or operation of Premium.

Based upon the facts stipulated to by the parties, the service provided by Premium can be described as follows:

1. To order a prescription drug, a customer contacts Kuehnl either by telephone or in person. The customer provides information such as name and strength of medication, quantity of prescription, and the prescribing physician's name and

telephone number.

2. Kuehnl informs the customer of the price he is charging. If the customer agrees to the quoted price, Kuehnl transfers the information he received from the customer to a form headed "Physician Order Form".

3. Kuehnl then faxes the form containing the information to the customer's physician for verification. The physician verifies the information, provides further information (including DEA number), signs the form and returns the signed form to Kuehnl.

4. Once the customer's health care provider has returned the order form, Kuehnl faxes the form to one of two or three pharmacies in Canada. At the doctor's direction, the Canadian pharmacy sends the medication either to the doctor's office or to the client's home address. Kuehnl never sees or handles the medicine.

5. Once Kuehnl has faxed the order to the Canadian pharmacy, either the pharmacy or Kuehnl sends an invoice to the customer. The pharmacy does invoicing in approximately 70% of the cases. If the customer has given Kuehnl a credit card number, that account is charged. If the customer has not given a credit card number, the customer sends Kuehnl payment at the time of the order. Kuehnl's commission is included in the drug prices shown on the invoice.

Among the drugs that customers have ordered through Kuehnl are Lotensin, Lipitor, Fosamax, Casodex, Zocor, Plavix, Celebrex, Paxil, Prilosec, Advair, Glucophage, Furosemide, Premarin, Metoprolol, and Plevacid.

In reference to advertising and promotional materials, Mr. Kuehnl advertises his business in Wisconsin and Illinois newspapers. He also provides printed literature and business cards. One page of literature dated February 1, 2002, is printed on paper with a mortar and pestle in the background. On the second page of the literature there is an Rx on one side. Mr. Kuehnl voluntarily discontinued use of the literature and business cards with an Rx or a mortar and pestle after meeting with a DRL investigator in April 2002.

Mr. Kuehnl claimed in his literature that "The Premium Discount Pharmaceutical Services has extensive experience in managing the medication needs of persons with Chronic Medical Conditions, Acute Medical Conditions requiring prolonged drug therapy, with couples that are undergoing Fertility Treatments, and those living with HIV and/or the AIDS Virus." He voluntarily discontinued use of that literature after meeting with a DRL

investigator in April 2002.

In addition, without agreeing that the phrase "pharmaceutical" in Premium's name is a violation of Wis. Stats. chapter 450, Mr. Kuehnl discontinued using the word in his business name, on business cards, and in literature and advertising.

III. Analysis

The evidence presented establishes that Philip Kuehnl and Premium Discount Pharmaceutical Services used and displayed a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without obtaining a pharmacy license, as required under s. 450.06 (1), Stats.

The Department of Regulation and Licensing (Department) is authorized under s. 440.21, Stats., to "conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480". If, after holding a public hearing, the Department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the Department may issue a special order enjoining the person from the continuation of the practice or use of the title.

Section 440.21, Stats., can be interpreted to mean that the Department may issue a special order if, after hold a public hearing, it determines that a person has "engaged in a practice" or "used a title" without a credential required under chs. 440 to 480, Stats. In this case, the issue is whether the respondents have "engaged in a practice" or "used a title" without a credential required under ch. 450, Stats.

In my opinion, the evidence presented does not establishes that Mr. Kuehnl engaged in the practice of pharmacy without a pharmacist license or that Premium operated as a pharmacy without a pharmacy license. The evidence presented does establish that Philip Kuehnl and Premium Discount Pharmaceutical Services used and displayed a symbol or insignia having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without obtaining a pharmacy license, as required under s. 450.06 (1), Stats.

(1) Practice of Pharmacy

The term "practice of pharmacy" is defined in subs. 450.01 (16), Stats., as follows:

(16) "Practice of pharmacy" means any of the following:

- (a) Interpreting prescription orders.
- (b) Compounding, packaging, labeling, dispensing and the coincident distribution of drugs and devices.
- (c) Participating in drug utilization reviews.
- (d) Proper and safe storage of drugs and devices and maintaining proper records of the drugs and devices.

