

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
RESPA PHARMACEUTICALS, INC	:	
RESPONDENT	:	LS0601181PHM

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Division of Enforcement Case No. 05PHM072

The State of Wisconsin, Pharmacy Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 22nd day of June, 2006

Michael Bettiga  
Member of the Board  
Pharmacy Examining Board

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF : PROPOSED  
DISCIPLINARY PROCEEDINGS AGAINST : FINAL DECISION AND ORDER  
: LS # 0601181-PHM  
RESPA PHARMACEUTICALS INC., :  
RESPONDENT. :

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[Division of Enforcement Case # 05 PHM 072]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Respa Pharmaceuticals, Inc.  
8920 58<sup>th</sup> Place  
Suite 800  
Kenosha, WI 53144

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Pharmacy Examining Board  
Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on February 22, 2006 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney Jeanette Lytle. Respondent did not appear.

On January 18, 2006, a Complaint and Notice of Hearing was filed in this matter. The Complaint and Notice of Hearing were mailed to the last known address of the Respondent. The respondent failed to file an answer or other responsive pleading and failed to appear.

Based upon the entire record of this case, the undersigned administrative law judge recommends that the Pharmacy Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On June 30, 2005, Ibrahim Ahmed applied for a license for a distributorship for a company known as Respa Pharmaceuticals, Inc. Mr. Ahmed requested that the license be granted "on the spot." No facility location was disclosed so no license was granted.

2. Mr. Ahmed returned to the Department of Regulation and Licensing on July 1, 2005, again requesting an immediate pharmaceutical distributorship license for Respa Pharmaceuticals, Inc. He listed an address for the business at

3. Respa Pharmaceuticals was issued a license as a pharmaceutical distributor (license # 1819) on July 1, 2005.
4. According to Department policy, Respa Pharmaceuticals was placed on a list for inspection within the next year.
5. On November 29, 2005, a Department investigator traveled to 8920 58<sup>th</sup> Place, Suite 800, Kenosha, Wisconsin. The facility was locked, there were no lights on, and the investigator could see through a glass door that the facility was empty and appeared vacant.
6. Other tenants indicate that there has been no business activity at that location.
7. Respa Pharmaceuticals is listed by the Department of Financial Institutions as having incorporated by Ibrahim Ahmed on August 25, 2005 at the address 10909 67<sup>th</sup> Street, Kenosha, Wisconsin.
8. The same Department investigator traveled to 10909 67<sup>th</sup> Street, Kenosha, Wisconsin on January 10, 2006. She determined that the address was a single family dwelling in a residential neighborhood. There were no signs, markings, or visible evidence of a business at that location.
9. Respondent furnished false and fraudulent information in its application for a distributor's license in violation of Wis. Admin. Code § Phar 13.06(4).

#### CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §§450.02 and 450.10(1) (a) 1.
2. The conduct described in the Findings of Fact above, constitutes a violation of Wisconsin Administrative Code § Phar 13.06 (4) and Wis. Stat. § 450.10(1) (a) 1, and § 450.10(1) (a) 2.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respa Pharmaceuticals, Inc. as a pharmaceutical distributorship in the State of Wisconsin is hereby REVOKED.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the Respondent.

IT IS FURTHER ORDERED that this Order is effective on the date of its signing.

#### OPINION

The Notice of Hearing and Complaint in this matter were served upon the respondent on January 18, 2006. The respondent did not answer, did not file any responsive pleading and failed to appear at the hearing.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint that disputed the allegations of failure to disclose a facility location and failure to disclose a business address.

The complainant has established a prima facie case that the respondent Respa Pharmaceuticals, Inc. has violated

Wisconsin's pharmacy licensing law. The complainant's motion for default is granted and the relief requested is granted.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

The respondent has failed to disclose an accurate facility location and business address on its application. The failure to disclose could be the result of intentional deceit or by inadvertence associated with a rush to licensure. Either possibility raises concerns for public protection. The public is entitled to the expectation that pharmacy distributorships will comply with disclosure requirements about the location of the controlled and dangerous substances passing through and into the state. The respondent may not be relied upon to comply with this requirement. The profession is also one in which the ability to read complex forms, understand them and follow the directions in completing them accurately is required. The respondent's skill set in this area is also suspect.

The nature of the failure to disclose is also an area of concern. Wis. Admin. Code § Phar 14.04 requires applicants for distributorships to provide their business address. Respondent did not provide an accurate address on its application. Wis. Admin. Code § Phar 13.05(2) requires that the distributor pass an inspection of the facility. An inspection is not possible without an accurate address for the facility. The respondent has shown itself to be unreliable and a risk to the public in each of these areas. In the present circumstance, it appears that respondent's actions violated several public protection requirements.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or deter other licensees from engaging in similar conduct. The respondent failed to appear at the hearing. The respondent presented no evidence that the distributorship was willing to or could be expected to agree to limitations that would provide the necessary public protection. The respondent failed to present any evidence in mitigation of the seriousness of the conduct and its potential for harm to the welfare of the public.

Further, to not revoke respondent's license would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other licensees.

### Costs

Section 440.22 (2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Pharmacy Examining Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees

who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Respectfully submitted;

By: \_\_\_\_\_  
Schuh

Dated \_\_\_\_\_

Dennis C.

Administrative Law Judge