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IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST

PAUL J. MORNARD, R.Ph.

FINAL DECISION AND ORDER

99 PHM 22

RESPONDENT

LS 9906041 PHM

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

*Paul J. Mornard
3025 Big Timber Circle
Green Bay, WI 54313*

*Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

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 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

1. Respondent is Paul Joseph Mornard (dob 1/19/48), and is licensed by the Board as a pharmacist, license #8308. Respondent has been so licensed since 4/6/72. At all times material to the matters set forth herein, respondent was the owner and managing pharmacist of Medical Center Pharmacy, Green Bay, Wisconsin, a community pharmacy licensed in Wisconsin.
2. In late August, 1998, respondent hired a female pharmacy clerk. Respondent knew shortly after hiring her that the employee had a history of drug abuse. The employee worked for respondent into December, 1998.
3. The clerk states, and the Board finds, that respondent dispensed Prozac®, Valium®, Ritalin®, hydrocodone, and morphine to this employee, or acquiesced to her taking these medications, at various times over the months of her employment, all without a prescription or other authority to do so. Respondent did not keep any records of this dispensing or taking, and did not discuss it with the employee's physician. Respondent denies providing Ritalin® or providing or knowing about her taking hydrocodone or morphine.
4. All of these drugs are controlled substances except Prozac®, which is a prescription drug. Morphine and Ritalin® are Schedule II controlled substances; hydrocodone is a Schedule III controlled substance; Valium® is a Schedule IV controlled substance.
5. Respondent developed a personal relationship with the employee which included romantic feelings. During at least some of the time that respondent employed this clerk, respondent was having a sexual affair with her. The clerk states the sexual activity was in the nature of an exchange for free controlled substances, in that

the employee would agree to have a sexual contact with respondent, and respondent would supply, would promise to supply, or would continue to supply, controlled substances to her without a prescription. Respondent denies any such understanding, but did not charge the clerk for the Prozac® and Valium® which he admits dispensing to her.

6. At least by October, 1998, respondent knew that the employee was stealing controlled substances from the pharmacy. Respondent had encouraged the employee to enroll in a substance abuse program, and had provided the employee with health insurance so that she could do so. Respondent knew, however, that the employee did not enroll in such a program, but continued to employ her.
7. At no time did respondent report the theft of the controlled substances taken by the employee to the DEA or to the Pharmacy Examining Board. Some, but not all, missing controlled substances were reported to the local police department.
8. On March 18, 1999, respondent dispensed 10 tablets of oxycodone, a Schedule II narcotic controlled substance, to a patient without a prescription from an authorized prescriber and without other authority to do so.
9. On March 22, 1999, respondent met with the same patient at his pharmacy, and was presented by the patient with a blank prescription form from a physician's office which the patient appeared to have obtained without authority, in that they were blank. The patient displayed the form to respondent, and asked him what to do with it. Respondent then told the patient to fill out the patient's name and address, and then to sign the physician's name to the form. Respondent then instructed the patient to write "Percocet" on the prescription. Respondent then dispensed 60 tablets of oxycodone (a generic form of Percocet®), a Schedule II narcotic controlled substance, to the patient. Respondent then entered the prescription information into his pharmacy computer records, as if the prescription had been legitimately issued by the physician for this patient.
10. Also on March 22, 1999, respondent viewed a second blank prescription form from the same physician at the same time as stated above. Respondent instructed the patient to fill the form out in a similar manner, but to put the drug "Oxycontin" as the medication. OxyContin® is a continuous release form of oxycodone, and is a Schedule II narcotic controlled substance. Respondent then dispensed 10 of these tablets to the patient, telling the patient that the other 10 listed on the prescription order would "cover" him for the oxycodone which respondent dispensed to the patient on March 18. This prescription information was also entered into the pharmacy computer records, as if the prescription had been legitimately issued by the physician for this patient.
11. On April 12, 1999, a state criminal complaint was issued against respondent, charging him with delivery of a Schedule II narcotic (§961.41(1)(a) and (d)1., Stats.), 2 counts, based on the allegations set forth in ¶¶ 8-10, above.
12. On or about 11/25/98, respondent's records purport to show that the pharmacy dispensed amoxicillin to a pediatric patient, on the prescription of a certain physician. Respondent's pharmacy records state that this purported prescription was refilled on 1/19/99. In fact, the records of the physician show that no such prescription order was issued by this physician. Respondent later submitted a billing to Wisconsin Medical Assistance or another third party payor for the January 19, 1999, prescription, stating falsely that it had been ordered by the named physician. In fact, a prescription for this medication for this patient was issued on 11/25/98 by another physician, but did not authorize any refills.
13. During an audit by the Wisconsin Medical Assistance program, it was discovered that respondent's hardcopy records of telephoned prescriptions between 9/13/96 and 5/24/99 routinely fail to show the amount of each medication prescribed and dispensed, but show only the name of the medication and dosage instructions. This error was the result of a programming error in respondent's computerized recordkeeping system, which respondent failed to adequately review and detect.
14. During the same audit, it was discovered through sampling that approximately one-third of respondent's hardcopy records of Schedule III-V prescriptions were missing. The period sampled was 1/1/95 through 5/99, and numerous prescriptions were missing for the period after October, 1996 (see ¶13, above). A subsequent audit of respondent's records by the Wisconsin Medical Assistance program revealed that approximately 14% of respondent's hardcopy prescription records for the most recent five years were missing and could not be accounted for. Respondent states that all prescriptions are recorded in the pharmacy's computer and are *bona fide*.
15. During a review of respondent's records by the DEA conducted between April and June, 1999, it was discovered that respondent failed to have available for review any records of the receipt of controlled substances between March and July, 1997, in violation of 21 CFR §1304.04. Respondent also failed to properly keep records of the receipt of Schedule II controlled substances on the official C-II order forms, between 8/20/97 and 2/26/98, in violation of 21 CFR §1305.09(e).
16. An audit of some of respondent's Schedule II controlled substances dispensing revealed that the following dosage units are missing and that respondent cannot account for them: 46 dextroamphetamine, 93 hydromorphone, 566 methadone, 2536 methylphenidate, and 1457 oxycodone. Each of these represents a greater than 2% deviation.
17. On multiple occasions in 1998-99, respondent accepted prescriptions from prescribers for methylphenidate, a Schedule II controlled substance, which were incompletely dated, and later completed the date so that the hardcopies appeared to have been dated on a date other than the date of issue. On other occasions, respondent accepted postdated orders for methylphenidate, and on some occasions filled them before the purported date of issue.

