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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
WALGREENS,	:	LS9505221PHM
RESPONDENT.	:	

The State of Wisconsin, Pharmacy Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

The rights of a party aggrieved by this Decision to petition the board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 14 day of MAY 1996.

George F. Chutkan, Esq.

**STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

PROPOSED DECISION
Case No. LS-9505221-PHM

**WALGREENS,
RESPONDENT.**

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Walgreens #34
7713 West Capitol Drive
Milwaukee, WI 53222

Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 22, 1995. In lieu of presenting evidence at a hearing, the parties filed a Stipulation of Facts and submitted legal briefs in support of their position. Atty. Arthur Thexton appears in this matter on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Walgreens, is represented by Atty. Joseph R. Long, II, Relles, Meeker & Borns.

Based upon the record herein, the Administrative Law Judge recommends that the Pharmacy Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent, Walgreens #34, is a community pharmacy licensed in the State of Wisconsin, #6064 to operate at 7713 West Capitol Drive, Milwaukee, Wisconsin.

2. In February of 1993, Walgreens and others with common ownership caused to be installed in at least six offices of physicians, computer terminals and/or software provided by respondent known as Pre-Scribe™. Such equipment and software enabled the physicians in those offices to transmit electronic text messages which ordered the dispensing of prescriptions to patients, directly to Walgreen pharmacies and later to certain other pharmacies which had agreed to join the program. Prescriptions were in fact dispensed to patients pursuant to communications transmitted and received with this system.

3. When Walgreens began to test the Pre-Scribe™ system in Wisconsin in February of 1993, the only pharmacies included in the test were Walgreen pharmacies, which already had computer equipment that was satisfactory for the Pre-Scribe™ system.

4. At that time, Walgreens arranged with 10 prescriber sites in southeastern Wisconsin to participate in the testing. The 10 prescriber sites were as follows:

- a. Ildefonso Asinas, M.D. (1 prescriber)
- b. Harwood Medical Center (26 prescribers)
- c. Health First Medicine (1 prescriber)
- d. Jerome Kostrzewski, M.D. (1 prescriber)
- e. Lake Shore Family Practice (5 prescribers)
- f. Medical Associates (17 prescribers)
- g. North Point Medical Clinic (4 prescribers)
- h. Oak Creek Family Medicine (1 prescriber)
- i. Sussex Family Practice (2 prescribers)
- j. United Internists (5 prescribers)

5. Of these 10 prescribers, Walgreen Company provided 6 prescribers, at no charge, with used computers with an 80286 processor and floppy and hard disk drives, and external modems capable of sending and receiving at a speed of 2,400 baud. At that time, 80486-based computer and 14,400 baud modems were the state-of-the-art. Nonetheless, the computers provided by Walgreens could be used to run business software for such functions as word processing, bookkeeping, etc. The remaining 4 prescribers used their own existing computer equipment to connect to the Pre-Scribe™ system. All 10 prescribers received, at no charge, the Pre-Scribe™ software and training in its use from Walgreens.

6. All subsequent prescribers who have participated in the Pre-Scribe system have purchased the requisite computer equipment from other vendors or from Walgreen Company at the then-current market price. Since July of 1993, the Pre-Scribe system has been generally available to any prescriber who wishes to participate in the system.

7. There is no evidence as to whether any prescriber or pharmacy that received the computer equipment free-of-charge from Walgreen Company in connection with the Pre-Scribe™ system has or has not used said equipment for any purpose other than the Pre-Scribe™ system.

8. There is no evidence as to whether any prescriber using the Pre-Scribe™ system in Wisconsin has or has not actually done anything to steer any patient to a pharmacy connected to the Pre-Scribe™ system in preference to pharmacies not connected to the system. The Department of Regulation and Licensing did not specifically investigate this issue.

