

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
RICHARD J. DVORSKY, R.Ph., : LS0807231PHM
RESPONDENT. :

[Division of Enforcement Case # 07 PHM 067]

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

Richard J. Dvorsky, R.Ph.
306 Augusta Street
Racine, WI 53402

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Pharmacy Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 Pharmacy Examining 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. Richard J. Dvorsky, R.Ph., Respondent, date of birth January 24, 1949, is licensed by the Wisconsin Pharmacy Examining Board as a pharmacist in the state of Wisconsin pursuant to license number 8713, which was first granted January 9, 1975.

2. Respondent's address of record with the Department of Regulation and Licensing (DRL) is 306 Augusta Street, Racine, WI 53402.

3. On all dates relevant to the facts set out below, Respondent was employed as the managing pharmacist at Aurora Pharmacy (Pharmacy), 3900 Erie Street, Racine, WI 53402.

4. On May 31, 2007, Ms. A came to the Pharmacy to refill two prescriptions; one for Ciprofloxacin and one for Phenazopyrid. A technician filled the prescriptions which were then checked by Respondent. Upon returning home and after having taken a dose of medication from each bottle, Ms. A noted that both bottles contained Phenazopyrid. Ms. A returned the bottles to the Pharmacy later that evening and spoke with Respondent.

5. Respondent recalled checking the bottle containing the Phenazopyrid and then being called away to do a patient consultation. Upon returning, Respondent saw the stock bottle of Ciprofloxacin next to the Rx vial and assumed that

the vial contained the Ciprofloxacin. Respondent failed to check that bottle before giving the medications to Ms. A.

6. On January 16, 2008, a DRL investigator observed a pharmacy technician transfer a prescription directly to a consumer without a pharmacist consultation.

7. The investigator spoke with Respondent, who was the pharmacist on duty. When asked what the consult practice was at the Pharmacy, Respondent explained that for every new prescription, the technicians get the pharmacist on duty to complete a consult. For refills, the technicians only get the pharmacist if the consumer has any questions.

8. Paragraph stricken.

9. The Pharmacy Examining Board requires pharmacists to provide consultation with every prescription, regardless of whether the prescription is new or a refill. The duty to consult is not satisfied by an offer to consult. The only exception to the consultation requirement for community pharmacies concerns prescriptions that are delivered to residences. None of the transactions witnessed by the DRL investigator on January 16, 2008 involved home-deliveries.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 450.10 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4 and 5, above, constitutes a violation of Wis. Admin. Code §§ Phar 7.01(1)(d), and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1).

3. The conduct described in paragraphs 6 and 7, above, constitutes a violation of Wis. Admin. Code §§ Phar 7.01(1)(e), and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Richard J. Dvorsky, R.Ph., is REPRIMANDED for the conduct set out above.

2. Respondent shall, within 60 days from the date of this Order, pay to the Department of Regulation and Licensing a forfeiture in the amount of \$500.00, pursuant to Wis. Stat. § 450.09(8).

3. Respondent shall, within 180 days from the date of this Order, provide proof that he has taken and successfully completed the Multi-state Pharmacy Jurisprudence Examination.

4. Respondent shall, within 60 days from the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$510.00, pursuant to Wis. Stat. § 440.22(2).

5. All payments and documentation required by this Order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

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 any payment of the forfeiture as set forth above or fails to pay costs as ordered,

Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Pharmacy Examining Board

By: Gregory C. Weber
A Member of the Board

7/23/08
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
RICHARD J. DVORSKY, R.Ph., : LS _____ PHM
RESPONDENT. :

[Division of Enforcement Case # 07 PHM 067]

It is hereby stipulated and agreed, by and between Richard J. Dvorsky, R.Ph., Respondent; and Sandra L. Nowack attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 07 PHM 067). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the 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 be returned to the Division of Enforcement for further proceedings. In the event that this 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 Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case 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 Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Richard J. Dvorsky, R.Ph.
Respondent
306 Augusta Street
Racine, WI 53402

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date