18. Respondent represents to the Board that he has not practiced pharmacy in any manner since September 1, 1999, except on one occasion on September 28, 1999 (and then in full compliance with the Interim Order).

CONCLUSIONS OF LAW

- A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.
- B. The conduct described in paragraph 4, above, dispensing a prescription drug without a prescription, violates §450.11(1), Wis. Stats. Dispensing a Schedule II or III controlled substance without a prescription violates §961.41(1)(a), Wis. Stats. Dispensing any controlled substance without a prescription violates §961.41(1m), Wis. Stats. and § Phar 8.05(2), Wis. Adm. Code. Dispensing any prescription drug without a prescription violates §450.11(1), Wis. Stats., and § Phar 10.03(1),(2) and (5), Wis. Adm. Code. Failing to keep any record of the dispensing of these controlled substances violated § Phar 8.02(1) and (5), Wis. Adm. Code, and 21 CFR §1304.21. Such conduct constitutes unprofessional conduct pursuant to §450.10(1)(a) 2 and 6., Wis. Stats., and § Phar 10.03(2), Wis. Adm. Code.
- C. Any agreement or practice by the respondent to supply free or unprescribed controlled substances in exchange for sexual contact as described in ¶5, above, is a violation of §450.11(1) and/or §944.32, Wis. Stats., and constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- D. The conduct described in ¶6, above, constitutes unprofessional conduct pursuant to §450.10(10)(a)6., Wis. Stats., and § Phar 10.03(2), Wis. Adm. Code.
- E. The conduct described in ¶7, above, violated § Phar 8.02(3)(f), Wis. Adm. Code, and 21 CFR §1301.74(c), and constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- F. Dispensing Schedule II controlled substances without a prescription from an authorized prescriber as described in ¶8, above, is a violation pursuant to §§450.10(1)(a)2 and 6, 961.41(a) and (b), Wis. Stats., and §§ Phar 10.03 (1) and (2), Wis. Adm. Code. Such conduct constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- G. The conduct described in ¶¶9-10, above, violates the following: dispensing a Schedule II controlled substance without a valid prescription violates §§450.11(1) and 961.41(1)(a), Wis. Stats.; willfully making a false statement in a prescription record is a violation of §450.11(7)(c) and (e); and entering the prescription information into his records is unprofessional conduct pursuant to § Phar 10.03(5), Wis. Adm. Code. Such conduct constitutes unprofessional conduct pursuant to §§450.10(1)(a)2. and 6., Wis. Stats.
- H. Billing a third party payor for the refill described in ¶12, above, constitutes unprofessional conduct pursuant to §450.10(1)(a)7., Wis. Stats. Dispensing the refill on 1/19/99 violated §450.11(5), Wis. Stats., and constitutes unprofessional conduct under §450.10(1)(a)2. and 6., Wis. Stats.
- I. The conduct described in ¶13, above, violates §450.11(1) and (2), Wis. Stats., and constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- J. To fail to have the records described in ¶14, above, for at least five years violates §450.11(2), Wis. Stats., and constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- K. The conduct described in ¶15, above, constitutes unprofessional conduct pursuant to §450.10(1)(a)2. and 6., Wis. Stats.
- L. The conduct described in ¶16 above, constitutes unprofessional conduct pursuant to §450.10(1)(a)6., Wis. Stats., and § Phar 8.02(1), Wis. Adm. Code.
- M. The conduct described in ¶17, above, constitutes unprofessional conduct pursuant to 21 CFR §§1306.04(a) and 1306.05(a), §450.10(1)(a) 2. and 6., Wis. Stats., and §§ Phar 8.04(1) and 8.05(1), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license to practice pharmacy of Paul J. Mornard is SUSPENDED for a period of at least one year, effective September 2, 1999. Respondent shall forthwith surrender his credentials to the Department Monitor, or to any agent of the department requesting them. While suspended, respondent shall not be in the professional area of any pharmacy for any reason.