9. The Pre-Scribe™ system was initially devised primarily for accomplishing the renewal of previously existing prescriptions. The system can also be used to transmit new prescriptions from prescriber to pharmacy. Except for the handwritten signature of the practitioners, such electronic prescriptions contain the same information that would be included in a written, oral or faxed prescription.

10. The electronic prescriptions transmitted by prescribers using the Pre-Scribe system do not contain the original handwritten signature of the prescriber and do not involve oral communications between the prescriber and the pharmacy.

11. At least as of October 31, 1995, prescription renewals constituted approximately 89% of the transactions on the Pre-Scribe™ system in Wisconsin, and new prescriptions have constituted approximately 11%.

12. At all times material to this matter respondent regularly received new prescriptions from prescribers and sent requests for prescription renewal authorizations to prescribers, and received such authorizations via the Pre-Scribe™ system.

13. In 1994, after Walgreen Company had completed initial testing of the Pre-Scribe system between prescribers and its own pharmacies, it expanded testing to 4 non-Walgreen pharmacies in southeastern Wisconsin. Walgreen Company provided to these pharmacies, at no charge, computers, the Pre-Scribe software, and training in the use of the software.

14. At all times, after initial testing, Walgreen Company intended that the Pre-Scribe system would eventually be made available to all prescribers and pharmacies in Wisconsin that wished to participate in the system.

15. On or about October 12, 1993, Walgreen Company knew that the position of the Pharmacy Examining Board was that the Board did not believe the Pre-Scribe system met the requirements of the Board's rules, as set forth in the minutes of the Board's meeting of October 12, 1993, the practice question presented to the Board, dated September 21, 1993, and the Board's draft answer to the practice question.

16. Walgreens received financial benefits from the testing of the Pre-Scribe system in Wisconsin, which included substantial savings in time, and therefore money, in processing prescriptions. Walgreen Company received benefits from the sale of the Pre-Scribe system in August 9, 1995, to Integrated Systems Solutions Corporation, a subsidiary of IBM Corporation.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this matter pursuant to s. 450.10, Wis. Stats.

2. Respondent's conduct as described in Findings of Fact #5-6 and 9-12, herein constitutes a violation of s. 450.11 (1), Stats.

3. Respondent's conduct as described in Findings of Fact #2, 5 and 16, herein constitutes a violation of s. Phar 10.01 (14), Wis. Adm. Code.

4. Respondent's conduct as described in the Findings of Fact herein does not constitute a violation of s. Phar 10.01-(13), Wis. Adm. Code.

5. Respondent's conduct as described in Findings of Fact #2, 5-6 and 9-12, herein constitutes a violation of s. Phar 10.01 (15), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to s. 450.10 (2), Stats., a forfeiture shall be and hereby is assessed against the respondent, Walgreens #34, in the amount of \$89,200. (Eighty-Nine Thousand and Two Hundred Dollars).

IT IS FURTHER ORDERED that pursuant to s. 440.22, Stats., the cost of this proceeding shall be and hereby is assessed against respondent.

This order is effective on the date on which it is signed by a designee of the Pharmacy Examining Board.

OPINION

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 22, 1995. In lieu of presenting evidence at a hearing, the parties filed a Stipulation of Facts and submitted legal briefs in support of their position.

The complainant alleges in its Complaint that Walgreens violated ss. Phar 10.03 (13), (14) and (15), Wis. Adm. Code and s. 450.11(1), Wis. Stats. Respondent denies having violated these provisions. Complainant has the burden of proof to establish that the violations occurred.

