

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE  
PHARMACY EXAMINING BOARD

IN THE MATTER OF

ERNEST T. WITZKE, R.P.H.,  
RESPONDENT.

## FINAL DECISION AND ORDER

The State of Wisconsin, Pharmacy Examining Board, having considered the above entitled matter and having reviewed the record and the proposed decision of the Examiner, makes the following:

## ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board, In the Disciplinary Proceedings Against Ernest T. Witzke, R.Ph., Respondent. Let a copy of this order be served on the Respondent by certified mail.

Dated this 21st day of February, 1980.

Robert M. Mink

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
ERNEST T. WITZKE, R.PH.,	:	
RESPONDENT	:	

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A hearing was held in the above captioned matter on November 26, 1979. Appearing at the hearing were the respondent, Ernest T. Witzke, in person and by his attorneys Boardman, Suhr, Curry and Field, by Claude J. Covelli. Appearing for the complainant was Paula Possin, attorney, Division of Consumer Complaints.

Based on the evidence in the record and on the pleadings, other documents and the arguments of the parties, the examiner recommends that the Pharmacy Examining Board make as its final decision in the case the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. ERNEST T. WITZKE, R.Ph. (Witzke) was at all times material to this matter, licensed by the Pharmacy Examining Board to practice as a registered pharmacist in the State of Wisconsin (license #7962 , granted January 30, 1970).

2. Witzke's address is 924 High Street, Union Grove, Wisconsin 53182.

3. Witzke was employed as a pharmacist at Haag's West Racine Pharmacy, 3308 Washington Avenue, Racine, Wisconsin for approximately a five-year period preceding February 21, 1979.

4. During the five-year period preceding February 21, 1979, Witzke, without his employer's knowledge or permission, removed from his employer's inventory and, without a prescription therefor, self-administered the following schedule II, III and IV controlled substances in approximately the quantities listed:

1. Schedule II

- a. meperedine hydrochloride, 100 mg. and 50 mg. (a/k/a Demerol): 200 tablets total
- b. oxycodone with acetaminophen (a/k/a Tylox): 100-200 tablets total

2. Schedule III

- a. resin complexes of hydrocodone and phenyltoloxamine (a/k/a Tussionex): 15-30 tablets per day for past one year; 6 tablets per day for previous four years

3. Schedule IV

- a. diazepam (a/k/a Valium): 5 mg. to 15 mg. daily for 2-3 years

Witzke drank alcohol heavily during this same five-year period, but did not drink while working as a pharmacist. Witzke used some of the drugs, especially the Tussionex, to control his spastic colon. Witzke paid for most of the drugs he took by including them in his employee charges.

5. On March 2, 1979 Witzke voluntarily admitted himself to the A-Center in Racine, an accredited hospital providing inpatient and outpatient treatment services for alcoholism and other drug abuse. He completed full inpatient programming on March 30, 1979 with a discharge diagnosis of among other things, polychemical abuse and alcohol abuse.

6. Witzke continued to receive outpatient treatment service from the A-Center at least through July 30, 1979, consisting of weekly counseling, antabuse chemotherapy, urine surveillance and participation in Alcoholics Anonymous.

7. Witzke has not ingested or otherwise taken any controlled substances since February 5, 1979 and has not drunk any alcoholic beverages since February 19, 1979.

8. Witzke is presently fit to practice as a pharmacist.

CONCLUSIONS OF LAW

1. Witzke, by engaging in the conduct described in paragraph 4 of the findings of fact above, has violated ss. 161.38(5), 161.41(2)(r)(a) and 161.41(3), Wis. Stats.

2. The State of Wisconsin Pharmacy Examining Board has jurisdiction to take disciplinary action against Witzke pursuant to s. 450.02, Wis. Stats.

ORDER

1. NOW THEREFORE IT IS ORDERED that the license as a registered pharmacist issued to Ernest T. Witzke, Respondent, shall be and hereby is LIMITED by the following conditions, requirements and restrictions which shall take effect on issuance of this order by the Pharmacy Examining Board:

A. Witzke shall refrain from the use of all alcoholic beverages and other drugs unless prescribed for a valid medical purpose.

B. Witzke shall submit to any reasonable medical tests requested by the Pharmacy Examining Board to determine whether the Respondent is drug and alcohol free which shall be conducted according to procedures prescribed by the Board or its authorized representative. Witzke shall bear the cost of all tests.

C. Witzke shall comply with the terms of the outpatient rehabilitation program at the A-Center, 200 Domanik Drive, Racine, Wisconsin according to procedures established by the program director or Witzke's individual counselor in the program. The A-Center shall file reports on Witzke's progress and status with the examining board every 90 days until completion of the program.

D. Witzke shall notify the Pharmacy Examining Board of the place of his employment and of his general work schedule as a pharmacist and of any change in his employment or work schedule. The Pharmacy Examining Board may conduct inspections, investigations or observations of Witzke while working as a pharmacist at any time. The Pharmacy Examining Board may also request that Witzke's employer report to the examining board concerning Witzke's conduct.

