STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
TERRY J. HUSTAD, R.PH., TERRY S. KUNICK, R.PH., AND WALGREENS RESPONDENT.	:	92 PHM 17

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

Terry J. Hustad, R.Ph.
858 Peregrine Ct.
Oregon, WI 53575

Terry S. Kunick, R.Ph.
113 Woodview Drive
Cottage Grove, WI 53527

Walgreens
2829 East Washington Avenue
Madison, WI 53704

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 Terry J. Hustad 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 #9506. At all times relevant to the facts set forth herein, respondent Hustad was the managing pharmacist of Walgreens pharmacy, 2829 East Washington Avenue, Madison, Wisconsin

where all of the actions described in these Findings took place, and was the supervisor of respondent Kunick.

2. Respondent Terry S. Kunick is and at was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license #8447. At all times relevant to the facts set forth herein, respondent Kunick was employed at the Walgreens pharmacy at 2829 East Washington Avenue, Madison, Wisconsin, and she dispensed the medication referred to in ¶3, below.

3. Respondent Walgreens is and was at all times relevant to the facts set forth herein a pharmacy licensed in the State of Wisconsin pursuant to license #6735.

4. The Respondents did, on January 4, 1992, permit an unlicensed person to transfer a prescribed medication, Augmentin, to Vint Q., and so transferred the medication without any consultation. When the patient asked questions about the medication, the unlicensed person (a store clerk, not a pharmacy technician) did not summon a pharmacist, but purported to provide the consultation herself.

5. On August 28, 1992, a prescribed medication was transferred to patient Kay G. by an unlicensed person and without any consultation. On the same day, a prescribed medication was transferred to another patient, Mr. A., by the same unlicensed person and without a consultation.

6. On and between January 4 and August 28, 1992, it was the policy of respondent Walgreens and respondent Hustad, as managing pharmacist, to permit pharmacy technicians to transfer refilled or renewed prescription medications to patients, and to require the technician to ask the patient if the patient had any questions. Only if the patient responded affirmatively was the pharmacist summoned.

CONCLUSIONS OF LAW

7. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10(1), Wis. Stats.

8. The Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

9. The conduct described in ¶¶4-5, and the policy described in ¶6, above, violated § Phar 7.01(1)(e), Wis. Adm. Code. The board specifically finds that permitting a technician to ask the patient if there are any questions does not constitute a consultation, and that consultation is required whether the prescription is a new or refilled. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that each respondent is hereby REPRIMANDED for the unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that each respondent shall forfeit $200, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that the respondent Walgreens shall pay the costs of the investigation and prosecution of this matter, in the amount of $225, to be paid within 30 days of this order.

Dated this 10th day of November, 1992.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas W. McGregor
a member of the Board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST TERRY J. HUSTAD, R.PH., TERRY S. KUNICK, R.PH., AND WALGREENS RESPONDENTS.	: : : : : : :	STIPULATION 92 PHM 17

It is hereby stipulated between each above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Each respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Each respondent is aware of and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. By entering to this Stipulation, each Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Each respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, each Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, 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 either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondents agree that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of either Respondent or Respondents's attorneys, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondents in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondents are informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

Terry J. Hustad — 10/20/92
Terry J. Hustad, R.Ph., Respondent — Date

Terry S. Kunick — 10/20/92
Terry S. Kunick, R.Ph., Respondent — Date

Walgreens, by:

10/19/92
Date

10/26/92
Prosecuting Attorney — Date
Division of Enforcement

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decisi n. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is November 13, 1992.