I. Background

The evidence in this case consists solely of the Stipulation of Facts signed by the parties.¹ In February, 1993, Walgreen Company began testing a system in Wisconsin designed for the electronic transmission of prescription information between prescribers and pharmacies. The system, which is known as Pre-Scribe™ ("Pre-Scribe"), was initially devised for accomplishing the renewal of previously existing prescriptions. The system can also be used to transmit new prescriptions from prescriber to pharmacy. New prescriptions transmitted over the system contain the same information that would be included in a written, oral or faxed prescription.²

Walgreens arranged with 10 prescriber sites in southeastern Wisconsin to participate in the testing of the system. Of the 10 prescribers, Walgreens provided 6 prescribers, at no charge, with used computers with an 80286 processor and floppy and hard disk drives, and external modems capable of sending and receiving at a speed of 2400 baud. At that time, 80486-based computers and 14,400 baud modems were the state-of-the-art. Although the computers could be used to run business software for such functions as word processing and bookkeeping, there is no evidence in the record regarding whether the computers were used for any purpose other than for testing the system. All subsequent prescribers who participated in the system purchased the requisite computer equipment from other vendors or from Walgreen Company at the then-current market price. At the time Walgreen Company began to test the system in Wisconsin, the only pharmacies included in the test were Walgreen pharmacies, which already had computer equipment that was satisfactory for the Pre-Scribe system.

1. Several admissions are contained in the Answer filed by respondent

2. Prescriptions transmitted by prescribers using the Pre-Scribe system do not contain the original handwritten signature of the practitioners.

II. Signature of Practitioners

First, the complainant alleges that the respondent violated s. 450.11 (1), Stats., by dispensing drugs or devices pursuant to prescription orders which did not include the signature of the practitioners.

Section 450.11 (1), Stats., reads, in part, as follows:

(1) Dispensing. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription shall be immediately reduced to writing ...

The evidence presented establishes that respondent violated s. 450.11 (1), Stats., by dispensing drugs upon prescription orders which did not include the signature of the practitioners.

Walgreens admits in its Answer that the electronic prescriptions transmitted through the Pre-Scribe system did not contain the original handwritten signature of the practitioners, and that the electronic communications did not involve oral communications between the prescriber and the pharmacy. *Respondent's Answer, page 1, paragraph 4.*

Respondent contends that the "signature" requirement does not apply to Pre-Scribe prescriptions because such prescriptions are electronic not "written" prescriptions. Respondent interprets the statutes to mean that in addition to written and oral prescriptions, other types of prescriptions, such as electronic prescriptions, are permissible. In addition, respondent argues that faxed prescriptions, which contain "reproductions" of signatures, are not specifically referred to in the statutes. Yet, the Board permits faxed prescriptions. This can only mean that the Board itself does not read the statute as requiring all prescription to be either written (and signed) or oral. Rather, the Board must read the statutes as Walgreens does, as permitting, without limitation, oral and written prescriptions, the latter requiring a signature. Therefore, respondent concludes, the absence of a literal signature in a Pre-Scribe prescription does not make that prescription violative of s. 450.11 (1), Stats.

Respondent's argument is unpersuasive. First, the statutes is clear that prescription orders must be written or oral. The term "prescription order" is defined in s. 450.01 (21), Stats., to mean "a written or oral order by a practitioner for a drug or device for a particular patient". Second, s. 450.11 (1), Stats., specifically states that a written prescription order must include the signature of the prescriber. Pre-Scribe prescriptions are written prescriptions, as such, they must include the signature of the practitioners. The information contained in Pre-Scribe prescriptions is inputted (typed) into the computer system by the prescriber in text format. *Answer, par. 2; Stipulation of Facts, #3; Exhibit A, p. 3-6.* The method or mechanism utilized to transmit prescription orders, whether hand-delivered, transmitted by computer or faxed, is irrelevant.

Finally, a faxed prescription is also a written prescription. A handwritten signature of a prescriber on a faxed prescription satisfies the statutory requirement.

The term "signature" is not defined in ch. 450, Stats. In construing a statute, the primary source of statutory construction is the language of the statute itself. State v. McKenzie, 139 Wis. 2d 171, 176, 407 N.W. 2d 274 (Ct. App. 1987). When the statutory language is clear and unambiguous, the statute must be interpreted on the basis of the plain meaning of its terms. State v. Oimen, 184 Wis. 2d 423, 434, 516 N.W. 2d 399 (1994). In the construction of Wisconsin laws, the words and phrases contained in s. 990.01, Stats., must be construed as indicated unless such construction would produce a result inconsistent with the manifest intent of the legislature.