E. Witzke shall not work independently as a pharmacist in a pharmacy owned by Witzke.

2. It is further ordered that the limitations imposed herein shall remain in effect for a period of two years following the date of this order, provided, however, that Witzke may petition the Pharmacy Examining Board at any time for removal of any or all of these conditions.

3. It is further ordered that any violation of any of the conditions on limitations ordered herein constitutes a basis for further disciplinary action against Witzke by the Pharmacy Examining Board.

#### OPINION

The issue in this case is whether the discipline imposed should include an actual suspension of respondent's license. Complainant urges that Witzke's license be suspended for six months with two months stayed. The arguments made by counsel in support of the need for suspension include the following:

A. The purposes for imposing discipline are to assure the public of the fitness and competence of pharmacists, to effectively express the board's disapproval of Witzke's conduct, to reduce the likelihood of reoccurrence of these violations, to deter others from such conduct and to help enforce the law. A suspension is necessary to meet these purposes.

B. Past cases like this resulted in a suspension of license. For reasons of consistency, clarity, certainty and prediction, a suspension is warranted.

C. The public and Witzke's former employer were directly harmed by Witzke. A suspension is needed to satisfy the public and especially Witzke's former employer.

Against the need for and appropriateness of any suspension:

1. There were factors mitigating Witzke's conduct; specifically his physical problems.

2. There is no reason to punish Witzke at this late date.

3. The state has an obligation to assist the recovery of Witzke, not to kick him while he is down.

Witzke showed at the hearing by his own testimony and that of his A-Center counselor and his current employer that he is currently fit to practice pharmacy, is receiving treatment for his physical problems and counseling for his alcoholism and past drug abuse. The complainant attempted to show but did not prove by any substantial evidence that Witzke had directly harmed his former employer and the public because his conduct had diminished the reputation of the pharmacy and injured relationships with customers at the pharmacy where Witzke worked.

Past decisions by the Pharmacy Examining Board and the Board of Nursing are not clearly dispositive of this case. Therefore, the issue presented here is a narrow one: In deciding on discipline, what importance is to be given to the goal of deterrence of others and the need to adequately express the board's disapproval of the conduct described in the findings of fact.

All parties agree that Witzke is currently fit to practice pharmacy. The limitations imposed on his license protect the public because they are likely to disclose his return to the use of alcoholism or drugs. Any suspension imposed here would be symbolic, designed to deter, and an expression of disapproval. At the hearing, Witzke presented a case which emphasized the unsettling and possibly disastrous effects which a suspension might cause to his program of rehabilitation. At the least a suspension would cause a psychological and financial setback.

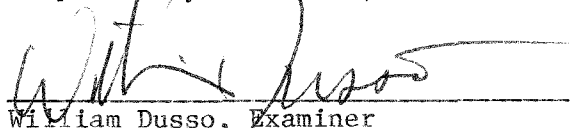
Witzke's voluntary admission to the hospital, his efforts at rehabilitation and his cooperation in this disciplinary proceeding establish credibility to his claims that physical illness contributed substantially to his misconduct. His cooperation and good faith are reasons for not imposing a lengthy license suspension despite the seriousness of this case.

The conduct described in the complaint may be made the basis of criminal proceedings against Witzke. The crimes are felonies. Although deterrence is a legitimate goal in a disciplinary proceeding, the deterrence effect resulting from a two-month suspension of Witzke's license is inconsequential compared to the deterrence of a possible felony conviction and prison sentence. There is no overriding need here to suspend for the sake of deterrence.

The limitations imposed by the Board's order severely restrict Witzke's conduct without depriving him of the means of earning a living and also serve as some deterrent against improper drug use by pharmacists. The benefit to the public to be gained through deterrence and disapproval by suspending Witzke's license is speculative and does not outweigh either the harm likely to be caused Witzke by a suspension or the inconvenience caused to the public by his inability to practice pharmacy.

Dated this 25<sup>th</sup> day of January, 1980.

Respectfully submitted,



William Dusso, Examiner

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
ERNEST T. WITZKE, R.PH.,	:	CORRECTION TO OPINION
RESPONDENT.	:	IN PROPOSED DECISION

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After issuance of the proposed decision in the above-captioned matter on January 25, 1980, the examiner discovered errors on page 4 of the opinion.

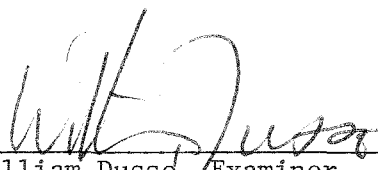
The opinion should be corrected as follows:

1. On page 4, in the third complete paragraph at line 2, the sixth word is "protect" rather than "protest."

2. The second last paragraph on page 4 of the opinion should read as follows:

"The conduct described in the complaint may be made the basis of criminal proceedings against Witzke. Although deterrence is a legitimate goal in a disciplinary proceeding, the deterrence effect resulting from a two-month suspension of Witzke's license is inconsequential compared to the deterrence of a criminal conviction and incarceration. There is no overriding need here to suspend for the sake of deterrence."

Dated this 30<sup>th</sup> day of January, 1980.

  
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William Dusso, Examiner

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