

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN :
ADMINISTRATIVE INJUNCTION INVOLVING :
: ADMINISTRATIVE INJUNCTION
ANTONIO SOTO-CRUZ, D.B.A :
SUPER MERCADO EL LOCAL, :
RESPONDENT. :
0004228

Division of Legal Services and Compliance Case No. 15 UNL 019

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

Antonio Soto-Cruz
D.B.A. Super Mercado El Local
1209 E. Mason St.
Green Bay, WI 54301

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Antonio Soto-Cruz, D.B.A. Super Mercado El Local is not and has never been licensed in the State of Wisconsin to practice pharmacy.
2. Respondent is the owner of the ethnic grocery store Super Mercado El Local (Grocery Store).

3. On February 24, 2015, City of Green Bay police officers and Wisconsin Alcohol and Tobacco officers searched Respondent's Grocery Store during an investigation of illegal sale of prescription drugs.

4. During the search officers discovered a cardboard box and a small plastic 5 drawer container behind a checkout counter that contained medication.

5. The medication found included large amounts of amoxicillin and other non-controlled medication for which a prescription is required to be dispensed.

6. Law enforcement interviewed a Grocery Store employee who revealed that the Grocery Store purchases medication and other supplies from a salesman/distributor once a month for approximately \$600.

7. Respondent does not employ a pharmacist licensed by the Board.

8. Respondent is not a licensed pharmacy.

9. By selling and dispensing non-controlled medication without a prescription, Respondent created an unacceptable risk of harm to customers.

10. Respondent neither admits nor denies illegal conduct, but agrees to resolve this matter through stipulation.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction in this matter pursuant to Wis. Admin. Code ch. SPS 3 and Wis. Stat. § 440.21, and is authorized to enter into the attached Stipulation and Order pursuant to Wis. Stat. § 227.44(5).

2. Pursuant to Wis. Stat. § 450.03(1), no person may engage in the practice of pharmacy or use the title "pharmacist" or sell, or give away or barter drugs unless the person is licensed as a pharmacist by the Pharmacy Examining Board.

3. Pursuant to Wis. Stat. § 450.01(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, if made 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 use of the therapeutic alternate drug selection has been approved for a patient during the period of the patient's stay within the hospital by any of the following:
 - 1. The patient's physician.
 - 2. The patient's advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with a physician.
 - 3. The patient's physician assistant.
- (hm) Making therapeutic alternate drug selections in accordance with written guidelines or procedures previously established by a quality assessment and assurance committee of a nursing facility under s. 49.498 (2) (a) 3. or by a committee established for a nursing home under s. 50.045 (2), if the use of the therapeutic alternate drug selection has been approved for a patient during the period of the patient's stay within the nursing facility or nursing home by any of the following:
 - 1. The patient's personal attending physician.
 - 3. The patient's physician assistant, if the physician assistant is under the supervision of the patient's personal attending physician.
- (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.

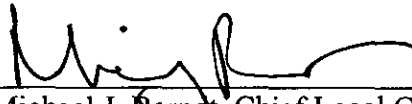
4. The conduct set out in the Findings of Fact, above, constitutes the unlicensed practice of pharmacy, contrary to Wis. Stat. § 450.03(1).

ORDER

- 1. The attached stipulation is accepted.
- 2. Unless and until Respondent is properly licensed as a pharmacist by the Wisconsin Pharmacy Examining Board, Respondent is enjoined and prohibited from the practice of pharmacy in the State of Wisconsin. Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation. See Wis. Stat. § 440.21(4)(a).
- 3. If the Department determines that there is probable cause to believe that Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Issued at Madison, Wisconsin, this 3rd day of September, 2015.

By: 

Michael J. Berndt, Chief Legal Counsel
On behalf of the Department

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION
INVOLVING

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STIPULATION

ANTONIO SOTO-CRUZ, D.B.A
SUPER MERCADO EL LOCAL,
RESPONDENT.

0004228

Division of Legal Services and Compliance Case No. 15 UNL 019

Respondent Shannon M. Dwyer and the Division of Legal Services and Compliance,
Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Administration Injunction by the Wisconsin Department of Safety and Professional Services (Department). The parties to the Stipulation consent to the entry of the attached Final Decision and Order 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 then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the 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 or other agent for the Division of Legal Services and Compliance may appear before the Department, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on the Stipulation.

7. Respondent is informed that should the Department adopt this Stipulation, the Department's Administrative Injunction is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending that the Department adopt this Stipulation and issue the attached Administrative Injunction.

Antonio Soto
Antonio Soto-Cruz
D.B.A. Super Mercado El Local
1209 E. Mason St.
Green Bay, WI 54301

8/27/15
Date

Sandra L. Nowack
Sandra L. Nowack, Attorney
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8/18/15
Date