Section 990.01(38), Stats., states, in reference to the signature of a person, that:

(38) Signature. If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the person's request and in the person's presence.

The original handwritten signature of a practitioner which is placed on a prescription order prior to transmittal by fax satisfies the requirement in s. 450.11 (1), Stats., that written orders include the signature of the practitioner.

Respondent's second contention is that if the signature requirement applies to Pre-Scribe prescriptions, such prescriptions satisfy the requirement at least as well as a faxed prescription. Respondent argues that if the Board is willing to look beyond the absence of a "literal signature" to decide whether faxed prescriptions satisfy the legislature's security concerns, then equal protection considerations require that the Pre-Scribe system be judged by the same process.

First, Pre-Scribe prescriptions do not contain the handwritten signature of the prescribers, original nor literal; therefore, such prescriptions cannot be compared to signed faxed prescriptions. Second, only faxed prescriptions which contain the signature of the practitioners satisfy the statutory requirement. Finally, in reference to security features, a pharmacist is able to compare the signature of a prescriber contained on a faxed prescription with the prescriber's signature on file. Such comparison cannot be made with Pre-Scribe prescriptions.

III. Rebate Arrangements

The complainant alleges that the respondent participated in rebate arrangements with health practitioners and health care facilities, in violation of s. Phar 10.03 (14), Wis. Adm. Code. The regulation states, in part, that it is unprofessional conduct for a licensee to participate in rebate or fee-splitting arrangements with health practitioners or with health care facilities. The evidence presented establishes that respondent violated the regulation.

In 1993, Walgreens arranged with 10 prescriber sites in Wisconsin to participate in the testing of the Pre-Scribe system. Of the 10 prescribers, Walgreens provided 6 prescribers, at no charge, with used computers with an 80286 processor and floppy and hard disk drives, and external modems capable of sending and receiving at a speed of 2400 baud. At that time, 80486 based computers and 14,400 baud modems were the state-of-the-art. Although the computers could be used to run business software for such functions as word processing and bookkeeping, there is no evidence in the record regarding whether the computers were used for any purpose other than for testing the system. The remaining 4 prescribers used their own computer equipment to connect to the system.

The complainant contends that by giving away the hardware and software to the six prescribers, Walgreens rebated the cost of setting up such a system. Complainant argues that it is not necessary to show that the rebate actually resulted in some financial benefit to Walgreens either because patients were encouraged to use Walgreen pharmacies or in any other way. It is sufficient to show that the rebate occurred.

Respondent contends that the computers provided to the prescribers were not given as an inducement to patient steering because the equipment was not "state-of-the-art", and because the equipment was provided to as few prescribers as possible. Respondent argues that there is no evidence that any of the six prescribers ever used the equipment for any other purpose or that they ever steered a single patient to a Walgreen pharmacy.

The term "rebate" is not defined in the regulation. In general, the language of a regulation controls its interpretation. Plain and clearly understood language must be given its accepted meaning. Only if the regulation is ambiguous will courts apply the rules of construction. *Franklin v. Housing Authority of the City of Milwaukee*, 155 Wis. 2d 419, 426; 455 N.W. 2d 668 (1990). A common and approved meaning for a word that is not a technical term may be ascertained by reference to a recognized dictionary. *State v. Mattes*, 175 Wis. 2d 572, 578, 499 N.W. 2d 711 (1993).

The term "rebate" is defined in the second edition of the American Heritage Dictionary as "a deduction from an amount to be paid or a return of part of an amount given in payment".

In this case, one can reasonably interpret the evidence to conclude that by providing the prescribers with free computer equipment Walgreens gave or rebated the "full amount" of the then-current market value of the equipment to the prescribers. All subsequent prescribers purchased the requisite computer equipment from other vendors or from Walgreen Company at the then-current market price. In addition to receiving financial gain by the savings in time which translated into more profits, Walgreen Company received financial gains as a result of the sale of the Pre-Scribe system to Integrated Systems Solutions Corporation, a subsidiary of IBM Corporation. *Stipulation of Facts*, #7 (a), #18.

IV. Undue Influence

The complainant alleges that respondent's action of supplying computer terminals and software to prescribers violated s. Phar 10.03 (13), Wis. Adm. Code. That regulation provides, in part, that it is unprofessional conduct for a licensee to exercise undue influence on or take unfair advantage of a patient in the promotion or sale of services, drugs or other products for the financial gain of the pharmacist or a third party. The evidence presented in this case does not establish that Walgreens violated the regulation.

The complainant has the burden of proof to establish that Walgreens: 1) exercised undue influence on or took unfair advantage of a patient; 2) that such conduct occurred in conjunction with the promotion or sale of services, drugs or other products and, 3) that respondent received financial gain as a result of such conduct. The legal positions of the parties differ primarily on the issue of whether Walgreens' conduct constitutes undue influence on a patient, and whether it received financial gain for itself or a third party.

There is no evidence in the record which establishes that Walgreens exercised undue influence on or took unfair advantage of a patient. There is evidence in the record establishing that Walgreens received financial gains as a result of the testing of the Pre-Scribe system in Wisconsin.

The complainant contends that by participating in the initial testing of the Pre-Scribe system, the prescribers formed a favorable opinion towards Walgreens which translated into a preference to use the services of Walgreens over other pharmacies. Consequently, the complainant contends, there is a reasonable probability that prescribers communicated their preference for Walgreens to their patients in some subtle fashion.

There is no evidence as to whether any prescriber using the Pre-Scribe system in Wisconsin has or has not actually done anything to steer any patient to a pharmacy connected to the Pre-Scribe system in preference to pharmacies not connected to the system. *Findings of Fact 8; Stipulation of Facts #21.*

In fact, the evidence reflects that at least two prescribers provided their patients with the opportunity to obtain services from the pharmacy of their choice. In the Stipulation of Facts, at page 1 of Exhibit G, a representative from Falls Medical Group Northwest stated that "patients were asked which pharmacy they wanted to use" and that the "system is only used if they request Walgreens". At page 2, first paragraph of Exhibit G, a representative from the Milwaukee Medical Clinic stated that "they still spend a lot of time doing the refills the old way for patients who request other pharmacies".

In reference to financial gains, not only did Walgreens receive finance gains by the savings in time which translated into more profits, Walgreen Company also received financial gains as a result of the sale of the Pre-Scribe system to Integrated Systems Solutions Corporation, a subsidiary of IBM Corporation. *Findings of Fact #16; Stipulation of Facts, #7 (a), #18.*

V. Prescription Order Blanks

Complainant alleges that respondent violated s. Phar 10.03 (15), Wis. Adm. Code by furnishing prescribers with prescription order blanks imprinted with respondent's name on them. The evidence presented establishes that respondent violated the regulation.

First, by providing the prescribers with the Pre-Scribe system, Walgreens furnished the mechanism used to transmit electronic prescription orders. In this case, the information contained in the prescription orders was not written on the traditional paper pad, but rather typed into the computer system.

The phrase "prescription order blank" is not defined in the regulation. However, the term "prescription order" is defined in s. 450.01 (21), Stats., to mean "a written or oral order by a practitioner for a drug or device for a particular patient". The information which must be included in a prescription order is specified in s. 450.11 (1), Stats., which states, in part, that:

(1) Dispensing. ... All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. ...

Except for the original handwritten signature of the practitioners, new prescriptions transmitted over the Pre-Scribe system contain the same information that would be included in a written, oral or faxed prescription. *Stipulation of Facts, #3.* To order a new prescription a prescriber using the Pre-Scribe system is required to input the following information into the system:

- 1) patient - name, address, birth date, phone and patient ID;
- 2) medication - drug name, quantity, number of refills and SIG;
- 3) doctor - name, address, DEA number and phone number, and
- 4) store - Walgreens store that will fill the new prescription.

Prescription renewal requests transmitted by respondent to prescribers identify the patient, prescribing doctor, drug name, quantity, SIG and last fill date. The prescribers are provided several options regarding refill authorization, including but not limited to the option to approve or deny the refill and the option to indicate changes to the prescription. After the prescriber inputs the requisite data for a new or renewed prescription, the information is then transmitted electronically to the Walgreens store selected by the prescriber.

Prescribers using the Pre-Scribe system, type the same information into the computer system as they would when "filling in the information" on a paper prescription blank order.

Second, the evidence establishes that the "Walgreens Pre-Scribe" logo appears on the computer screen at the time the Pre-Scribe program is initially started and each time the main Pre-Scribe menu screen is displayed. *Stipulation of Facts, Exhibit A, G.*

VI. Discipline

The Pharmacy Examining Board is authorized under s. 450.10, Stats., to reprimand a licensee or revoke, suspend or limit the license or any combination thereof of any person licensed under the statutes who has engaged in unprofessional conduct. In addition, s. 450.11, Stats., provides that the Board may assess a forfeiture of not more than \$1,000 for each separate offense. Each day of violation constitutes a separate offense.

Having found that the respondent violated s. 450.11 (1), Stats., and rules relating to the practice of pharmacy, a determination must be made regarding what type of discipline, if any, should be imposed. The Administrative Law Judge recommends that forfeitures be assessed against the respondent pursuant to s. 450.10 (2), Stats. This measure is designed to assure protection of the public and to deter other licensees from engaging in similar misconduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W. 2d 689 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481, 164 N.W. 2d 235 (1969).

The complainant recommends that a civil forfeiture be imposed against the respondent for each day of violation (totaling more than \$500,00.00) as follows:

- 1) For the period before the Board addressed the issue (226 days): \$100.00 per day.
- 2) For the period after the Board addressed the issue but before respondent was directly ordered to cease use of the system (273 days): \$500.00 per day.
- 3) For the period between July 12, 1994 and August 9, 1995 (393 days): \$1,000 per day.

Alternatively, the complainant proposes that if the number of prescriptions accepted over the system can conveniently be calculated, a forfeiture equal to the fee charged for each prescription for the first period, double the fee charged for each prescription for the second period, and quadruple the fee charged for the third period.

Respondent proposes that any forfeiture imposed not exceed \$892.00. Respondent suggests that the *de minimis* nature of its wrongdoing, if it has done anything wrong at all, should be met with a comparably *de minimis* penalty. By the State's calculation, Walgreens operated Pre-Scribe in Wisconsin for 892 days before selling it to ISSC. Respondent proposes that, if a forfeiture is to be imposed, that it be at the rate of \$1.00 for each day of operation, for a total forfeiture of \$892.00.

In general, Walgreens operated Pre-Scribe in Wisconsin for 892 days before selling the system to ISSC on August 9, 1995. Since each day of violation constitutes a separate offense, it is recommended that \$100.00 be assessed against respondent for each day of violation. This results in a total assessment of \$89,200.00. This recommendation takes into consideration the fact that there were three separate violations of the pharmacy statutes and/or rules cited in the proposed Conclusions of Law, and that not all of the three violations continued for the entire 892 day time period. *See, Findings of Fact #6.*

In addition, this recommendation takes into consideration the fact that Walgreens:

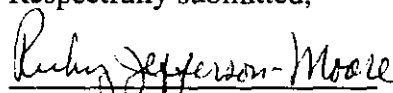
- 1) continued its practices after being informed by the Pharmacy Examining Board that the practices were impermissible;
- 2) received financial benefits as a result of its practices, and
- 3) expressed its intent that, after initial testing, the Pre-Scribe system would eventually be made available to all prescribers and pharmacies in Wisconsin that wished to participate in the system.