- (e) Providing information on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards and uses.
- (f) Drug product substitution under s. 450.13.
- (g) Supervision of pharmacist supportive personnel.
- (h) Making therapeutic alternate drug selections in accordance with written guidelines or procedures previously established by a pharmacy and therapeutics committee of a hospital and approved by the hospital's medical staff and by an individual physician for his or her patients for the period of each patient's stay within the hospital.
- (i) Drug regimen screening, including screening for therapeutic duplication, drug-to-drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.
- (j) Performing any act necessary to manage a pharmacy.
- (k) Administering prescribed drug products and devices under s. 450.035 (1r) and, pursuant to vaccination protocols, vaccines.

In my opinion, the conduct described in the facts stipulated to by the parties does not constitute the "practice of pharmacy", as that term is defined in subs. 450.01 (16), Stats.

In reference to paragraph (a) of subs. 450.01 (16), Stats., there is no evidence in the record indicating that Mr. Kuehnl's conduct involves "interpreting prescription orders". There is at least one likely scenario where Mr. Kuehnl might become involved in interpreting prescription orders. After Mr. Kuehnl transfers the information from the customer to the Physician Order Form, he then faxes the Form to the customer's physician for "verification". It is a reasonable assumption that on at least one occasion, a physician has revised or updated the Form as part of the verification process. In such case, the revised Form may have required Mr. Kuehnl to interpret the updated prescription order. However, there is no evidence in the records indicating that such scenario occurred. The evidence establishes that once Mr. Kuehnl receives the Form back from the customer's health care provider, he faxes the Form to one of two or three pharmacies in Canada. There is no evidence in the record that he is involved in interpreting the prescription orders contained on the Forms.

Paragraph (b) of subs. 450.01 (16), Stats., states that "compounding, packaging, labeling, dispensing and the coincident distribution of drugs and devices" constitutes the practice of pharmacy. That provision, which contains the word "and" after dispensing, can be interpreted to mean that an individual must engage in all of the conduct identified in paragraph (b) in order for such conduct to constitute the practice of pharmacy. Even assuming that the legislative intent was that the provision should be interpreted as if the term "or" had been used instead of the word "and", the evidence still does not support that Mr. Kuehnl dispensed or distributed drugs.

The terms "dispense and "distribute" are defined in s. 450.01, Stats., as follows:

450. 01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

(8) "Distribute" means to deliver, other than by administering or dispensing.

In reference to dispensing drugs, there is no evidence in the record that Mr. Kuehnl "delivered a prescribed drug or device to an ultimate user". In fact, the stipulation of facts agreed to by the parties indicates that the Canadian pharmacy sends the medication either to the doctor's office or to the client's home address. Mr. Kuehnl never sees or handles the medicine.

In reference to distributing drugs, there is no evidence in the record that Mr. Kuehnl delivered drugs to his customers. [The term "deliver" is defined in paragraph (5) of s. 450.01, Stats., to mean "the actual, constructive or attempted transfer of a drug or device from one person to another".]

Finally, in reference to the other provisions referenced in the definition of the "practice of pharmacy" that is contained in s. 450.01 (16), Stats., there is no evidence that Mr. Kuehnl participated in drug utilization reviews; stored drugs or maintained records of drugs; provided information on drugs, including but not limited to, advice relating to therapeutic values or potential hazards and uses; was involved with drug product substitution under s. 450. 13; supervised pharmacist supportive personnel; made therapeutic alternate drug selections; was involved with drug regimen screenings; performed any act necessary to manage a pharmacy, or administered prescribed drug products under s. 450.035 (1r) and, pursuant to vaccination protocols, vaccines.

(2) Operating as a Pharmacy

Subsection 450.06 (1) Wis. Stats., reads as follows:

450.06 Pharmacy; licensure. (1) No pharmacist may dispense at any location which is not licensed as a pharmacy by the board. No person may use or display the title "pharmacy", "drugstore", "apothecary" or any other title, symbol or insignia having the same or similar meanings, except for a place of practice which is licensed as a pharmacy by the board.

The term "dispense" is defined in subs. 450.01 (7), Stats., as follows:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

The evidence presented does not establish that Mr. Kuehnl operated a pharmacy or that Premium operated as a pharmacy. There is no evidence that Mr. Kuehnl and/or Premium dispensed prescribed drugs to ultimate users. As noted previously, the Canadian pharmacies that receive the Physician Order Forms deliver the prescribed drugs to the customers' physicians or directly to the customers. [The term "deliver" is defined in paragraph (5) of s. 450.01, Stats., to mean "the actual, constructive or attempted transfer of a drug or device from one person to another".]

