

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

MARK G. ANDERSON, R.PH.
RESPONDENT.

93 PHM 83

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

Mark G. Anderson, R.Ph.
626 Thomas Street
Fond du Lac, WI 54935

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 Mark G. Anderson (dob 7/5/53) 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 #9189, originally granted on 6/29/77.
2. From May 27, 1990 to October 12, 1993, respondent was the managing pharmacist for the SuperSaver Pharmacy #6015 in Madison, Wisconsin, where all of the activity described below took place.
3. Between May 1992 and October 1993, Supersaver Pharmacy was unable to account for the following controlled substances: an unknown quantity of capsules of codeine compounds, approximately 2700 diazepam 5 mg tablets, approximately 5500 other benzodiazepine tablets, approximately 2000 tablets of phenobarbital, 14,500 ml. of Schedule III hydrocodone cough syrup, an amount in excess of 14,500 ml. of Schedule V cough syrup, and smaller quantities of other tablet and capsule forms of various controlled substances.
4. During the time respondent was the managing pharmacist, the Schedule V record book was not kept in chronological order, such that dispensing records could be readily retrieved. For example, one page began on 2/21/92 and ended on 9/13/92, while the next page began on 2/4/92 and ended on 5/23/92. The following page began on 10/9/92 and ended on 8/19/93, while the next page began on 10/11/92 and ended on 7/2/93. On some occasions, the dispensing person failed to sign the book and respondent would sign later, indicating inaccurately that he had personally dispensed the medication.

5. On and between 10/25/90 and 7/8/91, respondent or his subordinates sold 12 bottles of Schedule V codeine-containing substance to D.B., without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase.

6. On and between 9/2/90 and 5/1/92, respondent or his subordinates sold 22 bottles of Schedule V codeine-containing substance to I.K. (or H.K., of the same address), without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase.

7. On and between 10/25/90 and 5/30/92, respondent or his subordinates sold 20 bottles of Schedule V codeine-containing substance to S.S., without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase. Respondent personally sold 18 of the 20 bottles to this patient.

8. On and between 10/8/90 and 12/17/90, respondent sold 5 bottles of Schedule V codeine-containing substance to R.S., without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase.

9. On and between 12/15/90 and 9/2/93, respondent sold 27 bottles of Schedule V codeine-containing substance to A.S., without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase.

10. On and between 9/22/90 and 6/11/92, respondent or his subordinates sold 25 bottles of Schedule V codeine-containing substance to M.T., without a prescription and without making appropriate inquiry to determine the valid medical purpose of purchase. Respondent personally sold 23 of the 25 bottles to this patient.

11. On each of the following dates, respondent sold a Schedule V controlled substance to a person without printing the name of the person to whom the substance was sold: 6/4/91, 10/24/92, and 1/22/93.

12. On a date unknown but between 2/21/93 and 9/23/93, respondent sold a bottle of Schedule V substance to T.H., without recording the date of the sale.

13. On a date unknown but between 3/16/93 and 3/29/93, respondent sold a bottle of Schedule V substance to J.S., without recording the date of the sale.

14. On a date unknown but between 3/30/93 and 4/3/93, respondent sold a bottle of Schedule V substance to A.M., without recording the date of the sale.

15. On a date unknown, respondent substituted Flexaril™ for Norflex™ for a patient, without practitioner authorization and without notifying the patient of the substitution. At the time the patient presented the prescription, respondent was out of Norflex™.

16. On a date shortly before August 9, 1993, respondent dispensed approximately eight dicloxacillin to customer W.E., who stated that he needed something for an adult son who had an infected toe. W.E. was not a health care professional, and had no prescription for such medication.

17. On date unknown, but believed to be in August 1993, respondent removed from the pharmacy a quantity of hydrocodone-based Schedule III cough syrup, without consent and without a prescription, for the family dog.

18. The Respondent did, on 10/9/93, dispense a bottle of hydrotropine, a Schedule III controlled substance, to a relative without a prescription from a practitioner. On or near the same day, respondent took a bottle of codeine cough sryup, a Schedule V controlled substance, for use by a member of his immediate family without a prescription and without signing the register. Respondent had also taken, for immediate family use, a similar bottle of Schedule V cough syrup without a prescription and without signing the register, on or about 9/9/93.

