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Before the
State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING

In the MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION
INVOLVING TURA MIMY EL SAYED,
Respondent

FINAL DECISION AND ORDER
DHA Case No. DRL-10-0077
ORDER 0000650

Division of Enforcement Case No. 07 UNL 114

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make 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, Department of Regulation and Licensing.

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 at Madison, Wisconsin on the 7th day of February, 2011.

A handwritten signature in black ink, appearing to read "Michael Berndt", written over a horizontal line.

Michael Berndt, General Counsel
Department of Regulation and Licensing



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

**In the MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION
INVOLVING TURA MIMY EL SAYED,
Respondent**

**PROPOSED DECISION AND ORDER
DHA Case No. DRL-10-0077**

Division of Enforcement Case No. 07 UNL 114

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Tura Mimy El Sayed
Mimi Pharmacy
7111 Reseda Boulevard
Reseda, CA 91335

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Sandra Nowack
Department of Regulation
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

Secretary David Ross
Department of Regulation and Licensing,
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a Petition for Injunction against the Respondent, Tura Mimy El Sayed. The Division filed said Petition with the Division of Hearings and Appeals on or about November 5, 2010. On or about November 2, 2010, the Division sent a copy of the Petition and a Notice of Hearing via certified and regular mail to Respondent El Sayed at the address included in her retail pharmacy licensure information in California; 7111 Reseda Blvd., Reseda, CA, 91335. The Notice of Hearing stated that Respondent El Sayed was required to file a written Answer to the Petition within 20 days, failing which "[she would] be

found to be in default and a default judgment [could] be entered against [her] on the basis of the Petition and other evidence....”

On December 13, 2010, the copy of the Notice of Hearing and Petition were returned to the Division with documentation from the U.S. Postal Service stating “NL 11/5, 11/10, 11/20, UNCLAIMED.”

To date, no Answer has been filed.

On November 22, 2010, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent El Sayed and Attorney Sandra Nowack of the Division of Enforcement for December 8, 2010. This Notice instructed Respondent El Sayed to contact the undersigned ALJ to provide the telephone number for which she could be reached for the December 8, 2010, telephone conference, and was sent to the address on file for Respondent El Sayed, as provided above.

Respondent El Sayed did not contact the undersigned ALJ with a telephone number that she could be reached at for the December 8, 2010, telephone conference, and the telephone conference that was conducted on that date was without her participation.

At the December 8, 2010, conference, Attorney Nowack made a motion for default pursuant to Wis. Admin. Code § RL 3.13. The undersigned ALJ summarily accepted Attorney Nowack’s default motion and issued a Notice of Default instructing Respondent El Sayed that she was in default and that findings would be made and an Order entered on the basis of the Petition and other evidence. It was mailed to Respondent El Sayed at the last address on record for her, 7111 Reseda Blvd., Reseda, California 91335.

Respondent El Sayed has failed to respond to the Notice of Default issued against her.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Tura Mimy El Sayed, Respondent, is not licensed to practice as a pharmacist in the State of Wisconsin, nor has she submitted an application to practice as a pharmacist in the State of Wisconsin.
2. Respondent El Sayed is licensed to practice pharmacy in California, pursuant to license number 45251, which is in good standing and expires on February 29, 2012.
3. Respondent El Sayed is the managing pharmacist and owner of Mimi Pharmacy, formerly Medicine Shoppe, 7111 Reseda Blvd., Reseda, California 91335, where she has been

employed during all times relevant to this matter. Neither Mimi Pharmacy nor Medicine Shoppe Pharmacy is, or has ever been credentialed as an out-of-state pharmacy by the Wisconsin Pharmacy Examining Board.

4. On February 2, 2007, Respondent El Sayed, via the pharmacy she managed – then known as Medicine Shoppe – caused a package to be delivered to a consumer in Viroqua County, Wisconsin. The package contained one bottle of 90 hydrocodone/apa 10/500 mg.

5. Pursuant to Wis. Stat. § 961.16(2)(a)7, hydrocodone is a controlled substance for which a prescription is required pursuant to Wis. Stat. § 961.38(1).

6. Respondent El Sayed admits that during a three month period in 2007, Respondent dispensed controlled substances to the same Wisconsin address.

7. As set out in the Procedural History above, a Petition for Injunction and Notice of Hearing were sent to Respondent El Sayed at her most recent address on file with the Department of Regulation (7111 Reseda Blvd, Reseda, CA, 91335), on or about November 2, 2010.

8. On or about November 22, 2010, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for December 8, 2010, to Respondent El Sayed at the above-listed address.

9. Respondent El Sayed did not appear at this hearing, and the Division made a motion for default which was summarily accepted by the undersigned ALJ.

10. On or about December 9, 2010, the undersigned ALJ sent a Notice of Default to Respondent El Sayed at her last known address.

11. Respondent Sayed has not responded to this Notice, or otherwise to the Petition filed against her.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has authority to issue this Administrative Injunction as a special order under Wis. Stat. § 440.21 and Wis. Admin. Code Ch. RL 3.

2. Wisconsin Administrative Code § RL 3.07(1)(1) provides in relevant part that “[t]he petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent,” and that “[s]ervice... is complete upon mailing.” Because the Petition and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of

Default were mailed to Respondent El Sayed at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 3.07(1).

3. Respondent El Sayed has defaulted in this proceeding pursuant Wis. Admin. Code § RL 3.13 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 3.08.

4. Allegations in a Petition are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 3.08(3). Respondent El Sayed has admitted to the allegations of the Petition by default by not filing an Answer.

5. Pursuant to Wis. Stat. § 441.21(2), "if... 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.

6. Wisconsin Stat. § 450.03(1) provides that no person may engage in the practice of pharmacy or use the title "pharmacist" or sell, give away or barter drugs in Wisconsin unless the person is licensed as a pharmacist by the Board.

7. Managing pharmacists are responsible for the professional operations of pharmacies pursuant to Wis. Stat. § 450.09(1)(a).

8. Wisconsin Stat. § 450.06(1) provides that no pharmacist may dispense at any location which is not licensed as a pharmacy by the Board.

9. Wisconsin Stat. § 450.065 provides that no pharmacy located in another state may ship, mail or otherwise deliver a prescription drug to a person in Wisconsin unless the pharmacy is licensed in Wisconsin.

10. Respondent El Sayed's conduct, as described in Findings of Fact ¶¶ 1-6, above, constitutes practice without credential contrary to Wis. Stat. § 450.03(1), Wis. Stat. § 450.06(1) and Wis. Stat. § 450.065. A special order enjoining her from the continuation of the practice of pharmacy is thus warranted pursuant to Wis. Stat. § 441.21(2).

ORDER

IT IS HEREBY ORDERED that Respondent Tura Mimy El Sayed is enjoined and prohibited from engaging in the practice as a pharmacist in Wisconsin unless and until Respondent is duly licensed as a pharmacist in Wisconsin.¹

¹ Out of state pharmacists who are licensed in another state may be licensed in Wisconsin pursuant to Wis. Stat. § 450.05.

Respondent Tura Mimy El Sayed is further enjoined and prohibited from holding herself out as authorized to practice as a pharmacist in Wisconsin unless and until Respondent is duly licensed as a pharmacist in Wisconsin.

Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation per Wis. Stat. § 440.21(4)(a).

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.

Dated at Madison, Wisconsin on January 11, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Amanda Tollefsen
Amanda Tollefsen
Administrative Law Judge

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