

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

| | | |
|-------------------------------|---|--------------------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION AND ORDER |
| | : | |
| JEFFREY A. SWANSON, R.PH. | : | 91 PHM 47 |
| RESPONDENT | : | |

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

Jeffrey A. Swanson, R.Ph.
3000 Regency Court #13
Ames, IA 50010

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 Jeffrey A. Swanson, 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 # 8759.

2. The Respondent did, for the ten years preceding and including May 7, 1991, practice pharmacy while addicted to and impaired by controlled substances, including tussionex and hydrocodone, and did dispense to himself and take without a prescription these and other controlled and prescription medications, all not for a valid medical purpose and without any other proper authority.

3. Respondent has admitted that he is chemically dependent upon controlled substances and alcohol. Respondent voluntarily entered treatment at St. Agnes Hospital on May 8, 1991, and notified the board of his dependency and decision to enter treatment on May 7, 1991. Respondent represents that he has been free of unprescribed medications and alcohol since May 8, 1991.

4. Respondent has cooperated with the board's investigation of this matter, and is presently not practicing pharmacy.

CONCLUSIONS OF LAW

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

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

7. The conduct described in paragraph 2, above, violated §§ 161.41, 450.10(1)(a)2. and 3., 450.10(1)(b), and 450.11(7)(h), Wis. Stats., and §§ Phar 10.03(1), (3), and (7), Wis. Adm. Code. 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 effective the date of this Order, the pharmacist license of Jeffrey A. Swanson is SUSPENDED for a period of not less than five (5) years. The Board in its discretion may restore Respondent's license to full, unlimited status only upon petition by Respondent after completion of the five year suspension period, and a showing by Respondent that he has complied with all terms and condition of this Order, and a demonstration by Respondent that he may practice pharmacy without condition or limitation.

1. STAYS OF SUSPENSION.

The suspension shall be STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined in par. 2, below.

(a) The Respondent may apply for consecutive three month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Respondent for rehabilitation and practice during the prior three month period.

(b) The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that Respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the Respondent for an extension, the Board shall afford an opportunity for hearing under Ch. RL 1, Wis. Adm. Code, upon timely receipt of a request for hearing.

(c) The applications for extension under 1 (a) and all required reports under 2 (a)-(c) shall be due on the following dates: May 1, 1992, and each and every following August 1, November 1, and February 1 as long as this order is in effect.

2. CONDITIONS OF STAY, AND LIMITATIONS.

(a) No consumption without prescription. Respondent shall remain free of alcohol, prescription drugs, and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his prescribing physician report in writing to the supervision physician or therapist under par. 2 (b)(1) all medications prescribed to Respondent within 3 days of such prescription.

(b) Rehabilitation Program. Respondent shall continue participation in a rehabilitation program acceptable to the Board for the treatment of chemical abuse and dependency. Such a program shall consist of the following:

(1) Respondent shall continue participation in a chemical abuse and/or dependency rehabilitation program supervised by a qualified physician or therapist ("supervising physician or therapist") at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Board prior approval of the facility and the supervising physician or therapist. The supervision physician or therapist is responsible for Respondent's total assessment and rehabilitation program. Respondent shall immediately provide a copy of this Order to the supervising physician or therapist for review and consideration in establishing a diagnosis and treatment and rehabilitation plans for Respondent. A full written report of the evaluation and assessment shall be provided directly to the Board by the supervising physician or therapist within 30 days of the date of his order. The assessment report shall include: (i) an evaluation of Respondent's level of

cooperation in the chemical dependency evaluation and assessment and influence thereof on the assessment's conclusions, (ii) diagnosis of Respondent's condition, (iii) recommendations for treatment, (iv) recommended work restrictions, if any, and (v) prognosis for Respondent's success in rehabilitation. The results of the evaluation and assessment shall be considered in establishing the elements and goals of Respondent's rehabilitation and treatment program, subject to the requirements of this order. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order.

(2) The rehabilitation program shall include, and Respondent shall participate in, individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervision physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy session may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §227.01(3) or 227.42, Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervision physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to his supervising physician or therapist.

(4) Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of all controlled substances and alcohol on a frequency of not less than:

- (i) Eight times per month for the first year following the date of this order.
 - (ii) Six times per month for the second year following the date of this order.
 - (iii) Four times per month for the third through fifth years following the date of this order.
- All urine screens shall include testing and reporting of the specific gravity of the urine specimen.

The random drug and alcohol screening program shall include weekends and holidays for collecting specimens. Failure of the drug and alcohol screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspensions, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board, in its sole discretion.

Respondent shall appear and provide a specimen not later than 5 hours following a request for a specimen, but in no event later than the same calendar date that the request is made.

If the supervising physician or therapist, Respondent's employer, the Board, or the Division of Enforcement deems that additional blood or urine screen are warranted, Respondent shall submit to such additional screens as requested or recommended. The supervision physician or therapist shall exceed the above minimum frequency for screening as necessary to prevent Respondent from predicting that no further screens will be required for a given period because the minimum frequency for that period has been met.

Respondent shall obtain a monitoring facility and reporting system acceptable to the Board.

Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimens and/or chemical analysis upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subject to a gas chromatography-mass spectroscopy ("GC-MS") test to confirm the initial positive screen results. The monitoring facility shall agree to immediately file a written report directly with the Board, the Division of Enforcement, the supervising physician or therapist, and Respondent's employer upon any of the following occurrences: the Respondent fails to appear for collection of a specimen as requested; the drug or alcohol screen and confirmatory GC-MS test is positive; the specific gravity of a urine specimen is below 1.008; or Respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to the supervision physician or therapist, providing the dates and results of specimen analyses performed. Such reports are due on the dates specified in par. 1 (c), above.

(5) Respondent shall arrange for quarterly reports from the supervision physician or therapist directly to the Board, which shall evaluate and report:

(i) A summary of Respondent's compliance and progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,

(ii) Respondent's attendance in NA/AA meetings, and

(iii) Respondent's participation in and result of his random witnessed urine and/or/blood screening program

These quarterly reports are due on the dates specified under par. 1 (c), above.

(6) Respondent shall arrange for agreement by his supervising physician or therapist to report immediately to the Board and Division of Enforcement any conduct or condition of Respondent that may constitute a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of Respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled or prescription substances, notice of any positive blood and/or urine screens for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Pharmacy: Limitations and Conditions. Any practice of pharmacy by Respondent during the pendency of this Order shall be subject to the following terms and conditions:

(1) Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation program as specified and approved under this Order.

(2) Respondent shall not be employed as or work in the capacity of a "managing pharmacist" or "pharmacist in charge" as defined in §§ Phar 1.02(2) and (5), Wis. Adm. Code.

(3) Respondent shall not be employed in the practice of pharmacy except under continuous, direct, on-site supervision of another registered pharmacist who is in good standing with, acceptable to, and approved in advance by, the Board.

(4) Respondent shall not place nor be responsible for the placing of any orders for the purchase of any controlled substances, except as monitored and specifically approved, in writing, by his supervisor, and Respondent shall not sign any invoices or receipts for controlled substances.

(5) Respondent shall provide his employer and any prospective employers, including business partners, with a copy of this Order, immediately upon issuance of this Order, and upon any change in employment, including a change in business partnership.

(6) Respondent shall arrange for his supervising pharmacist to provide directly to the Board quarterly written reports evaluating Respondent's work performance, which shall include reports or information required under subs. (7) and (8), below. Such reports are due on the dates specified in par. 1 (c), above.

(7) Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abusable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abusable drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abusable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(8) Respondent shall obtain from his supervising pharmacist agreement to conduct accountability audits of all schedule II controlled substances monthly for the first six months following the date of this order and then every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this paragraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(d) Releases to be provided. Upon request of the Board or Division of Enforcement, Respondent shall provide the Board and Division with current releases complying with state and federal laws, authorizing release of counseling, treatment (including AODA and mental health) and monitoring records, and employment records.

(e) Employment and residence reporting. Respondent shall report to the Board any change of his employment status, residence, or telephone number within five days of such change.

3. COSTS Respondent shall pay the costs of this investigation in the amount of \$*, within 60 days of this order.

4. FURTHER LIMITATION OF LICENSE Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.

5. PETITION FOR MODIFICATION AFTER TWO YEARS Following successful compliance with and fulfillment of the provisions of par. 2, above, for two years, Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of the Respondent's supervision physician or therapist expressly supporting the specific modifications sought. Denial of such a petition or modification shall not be deemed a denial of license under §227.01(3) or 227.42, Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

6. TREATMENT AND COMPLIANCE EXPENSES Respondent is responsible for all costs and expenses of complying with this Order, and for arranging any alternative means for covering such costs and expenses.

7. MONITORING OF PRACTICE The Board in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where Respondent is employed as a pharmacist.

8. VIOLATION OF BOARD ORDER Violation of any of the terms of this Order or of any law substantially relating to the practice of pharmacy may result in a summary suspension of Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

9. EFFECTIVE DATE OF ORDER This Order is effective immediately upon issuance by the Board, the respondent having already been furnished with a copy

Final Order
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and with knowledge of the date of the meeting of the board at which this matter will be considered.

Dated this 1st day of February, ¹⁹⁹²~~1991~~.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas M. Grogan RPh
a member of the Board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

| | | |
|----------------------------------|---|-------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | |
| | : | STIPULATION |
| JEFFREY A. SWANSON, R.PH. | : | |
| RESPONDENT. | : | 91 PHM 47 |

It is hereby stipulated between the 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. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent is aware 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 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, and the Wisconsin Administrative Code.

3. 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. 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, 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.

Stipulation

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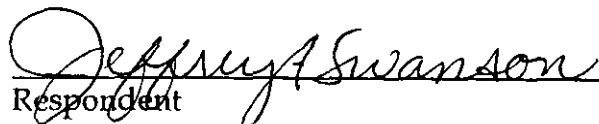
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board 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.

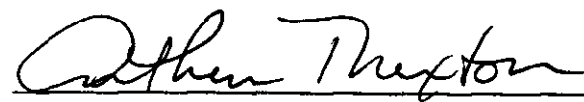
8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support 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 Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10 Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation shall 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.


Respondent

12-18-91
Date


Prosecuting Attorney
Division of Enforcement

12-27-91
Date

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 decision. (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 February 14, 1992.