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IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST

ROBERT A. STEIB, R.PH.

RESPONDENT.

FINAL DECISION AND ORDER

99 PHM 55

LS0004114PHM

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

Mr. Robert A. Steib, R.Ph.
2985 S 127th St.
New Berlin, WI 53151

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 Robert A. Steib (dob 8/24/1963) is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #10938, originally granted on 3/17/1987. At all times relevant to the matters set forth below, respondent was the managing pharmacist of the Drug Emporium, 1537 E. Moreland Blvd., Waukesha, Wisconsin, where the conduct set forth took place.
2. On 5/12/1999, a patient presented a prescription order for Niferex®-PN to the respondent. The respondent decided to dispense NatalCare® PIC instead of the brand name Niferex®-PN because respondent believed that the two were substantially equivalent, and NatalCare was less expensive than Niferex and would be covered by the patient's insurance.
3. The pharmacy did not have the NatalCare in stock, so the respondent dispensed the brand name Niferex®-PN to the respondent, but labeled the bottle as the "NatalCare PIC." The respondent labeled the bottle as the NatalCare even though it contained the Niferex because the respondent planned to dispense the NatalCare for all future refill prescriptions. The respondent said that he did not tell the patient about substituting NatalCare PIC for Niferex®-PN because he did not want the patient to have to come back to the pharmacy to pick up the NatalCare when it came in and he did not want to deal with the customer's anger again.
4. On 8/4/1999, the patient had her prescription for Niferex®-PN refilled. The respondent dispensed the NatalCare in blister packs labeled "NatalCare PIC UD." The patient noticed that the medication was labeled

exactly as it had been before, but the medication looked different than what she had received on 5/12/1999. She telephoned the pharmacy, and respondent explained that he had dispensed the "generic equivalent" instead of the brand name drug.

5. Respondent states he followed the recommendation of his pharmacy computer program that NatalCare PIC could be substituted for Niferex®-PN. In fact, NatalCare PIC is not approved by the FDA as an equivalent for Niferex®-PN and is not a legal substitute, and the FDA does not approve vitamin formulae equivalents. Such a substitution would have required authorization by the prescriber, which respondent did not obtain.

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 3, above, § Phar 7.02 Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in paragraphs 2, 4, and 5 above, violated §§ 450.10(1)(a)5. and 6., and 450.13(1) and (3), Wis. Stats. and §§ Phar 7.01(1)(e) and 7.02, Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. The Board also concludes that, even if the two products were AB rated and therefore substitutable under §450.13, Wis. Stats., respondent's conduct in not informing the patient of her options and in mislabeling the first prescription would have been unprofessional conduct as set forth in par. C, above.

ORDER

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

IT IS FURTHER ORDERED, that Robert A. Steib, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, the respondent shall FORFEIT \$500, to be paid within 60 days, for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$450, within 30 days of this order.

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 April 11, 2000.

WISCONSIN PHARMACY EXAMINING BOARD, by:

s/

John Bohlmann R.PH.

a member of the board