(3) Operating as a Distributor

Subsections 450.07 (2) and (3) Wis. Stats., read as follows:

450.07 Manufacturers and distributors; licensure.

(2) No person may engage in the sale or distribution at wholesale of a prescription drug or device in this state without first obtaining a distributor's license from the board. For the issuance of a license under this subsection, the applicant shall pay the fee specified in s. 440.05 (1).

(3) No manufacturer or distributor may sell or distribute a prescription drug or device at wholesale to any person other than:

- (a) Pharmacists.
- (b) Practitioners.
- (c) Persons who procure prescription drugs or devices for the purpose of lawful research, teaching or testing and not for resale.
- (d) Hospitals and other institutions which procure prescription drugs or devices for administration to patients.
- (e) Officers or employees of the federal government who are authorized to receive prescription drugs or devices in the performance

of their official duties.

(f) Distributors.

The term "distribute" is defined in s. 450.01, Stats., as follows:

(8) "Distribute" means to deliver, other than by administering or dispensing.

The evidence presented does not establish that Mr. Kuehnl functioned as a distributor or that Premium operated as a distributor. There is no evidence that Mr. Kuehnl and/or Premium distributed prescribed drugs to the customers involved. As noted previously, the Canadian pharmacies that receive the Physician Order Forms deliver the prescribed drugs to the customers' physicians or directly to the customers. Mr. Kuehnl never sees or handles the medicine.

(4) Use of a Title

Subsection 450.03 (1), Stats., states, in part, that no person may engage in the practice of pharmacy or use the title "pharmacist" or sell, give away or barter drugs unless the person is licensed as a pharmacist by the board.

Subsection 450.06 (1), Stats., states, in part, that no person may use or display the title "pharmacy", "drugstore", "apothecary" or any other title, symbol or insignia having the same or similar meanings, except for a place of practice which is licensed as a pharmacy by the board.

In this case, there is no evidence that Mr. Kuehnl used the title "pharmacist" or that Premium Discount Pharmaceutical Services ("Premium") used the title "pharmacy", "drugstore", or "apothecary". However, as evidenced by the name of the business entity, "Premium Discount Pharmaceutical Services", the term "Pharmaceutical" is used as part of the name of the business. In my opinion the term "pharmaceutical" has the same or similar meaning as the titles prohibited under the Statutes.

In reference to "symbol or insignia" as having the same or similar meanings as the titles prohibited under the Statutes, Mr. Kuehnl admitted that one page of literature that he distributes, dated February 1, 2002, is printed on paper with a mortar and pestle in the background. On the second page of the literature there is an Rx on one side. Mr. Kuehnl voluntarily discontinued use of the literature and business cards with an Rx or a mortar and pestle after meeting with a Department of Regulation and Licensing investigator in April 2002. A copy of the literature dated February 1, 2002, is attached to the Petition for Administrative Injunction as Exhibit 2. In addition, without agreeing that the phrase "pharmaceutical" in Premium's name is a violation of Wis. Stats. chapter 450, Mr. Kuehnl has discontinued using the word in his business name, on business cards, or in literature and advertising.

IV. Protection of the Public

The purpose of licensing statutes is not to benefit those persons licensed to practice under the statute, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession. Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health, and property of its citizens. *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W. 2d 68 (1984).

The issuance of an administrative injunction is clearly warranted in this case. The evidence presented establishes that Philip Kuehnl and Premium Discount Pharmaceutical Services used terminology and displayed symbols having the same or similar meaning as the titles referenced in s. 450.06 (1), Stat., without obtaining a pharmacy license, as required under

s. 450.06 (1), Stats. Mr. Kuehnl knew, or should have know, that when he used the term "Pharmaceutical" in the name of his business entity and when he used the Rx and the mortar and pestle symbols on his literature, the public would conclude that his business was operating as a pharmacy. The term "pharmaceutical" and the symbols that he used in his literature are reserved for business entities that are licensed as pharmacies by the Pharmacy Examining Board pursuant to ch. 450, Stats. Pharmacies licensed by the Board must meet stringent requirements established by the Legislature to assure protection of the public. Mr. Kuehnl offers no such assurances.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 2nd day of May, 2003.

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge