

# 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

STEVEN D ESKIN, R.PH.  
K-MART PHARMACY #4395  
RESPONDENTS.

93 PHM 85

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

Steven D Eskin, R.Ph.  
500 West Bradley Road #115-A  
Milwaukee, WI 53217

K-Mart Pharmacy #4395  
6077 South Packard Avenue  
Cudahy, WI 53110

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 Steven D. Eskin (dob 6/1/56) 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 #20056, originally granted on 12/2/81. At all times material to the facts set forth herein, respondent Eskin was the managing pharmacist of co-respondent K-Mart Pharmacy #4396, a licensed community pharmacy in the State of Wisconsin pursuant to license #6037, first granted 3/22/79, where all of the activity described took place.

2. Respondent Eskin did, on October 9, 1993, receive a new prescription for 40 tablets of penicillin 250 mg, with instructions that the patient was to take four immediately and then two every six hours until gone. Respondents did not have this particular strength at the time, so respondent Eskin filled the prescription with 500 mg. strength tablets and labeled the prescription with the instructions to take two immediately and then one every six hours until gone.

3 Respondent would testify that he gave the patient's husband (who picked up the prescription) a consultation which called his attention to the change. The patient's husband would testify that no consultation was given, and that he received the prescription from a clerk without any contact with a pharmacist. The patient would testify that she followed her prescriber's instructions, and took four tablets immediately and two every six hours thereafter.

4. On February 11, 1994, investigators for the Board observed several patients receive prescriptions at respondent K-Mart, while a subordinate pharmacist of respondent Eskin was on duty. The board's investigators observed repeated instances of a clerk transferring prescriptions without contact or consultation between patient and pharmacist.

5. In the light of the patient's actions and the observations of the board's investigators, the board infers that the version of the patient's husband regarding nonconsultation and transfer by a clerk is more believable, and accepts it as true.

### CONCLUSIONS OF LAW

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

4. The conduct described in paragraphs 3 and 4, above, violated § Phar 7.01(1)(e), 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 Steven D. Eskin, R.Ph., and K-Mart Pharmacy #4395 are each REPRIMANDED for unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that each respondent shall separately FORFEIT \$200, to be paid in full within 30 days of this order.

IT IS FURTHER ORDERED, that respondents shall jointly and severally pay COSTS in this matter in the amount of \$250, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 10 day of MAY, 1994.

WISCONSIN PHARMACY EXAMINING BOARD

by:

  
a member of the board

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :

STEVEN D. ESKIN, R.PH. :  
K-MART PHARMACY #4395, :  
RESPONDENTS. :

STIPULATION

93 PHM 85  
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It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, 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 agreement and without the issuance of a formal complaint.

2 Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; 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 respondent, the right to call witnesses on respondent's 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 to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4 Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. 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.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

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

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

Steven D. Eskin  
Steven D. Eskin, Respondent

4-22-94  
Date

K-MART #4395, by:

Tom D'Amico

4-24-94

Name and title:

Date

Arthur Huxton  
Prosecuting Attorney  
Division of Enforcement

5/2/94  
Date

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN PHARMACY EXAMINING BOARD.

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1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

MAY 12, 1994.

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### **1. REHEARING**

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### **2. JUDICIAL REVIEW.**

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)