

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF A PETITION FOR AN	:	
ADMINISTRATIVE INJUNCTION INVOLVING	:	
	:	
TOTAL HOME HEALTH, INC.,	:	LS0912104UNL
RESPONDENT.	:	

FINAL DECISION AND SPECIAL ORDER OF INJUNCTION
[WIS. STAT. § SEC. 440.21(2)]

[Division of Enforcement Case # 09 UNL 059]

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

Total Home Health, Inc.
1201 E. Richmond Street
Shawano, WI 54166

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

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

PROCEDURAL HISTORY

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 Department. The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Total Home Health, Inc., Respondent, was licensed by the Department as a Wholesale Distributer in the state of Wisconsin, pursuant to license number 2142, which was first granted February 19, 2008. Respondent is a business that distributes oxygen which is labeled for sale as a prescription drug.
2. Respondent’s business address on file with the Department is 1201 E. Richmond Street, Shawano, WI 54166.
3. On April 17, 2008, Respondent’s license became inactive due to a rule change which required Respondent to become relicensed. Respondent did not do so and has not held a valid license since that date.
4. A Division of Enforcement investigation revealed that, on June 29, 2009, Respondent was engaged in the delivery of oxygen, a prescription drug, without a valid distributor license or other authority.
5. “Distribute” means to deliver, other than by administering or dispensing pursuant to Wis. Stat. § 450.01(8). A license is required to distribute prescription drugs pursuant to Wis. Stat. § 450.071.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter, pursuant to Wis. Stat. § 440.21(1) and (2) and is authorized to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent's conduct, as set out above, constitutes distributing a prescription drug without a required credential, in violation of Wis. Stat. § 450.071.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent, Total Home Health, Inc., is enjoined and prohibited from the distribution of any prescription drug or device, including but not limited to oxygen, personally or through employees, agents, business entities, and contractors, in Wisconsin, and from doing any act which may constitute the distribution of any prescription drug or device in Wisconsin, unless and until properly credentialed to do so.

IT IS FURTHER ORDERED that Respondent, Total Home Health, Inc., be, and hereby is, notified that any person who violates a special order such as this, issued under Wis. Stat. § 440.21(4)(a) may be required to forfeit not more than \$10,000.00 for each offense and that each day of continued violation constitutes a separate offense.

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 Special Order of Injunction, 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.

Department of Regulation and Licensing

By: Celia M. Jackson
Secretary

12/10/09
Date

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF A PETITION FOR AN	:	
ADMINISTRATIVE INJUNCTION INVOLVING:	:	
	:	STIPULATION
TOTAL HOME HEALTH, INC.,	:	LS _____ UNL
RESPONDENT.	:	

[Division of Enforcement Case No. 09 UNL 059]

It is hereby stipulated and agreed, by and between Total Home Health, Inc., by its manager Carol Paiser, Respondent; and Sandra L. Nowack, attorney for the Petitioner, Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. The Wisconsin Department of Regulation and Licensing, Division of Enforcement, has an open investigative file pending regarding Respondent (09 UNL 059) which contains allegations that Respondent distributed a prescription drug in Wisconsin without a current license. By signing below, Carol Paiser represents that she has the authority to enter into this agreement on behalf of Respondent. Respondent, by its manager Carol Paiser, consents to the resolution of this investigation by agreement and without a public hearing on, or the filing of, a petition for an administrative injunction.
2. Carol Paiser understands that by signing this Stipulation, she voluntarily and knowingly waives on behalf of Respondent the following rights with respect to formal proceedings: the right to a statement of the allegations against Respondent; the right to a hearing at which time the state has the burden of proving those allegations; the right to confront and cross-examine the witnesses; the right to call witnesses on Respondent’s behalf and to compel their attendance by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Carol Paiser has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Carol Paiser agrees to the adoption of the attached Final Decision and Special Order of Injunction by the Department. The parties to the Stipulation consent to the entry of the attached Final Decision and Special Order of Injunction without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department’s Order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Department for the purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on this Stipulation.

_____ Total Home Health, Inc. By: Carol Paiser Respondent	_____ Date
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1201 E. Richmond Street
Shawano, WI 54166

Sandra L. Nowack
Attorney for Petitioner
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date