See, Findings of Fact # 14, 15 and 16.

Based upon the record herein, the Administrative Law Judge recommends that the Pharmacy Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 18th day of April, 1996.

Respectfully submitted,



Ruby Jefferson-Moore
Administrative Law Judge

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:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

May 15, 1996

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.)

**STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

AFFIDAVIT OF COSTS
LS9505221PHM

**WALGREENS,
RESPONDENT.**

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief, the costs for services provided by affiant are as follows:

<u>ACTIVITY</u>	<u>DATE</u>	<u>TIME</u>
Review record/law	01/08/96	3 hrs./30 min.
Review record	02/08/96	30 min.
Review record	02/21/96	30 min.
Review record	02/22/96	2 hrs./30 min.
Review law	02/27/96	30 min.
Review record/law	02/28/96	2 hrs.
Review record/law	03/06/96	4 hrs.
Review record	03/12/96	2 hrs.
Review record/law	03/13/96	1hr./15 min.
Review record/law	03/18/96	2 hrs.
Review record	03/19/96	1 hr./30 min.
Draft decision	04/02/96	2 hrs./45 min.
Draft decision	04/09/96	1 hr.

Affidavit of Costs
Walgreens, Respondent

Review record _ _	04/10/96	1 hr.
Review record/draft decision	04/12/96	5 hrs./30 min.
Draft decision	04/14/96	5 hrs.
Draft decision	04/18/96	2 hrs./30 min.

Total costs for Administrative Law Judge (38 hours @ \$27.15): \$1,031.70 .

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 28th day of May, 1996

Robert T. Gaudin
Notary Public
My Commission: is permanent

FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

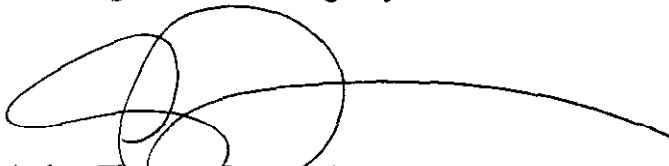
WALGREEN :
RESPONDENT. :

AFFIDAVIT OF COSTS
94 PHM 25

STATE OF WISCONSIN)
COUNTY OF DANE)


I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. That set out on the attached record are some of the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.



Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this June 5, 1996.



Notary Public
My Commission is permanent.

akt
i:\walgreen.cos

STATE OF WISCONSIN
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708-8935

Walgreen Company
(e-mail prescription matter)

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06/05/96
8N

94 PHM 25

	HOURS
04/07/94 AKT Screen case for jurisdiction.	.30
04/19/94 INV Received and reviewed file.	.25
05/10/94 INV Travel to Milwaukee, visit clinic sites, interview staff.	6.00
05/11/94 INV Memo of trip activity. Letter to respondent.	1.00
05/20/94 INV Review case with Board Advisor and with supervisor.	.50
05/23/94 INV Memo of Board Advisor comments. Confer with Prosecuting Attorney and with supervisor.	1.00
INV PIC memo.	1.00
AKT Confer with and advise Inv. Johnson on case.	.30
06/07/94 AKT Review PIC memo and approve PIC status.	.30
07/12/94 AKT Review file. Letter to Atty Choroski.	1.00
07/25/94 AKT Received and reviewed correspondence from Atty Choroski.	1.00
07/30/94 AKT (date approximate) Telephone conference with Atty Kaap @ State Bar.	.50

Walgreen Company

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	HOURS
08/04/94 AKT Letter to Atty Choroski.	1.00
02/06/95 AKT Telephone conference with Atty Choroski.	.30
03/07/95 AKT Review file in preparation for meeting with Atty Choroski and Walgreen staff.	1.00
03/08/95 AKT Traveled to Milwaukee, met with Atty Choroski and Walgreen staff. View PreScribe system in operation.	7.00
03/23/95 AKT Memo re: trip to Milwaukee. Telephone conference with Board Advisor. Leave message for Atty Choroski.	1.50
03/24/95 AKT Received and reviewed correspondence from Atty Choroski. Confer with supervisor.	.50
04/11/95 AKT Received and reviewed correspondence from Atty Choroski. Send to Board Advisor.	.50
04/18/95 AKT Telephone conference with Board Advisor. Review and revise Complaint. Letter to Atty Choroski.	1.50
06/27/95 AKT Pretrial conference with ALJ, telephone conference with Atty Long.	.60
07/27/95 AKT Draft Witness List.	.60
08/30/95 AKT Prepare response to Interrogatories.	1.00
09/19/95 AKT prepare Stipulation of Facts and send to Atty	

Walgreen Company

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	HOURS
Long.	2.50
10/03/95 AKT Telephone conference with Atty Long.	.30
10/09/95 AKT Telephone conference with Atty Long.	.10
10/10/95 AKT Receive and review fax from Atty Long. Revise stipulation proposal and send.	1.00
10/11/95 AKT Telephone conference with Atty Long. Draft standard of care paragraph, fax to Atty Long.	1.30
10/23/95 AKT Telephone conference with Arizona Board staff. Receive and review fax from Atty Long. Telephone conference with Atty Long.	.90
10/24/95 AKT Telephone conference with Tennessee Board staff. Revise stip paragraph, fax to Atty Long.	.60
10/26/95 AKT Receive and review fax from Atty Long, leave message for Atty Long.	.20
10/31/95 AKT Receive and review stip versions and exhibits. Telephone conference with Atty Long. Copy and file.	.80
11/06/95 AKT Fax excerpt from NABP 1995-96 Pharmacy Law Survey to Atty Long.	.20
11/19/95 AKT Review file, draft brief.	3.00
11/20/95 AKT Review file, work on brief. Finalize and file.	4.50

Walgreen Company

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	HOURS
11/29/95 AKT Work on reply brief.	2.00
11/30/95 AKT Work on reply brief.	1.00
12/01/95 AKT Finalize and file reply brief.	1.00
04/19/96 AKT Receive and review ALJ proposed decision. Telephone conference with Board Advisor.	.70
04/22/96 AKT (date approximate) Telephone conference with Atty Long re: extending objection deadline. Confer with Atty Rittel, other prosecutors.	1.00
04/29/96 AKT Do State's Objections, file.	.50
05/01/96 AKT Work on Reply to Respondent's Objections. Telephone conferences with Atty Long.	2.00
05/02/96 AKT Telephone conferences with Atty Long. Leave message for Board Advisor.	.50
05/03/96 AKT Telephone conferences with Board Advisor and with Atty Long.	1.00
05/06/96 AKT Receive message from Atty Long. Leave message for Atty Long.	.40
05/07/96 AKT Telephone conference with Atty Long.	.40
05/08/96 AKT Receive and review fax from Atty Long. Telephone conference with Board Advisor. Meeting with Atty Long. Draft stipulation proposal.	1.00

Walgreen Company

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	HOURS	
05/09/96		
AKT Finalize stip proposal and letter, send to Atty Long.	.40	
05/14/96		
AKT Telephone conferences with Atty Long and with Board Advisor.	1.00	
05/16/96		
AKT Received and reviewed correspondence from PEB: Final Decision and Order.	.20	
06/05/96		
AKT Prepare bill of costs.	1.00	
	-----	-----
FOR CURRENT SERVICES RENDERED	58.15	2179.40
05/10/94		40.00
03/08/95		45.00

TOTAL COSTS		85.00
BALANCE DUE		\$2,264.40
		=====

The above records are kept in the ordinary course of business by the Division and are assessable under s.440.22, Wis. Stats. Hourly rates of \$41/attorney and \$20/investigator are set by DOE policy.