

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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 :
: **ADMINISTRATIVE INJUNCTION**
EL REY MEXICAN PRODUCTS, INC., : LS0410139UNL
ERNESTO VILLARREAL, AND M. OLIVIA :
VILLARREAL, :
RESPONDENTS :

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

El Rey Mexican Products, Inc. 1023 South 16 th Street Milwaukee, WI 53204	Ernesto Villarreal 1403 West Larchmont Drive Waukesha, WI 53186
M. Olivia Villarreal 1403 West Larchmont Drive Waukesha, WI 53186	Department of Regulation and Licensing Division of Enforcement 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. Respondent El Rey Mexican Products, Inc. is a Wisconsin corporation having its principal office at 1023 South 16th Street, Milwaukee, Wisconsin. Among other business activities, the corporation owns and operates Mercado El Rey, 1010 South Cesar E. Chavez Drive, Milwaukee, Wisconsin, a business regularly engaged in the retail sale of groceries, sundries and associated products.
2. Respondents Ernesto Villarreal and M. Olivia Villarreal are husband and wife, and are officers and directors of Respondent El Rey Mexican Products, Inc.
3. The named Respondents are wholly responsible for all the policies and operations of Mercado El Rey, including decisions on what products to carry for sale to the public.
4. During a period extending from at least May 19, 2002 until at least September 18, 2002, Respondents offered for sale and delivery to the public at Mercado El Rey certain prescription drugs including but not limited to: amoxicillin, ampicillin, tesselon benzonatate, and synalar.
5. During a period extending from at least May 19, 2002 until at least September 18, 2002, Respondents through employees, agents, business entities and/or contractors did in fact sell such prescription drugs to the general public at a profit without validly issued prescriptions.
6. Respondents lacked knowledge regarding the physical effects of the medications, adverse or otherwise.
7. Amoxicillin, ampicillin, tesselon benzonatate and synalar are "drugs" within the meaning of section 450.01(10), Wisconsin Stats., and are "prescription drugs" within the meaning of section 450.01(2), Wisconsin Stats.

8. At no time has any respondent been licensed by the Pharmacy Examining Board as a pharmacist, a pharmacist distributor, or a manufacturer under Chapter 450, Wis. Stats., nor has any employee of any respondent been licensed as a pharmacist or other health care practitioner licensed to prescribe or dispense prescription drugs.

CONCLUSIONS OF LAW

9. The sale and delivery of a prescription drug to an individual is “dispensing” within the meaning of section 450.01(7), Wis. Stats. Dispensing of a prescription drug may only be performed by a pharmacist or person licensed to prescribe such drugs, and if performed by a pharmacist, such dispensing must occur in a licensed pharmacy. Section 450.11, Wis. Stats.

10. The conduct of respondents set forth in paragraph 5 constitutes dispensing a prescription drug without a required credential in violation of section 440.21, Wis. Stats.

11. The department has authority to issue this Administrative Injunction as a special order under section 440.21, Wis. Stats., and ch. RL 3, Wis. Adm. Code.

ORDER

IT IS ORDERED, that the attached stipulation is accepted.

IT IS FURTHER ORDERED, that El Rey Mexican Products, Inc., Ernesto Villarreal and M. Olivia Villarreal are enjoined and prohibited from the sale, dispensing, or delivery of any prescription drug, personally or through employees, agents, business entities, and contractors, and from doing any act which may constitute the practice of pharmacy, or which is permitted to be conducted only in a licensed pharmacy, 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 (section 440.21(4)(a), Wis. Stats.).

IT IS FURTHER ORDERED, that respondents shall forfeit One Thousand dollars (\$1000.00), to be paid to the Department within 60 days of the signing of this Order, for violating the sections of Chapter 440 and 450 of the Wisconsin Statutes as set forth above.

IT IS FURTHER ORDERED, that the respondents shall pay COSTS in the amount of One Thousand, Two Hundred and Fifty dollars (\$1,250.00) within 60 days of the signing of this Order.

IT IS FURTHER ORDERED, that the respondents shall be jointly and severally liable and responsible for payment of the above described forfeiture and costs.

IT IS FURTHER ORDERED, that if the secretary determines that there is probable cause to believe that respondent has violated any terms of this final decision and order, the secretary may order that the violations covered by this decision and order be referred to any appropriate prosecutorial unit for review for possible criminal charges, such units including but not limited to Milwaukee County District Attorney’s office and the United States Attorney for the Eastern District of Wisconsin.

Issued at Madison, Wisconsin this 13th day of October, 2004.

Sandra Rowe, Deputy Secretary
Department of Regulation and Licensing