

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION AND ORDER  
: 88 PHM 9  
ROBERT E. BERRY, R.P.H., :  
RESPONDENT. :

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

Robert E. Berry, R.Ph.  
3722 Bayberry Lane  
Greenfield, WI 53228

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 E. Berry 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 #3722. At all times relevant to the facts set forth herein, respondent Berry was a relief pharmacist at the Cooperative Pharmacy of Milwaukee, where all of the activity described herein took place. Respondent has practiced pharmacy for 37 years without disciplinary action by the board.
2. On and between 12/30/87 and 3/17/88, respondent sold 3 bottles of Schedule V codeine-containing substance to Charles B., without a prescription and not for a valid medical purpose or in good faith. The schedule V book of the pharmacy shows that a total of 28 bottles were sold to this patient during this time by respondent and another pharmacist.
3. On and between 12/17/87 and 4/27/88, respondent sold 3 bottles of Schedule V codeine-containing substance to Randall E., who had the same last name and address as Elizabeth E, above, without a prescription and not for a valid medical purpose or in good faith. The schedule V book of the pharmacy shows that a total of 37 bottles were sold to this patient during this time by respondent and another pharmacist.

4. On and between 12/9/87 and 4/25/88, respondent sold 3 bottles of Schedule V codeine-containing substance to John K., without a prescription and not for a valid medical purpose or in good faith. The schedule V book of the pharmacy shows that a total of 51 bottles were sold to this patient during this time by respondent and another pharmacist.

5. On and between 12/28/87 and 4/27/88, respondent sold 3 bottles of Schedule V codeine-containing substance to Dale P., without a prescription and not for a valid medical purpose or in good faith. The schedule V book of the pharmacy shows that a total of 46 bottles were sold to this patient during this time by respondent and another pharmacist.

6. The figures set forth in these findings are based on an audit of a 5-month period only.

#### 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 paragraphs 2-5, above, violated §§161.23(1) and 161.38(4), Wis. Stats. and § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code (1988). 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 Robert E. Berry, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall forfeit \$500, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay the costs of the investigation and prosecution of this matter, in the amount of \$100, within 30 days of this order.

Dated this 9<sup>th</sup> day of December, 1992.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas M. Grogan  
A member of the Board

AKT:dms  
ATY-2277

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
ROBERT E. BERRY, R.PH.,	:	88 PHM 9
RESPONDENT.	:	

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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 a hearing on the a formal complaint which has been issued in this matter.
2. 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, 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 obtained 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.
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. 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 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.

11-19-92  
Date

Robert E. Berry  
Respondent

11-19-92  
Date

Eugene J. Kelly  
Attorney for Respondent

11-20-92  
Date

Arthur Thurston  
Prosecuting Attorney  
Division of Enforcement

AKT:dms  
ATY-2276

## 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 December 10, 1992.