19. Respondent has been examined by a competent psychiatrist, who has been informed of the above facts and others, and has opined that respondent is not presently in need of AODA treatment.

CONCLUSIONS OF LAW

20. 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.

21. The conduct described in paragraph 3, above, violated §§ Phar 6.07(3) and 8.02(1), Wis. Adm. Code. The conduct described in paragraph 4, above, violated §161.23(4), Wis. Stats., and § Phar 8.02(3)(b), Wis. Adm. Code. The conduct described in paragraphs 5-10, above, violated §161.23(1) and 161.38(4), Wis. Stats. and § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code. The conduct described in paragraph 11, above, violated §161.32(4), Wis. Stats., § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code, and 21 CFR §1306.32(e). The conduct described in paragraphs 12-14, above, violated §161.32(4), Wis. Stats., § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code, and 21 CFR §1306.32(e). The conduct described in paragraphs 15-16, above, violated §450.11(1), §450.13(1), and § Phar 10.03(1) and (2), Wis. Adm. Code. The conduct described in paragraphs 17-18, above, violated §161.23(4), Wis. Stats., and § Phar 8.05(2), 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 the license of Mark G. Anderson, R.Ph., to practice pharmacy is hereby LIMITED in that respondent shall take and pass both the Federal Drug Law Examination and the Wisconsin Pharmacy Jurisprudence Examination with scores of 75 or better, before August 1, 1995. Respondent may not take either examination more than twice without express permission of the board, which shall determine in its discretion under what terms and conditions the respondent may attempt an exam after two attempts. If and only if respondent fails either examination, his license shall be SUSPENDED forthwith by staff until respondent has passed both examinations. If there is such a suspension, upon proof of passing the examinations and payment of the forfeiture and costs, respondent's license shall be forthwith reissued and restored by the staff of the department, subject to the other provisions of this Order, with no further action by the board.

IT IS FURTHER ORDERED, that effective October 31, 1993, the license of Mark G. Anderson, R.Ph., to practice pharmacy is hereby LIMITED in the following respect: respondent shall not be the managing pharmacist of any pharmacy, including on a temporary or acting basis, for three years. After such three years, this limitation shall be removed by staff without formal action by the board.

IT IS FURTHER ORDERED, that the license of Mark G. Anderson, R.Ph., to practice pharmacy is hereby LIMITED in the following respects:

- A. Respondent shall not personally dispense any Schedule V controlled substance to any patient without a valid prescription from a practitioner.
- B. Respondent shall not consume any alcoholic beverage, nor personally purchase, personally obtain, or ingest any controlled substance, including a Schedule V controlled substance, without a legitimate prescription from a licensed practitioner for a legitimate medical purpose. This specifically includes, but is not limited to, respondent's obtaining any such medication for a member of his family. This limitation does not prevent respondent from placing or receiving orders for drugs for strictly professional purposes related exclusively to keeping appropriate pharmacy stock for his employer.
- C. For the duration of his license limitation, respondent shall provide his employer and any prospective employers with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment.
- D. 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 this Order. Such reports shall be due on the first business day of January, April, July, and October of each year.
- E. In addition to the foregoing, Respondent shall obtain from his supervising pharmacist agreement to conduct a full and exact (not estimated) count of all controlled substances which contain codeine or benzodiazepines in inventory immediately, and accountability audits of all such controlled substances 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 (such approval not to be unreasonably withheld). 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.
- F. Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.
- G. Respondent shall provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding Respondent to the Pharmacy Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondent's employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

H. Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

J. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$500.

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 15 day of March, 1995.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas M. Gungor
a member of the board

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akt

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

MARK G. ANDERSON, R.PH., :
RESPONDENT. :

STIPULATION
93 PHM 83

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 obtained legal advice before signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. Respondent does not admit that the figures set forth in ¶3 of the Findings of Fact are correct, but agrees solely for purposes of settlement and to avoid the expense and inconvenience of litigation not to contest them in this forum. 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.


Stipulation
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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.


Respondent 3/10/95
Date


Hal G. Harlowe, Attorney for Respondent 3/29/95
Date


Prosecuting Attorney
Division of Enforcement 3/30/95
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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

APRIL 3, 1995.

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.)