

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
GEORGE W. ZIPPERER, R.PH., : FINAL DECISION  
RESPONDENT : AND ORDER

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

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board. Let a copy of this order be served on the respondent by certified mail.

Dated this 24<sup>th</sup> day of March, 1982.

Paul G. Byrke

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GEORGE W. ZIPPERER, R.PH.,  
RESPONDENT

PROPOSED DECISION

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The parties of this proceeding, for the purposes of Wis. Stats.  
sec. 227.16 are:

George W. Zipperer, R.Ph.  
623 First Avenue  
Antigo, Wisconsin 54409

Pharmacy Examining Board  
1400 East Washington Avenue, Room 176  
P. O. Box 8936  
Madison, Wisconsin 53708

A complaint was filed in the above-captioned matter on September 29,  
1981. The Respondent, George W. Zipperer, by his attorney, filed an  
answer on October 16, 1981.

A hearing was held on November 19, 1981 at 1400 East Washington  
Avenue, Madison, Wisconsin. Mr. Zipperer appeared personally and by his  
attorney, James H. Whiting, 612 Clermont Street, P. O. Box 239, Antigo,  
Wisconsin 54409. The Complainant appeared by attorney Michael J. Berndt,  
Department of Regulation and Licensing, Division of Enforcement, P. O.  
Box 8936, Madison, Wisconsin 53708.

By agreement of all parties, this proceeding was consolidated with  
two other disciplinary proceedings for the purposes of hearing. These  
other proceedings are captioned In the Matter of Disciplinary Proceedings  
Against Edwin F. Dorzeski, R.Ph. and In the Matter of Disciplinary  
Proceedings Against Leonhardt F. Koepsell. The gravamina of all three  
complaints filed in these proceedings are the same.

Based upon the evidence in the record, the hearing examiner recommends  
that the Pharmacy Examining Board adopt as its final decision the following  
Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. George W. Zipperer, R.Ph. (Zipperer), residing at 623 First  
Avenue, Antigo, Wisconsin, was at all times relevant to this proceeding  
licensed under the provisions of Wis. Stats. chapter 450 to practice as  
a pharmacist in the State of Wisconsin (license #7119).

2. At all times relevant to this proceeding Zipperer was a partner in and worked as a pharmacist at the Olk Drugstore, 800 Fifth Avenue, Antigo, Wisconsin, and the Medical Center Pharmacy, 1111 Langley Road, Antigo, Wisconsin.

3. Others employed as pharmacists at the Olk Drugstore and the Medical Center Pharmacy are Edwin F. Dorzeski (Dorzeski) and Leonhardt F. Koepsell (Koepsell). Dorzeski and Koepsell are respondents in disciplinary proceedings consolidated with this proceeding for the purposes of hearing.

4. Rita Meeks (Meeks) is a resident of Antigo who is approximately 70 years of age and who, at all times relevant to this proceeding, suffered from the condition identified as leukemia.

5. On June 23, 1980, Dr. J. E. Garritty (Garritty) issued a prescription order, identified as prescription #75012, to Meeks for quantity 50 Darvocet-N 100 tablets.

6. Garritty had issued prescription orders to Meeks for Darvocet-N 100 on a number of previous occasions.

7. Darvocet-N 100 is an analgesic agent classified as a Schedule IV controlled substance under the Wisconsin Controlled Substances Act, Wis. Stats. chapter 161.

8. No refills of prescription #75012 were authorized by Garritty.

9. While practicing as a pharmacist at the Olk Drugstore, Zipperer refilled prescription #75012 on five (5) occasions: June 30, 1980; January 11, 1981; January 26, 1981; February 7, 1981; and February 15, 1981.

10. The five occasions upon which Zipperer refilled prescription #75012 constituted the 1st, 17th, 19th, 21st and 22nd occasions upon which said prescription was refilled.

11. Zipperer refilled prescription #75012 in part to avoid a financial hardship which he believed Meeks would suffer as a result of the perceived necessity of making a physician's office call each time Meeks wished to renew her prescription.

12. At no time relevant to this proceeding did Zipperer make contact with Garritty for the purpose of seeking authorization to refill prescription #75012.

13. Based upon the frequency with which prescription #75012 was refilled and the refill quantities, Meeks use of Darvocet-N 100 fell within proper prescriptive limits as to dosage.

## CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. section 450.02(7).

2. In refilling prescription #75012 without authorization of the prescribing practitioner, as set forth in paragraphs 5 through 10 of the Findings of Fact, above, Zipperer has violated Wis. Stats. secs. 161.38(3), 161.41(1)(c) and 450.07(5), and Wis. Adm. Code secs. Phar 5.03(3) and Phar 6.06(2).

