

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

PHILIP J. LUTGEN, R.PH.  
RESPONDENT.

92 PHM 94

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

Philip J. Lutgen, R.Ph.  
1003 West Devonshire Road  
Delafield, WI 53018

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 Philip J. Lutgen (dob 7/26/45) 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 # 7822.
2. The Respondent did, on June 25, 1992, fill and dispense a prescription for promethazine VC with codeine syrup for a pediatric patient. The prescription read (in relevant part): "sig: 1-2 tsp q4h prn cough." Respondent permitted the bottle to be transferred to the patient's mother labeled (in relevant part): "Take 1 to 2 tablets teaspoonsful every 4 hours into the left ear needed for cough." The medication was transferred to the patient's mother without a consultation.

**CONCLUSIONS OF LAW**

3. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats.
4. The Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

**ORDER**

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

IT IS FURTHER ORDERED, that Philip J. Lutgen, R.Ph., is hereby REPRIMANDED for his unprofessional conduct in this matter.

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

Dated this 9 day of FEBRUARY, 1993.

WISCONSIN PHARMACY EXAMINING BOARD

by: Charles H. Dinkel, R.Ph.  
a member of the board

ATY2-3193  
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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :

PHILIP J. LUTGEN, R.PH., :  
RESPONDENT. :

STIPULATION  
92 PHM 94

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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 the issuance of a formal complaint.

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 into 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 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.

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.



## 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 11, 1993.