IT IS FURTHER ORDERED, that respondent may petition the Board for the termination of the suspension, after one year, under the following terms and conditions:

a. Respondent shall, at his own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who have become involved sexually with patients. The practitioner performing the assessment must have been approved by the Board or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed. If requested or recommended by the assessor, respondent shall undergo such additional assessments, including but not limited to an inpatient AODA assessment at a facility approved by the Board or its designee.

b. Respondent shall have successfully completed a course in ethical boundaries for human services professionals, which course shall be pre-approved by the Board or its designee. This course shall not be credited to the standard biennial CE requirement for renewal of licensure. Respondent shall also

have taken and passed the pharmacy jurisprudence examination required of new applicants for licensure: respondent may not attempt the exam more than twice without permission of the Board.

c. Respondent must provide proof sufficient to the Board that Respondent has complied with the Board's order, that he can practice with reasonable skill and safety of patients and public, that he has undergone a program of education sufficient to assure the Board that his recordkeeping and billing will meet the standards for the profession, and that he will in fact meet those standards in his practice. At a minimum, this shall consist of 12 hours of continuing education, pre-approved by the Board or its designee, in pharmacy recordkeeping. Hours obtained in fulfilling this requirement shall not be credited to the standard biennial CE requirement for renewal of licensure. Additionally, before termination of the suspension, respondent shall take and pass the pharmacy jurisprudence examination required of new applicants for licensure. Respondent may not take the test more than twice without permission of the Board.

d. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address any recommendations resulting from the assessment or from this investigation and respondent's conduct following the adoption of this order, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

iii. If respondent has been found to be impaired or chemically dependent, the Board may require the usual and customary limitations and reports in such cases, and employ its usual and customary method of imposing a 5 year suspension and then staying that suspension quarterly.

e. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

IT IS FURTHER ORDERED, that if respondent believes that the Board's refusal to end the suspension is inappropriate or that any limitation imposed or maintained by the Board under paragraph 2 is inappropriate, respondent may seek a class 1 hearing pursuant to §227.01(3)(a), Wis. Stats., in which the burden shall be on respondent to show that the Board's decision is arbitrary or capricious. The suspension or limitations on respondent's license shall remain in effect until there is a final decision in respondent's favor on the issue.

IT IS FURTHER ORDERED, that respondent's license is permanently LIMITED in the following respects: he shall not own an interest in any pharmacy or licensee of the Board, and

shall not be a managing pharmacist. Respondent shall furnish a copy of this Order to all employers who are health care providers. If respondent works for a temporary employment service, the Order shall be furnished to the service, but need not be furnished to each client of the service. If respondent provides services as an independent contractor for a health care provider, he shall furnish a copy of this Order to each provider for whom he provides services which may constitute the practice of pharmacy.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter before his license is next renewed. The Division of Enforcement and Bureau of Legal Services shall file their statements of costs within 30 days, and respondent shall have 15 days following mailing of the statements to him, to object.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this October 13, 1999.

WISCONSIN PHARMACY EXAMINING BOARD,

by

Daniel F. Luce, R.Ph.

a member of the board