## ORDER

NOW, THEREFORE, IT IS ORDERED, that the license of George W. Zipperer to practice pharmacy in the State of Wisconsin shall be, and hereby is, suspended for a period of two (2) weeks, effective seven (7) days after the date of the final decision and order rendered by the Pharmacy Examining Board in this cause.

## OPINION

Pursuant to an oral stipulation between the parties at hearing, Mr. Zipperer admitted the factual allegations of the complaint. Based upon those admitted facts, a violation of the statutory and code sections set forth in paragraph 2 of the conclusions of law is clear. Accordingly, the primary issue in this proceeding is what discipline, if any, should be imposed.

It is well established that the purposes for imposition of discipline include rehabilitation of the licensee, protection of the public, and deterring other licensees from engaging in similar misconduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. State v. McIntyre, 41 Wis. 2d 481 (1969).

Testifying at hearing were the Respondent, Mr. Zipperer, and the Respondents in the two companion cases, Edwin Dorzeski, R.Ph., and Leonhardt Koepsell, R.Ph. All of their testimony was consistent and may be briefly summarized as follows:

Mrs. Rita Meeks is an elderly woman of apparently limited means who suffers from leukemia. She had been well known by all three respondents for a number of years and they were all familiar with the circumstances of her life, including the nature of her illness and the fact she had recently lost both her husband and her son. Over a period of years, Mrs. Meeks had presented for filling prescriptions for Darvocet-N 100 prescribed by Dr. Garritty for relief of pain connected with her illness. During the period relevant to this proceeding, Mrs. Meeks repeatedly requested that the prescription in question here be refilled. When urged to visit her physician for the purpose of renewing the prescription, Mrs. Meeks would respond that she needed the medication for pain but that she could not afford the cost of repeated visits to her physician's office. Because he felt sorry for her, and recognizing that her consumption of the medication

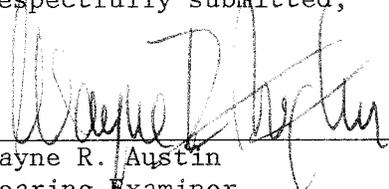
was within normal prescriptive limits (as to dosage), Zipperer responded affirmatively to Mrs. Meeks requests. Zipperer testified that he attempted himself to contact the physician from time to time in regard to refilling the prescription, but had never been successful in those attempts.

Mr. Zipperer's testimony was credible and it can therefore be concluded that his actions were motivated by compassion rather than by either avarice or indifference to the law. It is not sufficient, however, to decide that Mr. Zipperer was well intentioned though misguided and let the matter rest. In light of the disciplinary objectives outlined above, his good intentions are not enough. Even if it is assumed (as it probably may) that discipline is not necessary to insure Mr. Zipperer's rehabilitation, discipline is nonetheless necessary to protect the public by deterring others from similarly disregarding the important restrictions placed upon the prescribing and dispensing of controlled substances. Further, something more than a reprimand is appropriate to adequately express to the profession and to the public the Board's displeasure with the failure of a pharmacist to scrupulously adhere to the laws pertaining to prescriptions for controlled substances. It is deemed that the recommended two-week suspension will adequately serve that objective.

Finally, while this and the companion cases (Dorzeski and Koepsell) are handled individually in that separate proposed decisions have been filed, the Board will note that the effective dates of the three recommended orders are staggered so as to run consecutively rather than concurrently. Testimonial evidence at hearing indicates that concurrent suspension of all three pharmacists involved in this and the companion cases would result in the necessity to close at least the Medical Center Pharmacy for the period of the suspensions. The ramification such a closing might have on Mr. Zipperer's personal finances is a much lesser consideration than the public welfare considerations already discussed, and this staggering of effective dates is thus not recommended as a way to lessen respondent's financial burden. Rather, it is suggested that to impose the recommended discipline in a manner so as to result in the necessity to close one or both pharmacies could very well result in an injury to the public safety and welfare by requiring that patients have their prescriptions filled at a less conveniently located pharmacy and/or at greater expense. Conversely, imposition of the recommended periods of suspension on a consecutive rather than concurrent basis would probably not lessen the gravity of the imposed discipline as perceived by the public or by other licensees. If so, then concurrent imposition of discipline would accomplish little but to punish Mr. Zipperer and the other two respondents.

Dated at Madison, Wisconsin this 10<sup>th</sup> day of February, 1982.

Respectfully submitted,

  
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Wayne R. Austin  
Hearing Examiner