

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MARTIN AVENUE PHARMACY,	:	
RESPONDENT.	:	0004260

Division of Legal Services and Compliance Case No. 14 PHM 087

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

Martin Avenue Pharmacy
1247 Rickert Dr., Ste. 100
Naperville, IL 60540

Wisconsin Pharmacy Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
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 Pharmacy Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Martin Avenue Pharmacy is licensed in the state of Wisconsin to practice pharmacy, having license number 476-43, first issued July 13, 2009 and current through May 31, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1247 Rickert Drive, Suite 100, Naperville, Illinois 60540.

2. Between June 30, 2014 and July 21, 2014, an investigator with the U.S. Food and Drug Administration (FDA) inspected Respondent's facility in which employees engaged in sterile compounding. The investigator reported 15 observations of practices or policies that were

below professional standards and potentially compromised sterility and stability of the drugs compounded in Respondent's facility.

3. As a result of the FDA inspection, and as of August 20, 2014, Respondent has voluntarily ceased sterile compounding, and does not intend to engage in sterile compounding in the future.

4. As a result of the FDA inspection, Respondent voluntarily recalled compounded medications dispensed to 38 Wisconsin patients. The recall was not the result of any patient becoming ill or otherwise medically compromised by Respondent's compounded products.

5. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 450.10(1), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Martin Avenue Pharmacy engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(2), by engaging in practices below professional standards, which could have resulted in harm to patients.

3. By the conduct described in the Findings of Fact, Martine Avenue Pharmacy violated Wis. Stat. § 450.10(1)(a)2., by violating this chapter, or subject to § 961.38(4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

4. As a result of the above violations, Martin Avenue Pharmacy is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

ORDER

1. The attached Stipulation is accepted.

2. Respondent Martin Avenue Pharmacy is REPRIMANDED.

3. The license of Martin Avenue Pharmacy, license number 476-43, is hereby limited to prohibit Respondent from engaging in sterile compounding until the Board removes this limitation. The Board may remove this limitation upon receiving evidence satisfactory to the Board or its designee that Respondent is capable of safely and reliably engaging in the practice of sterile compounding.

4. Within ninety (90) days from the date of this Order, Martin Avenue Pharmacy shall COSTS of this matter in the amount of \$490.00.

5. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

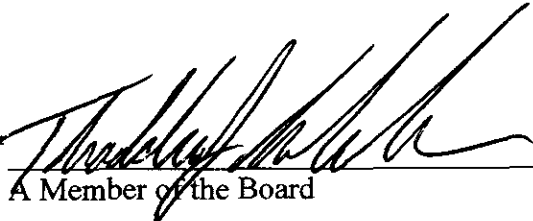
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered, Respondent's license (no. 476-43) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs.

7. This Order is effective on the date of its signing.

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

9/23/15
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARTIN AVENUE PHARMACY,
RESPONDENT.

:
:
:
:
:

STIPULATION

0004260

Division of Legal Services and Compliance Case No. 14 PHM 087

Respondent Martine Avenue Pharmacy 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. Respondent is represented by Todd Mizeski.

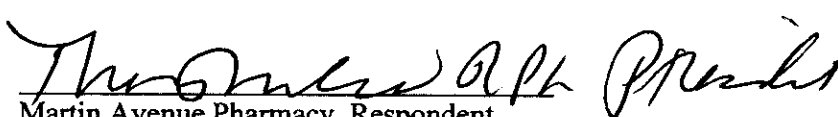
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Pharmacy Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

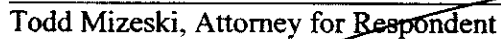
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

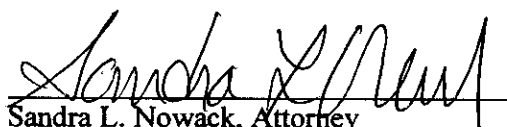
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order 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 the Board adopt this Stipulation and issue the attached Final Decision and Order.


Martin Avenue Pharmacy, Respondent
1247 Rickert Dr., Ste. 100
Naperville, IL 60540
License no. 476-43
Date 8/29/15


Todd Mizeski, Attorney for Respondent
FRIER & LEVITT, LLC
84 BLOOMFIELD AVENUE
PINE BROOK NJ 07058
Date 7/31/15


Sandra L. Nowack, Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190
Tel. (608) 266-8098
Fax (608) 266-2264
sandra.nowack@wisconsin.gov

Date 8/31/15

RECEIVED

AUG 31 2015