

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

ROBERT E. SCHMIDT, R.Ph.
RESPONDENT.

96 PHM 4

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

Robert E. Schmidt, R.Ph.
310 Waldo Blvd.
Manitowoc, WI 54220

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. Schmidt (dob 12/5/38), is and was at all times relevant to the facts set forth herein a pharmacist licensed in the state of Wisconsin pursuant to license # 7288, first granted on 9/16/63. Respondent is and was at all times relevant to the facts set forth therein the President and a major shareholder of North End Drug, Inc., a pharmacy licensed in the State of Wisconsin pursuant to license #5927. Respondent was responsible for the policies of the pharmacy by virtue of his position, and was actively participating in, and knowledgeable of, all the facts set forth herein at the time they occurred.

2. North End Drug is both a community and an institutional pharmacy. Since 1990, it has served an area nursing home by providing unit dose and other pharmaceutical services. Unit dose medications are provided in cassettes which are filled at the pharmacy by staff four times per week, and delivered to the nursing home on a daily basis. A cassette consists of a large box filled with drawers, with each drawer containing several chambers. The drawers are filled with the medications for one resident for the day, the medications typically being grouped in a chamber by the time of administration (for example, morning, noon, evening, and bedtime). There are three sets of cassettes. Three times per week, auxiliary staff fill two cassettes at a time. For most medications, the administration is identical from day to day, so that a resident's drawers are filled at the same time in the same manner by the same person at the pharmacy. Some medications are administered on an every-other day basis, so the cassette drawers are not identical.

3. Since North End Drug began using three sets of cassettes, its policy (for which respondent was responsible) has been that when the cassette drawers are filled identically and at the same time by the same person, a registered pharmacist must check only one of the cassette drawers. When an error is discovered, the corresponding cassette drawer is also checked. When the cassette drawers are non-identical, such as when medication is administered only every other day, then each and every such cassette drawer is checked by the registered pharmacist. Auxiliary personnel also spot-check each other during the process.

4. Since this matter was investigated and discussed with North End Drug's management and owners, respondent has changed North End's policy and practice, and now has a registered pharmacist check each and every cassette drawer before it leaves the pharmacy. This has added approximately one hour to the process, three times per week. North End Drug, Inc., has been separately disciplined for its actions in this matter, and has paid the costs of investigating and prosecuting this matter.

CONCLUSIONS OF LAW

5. 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.

6. The conduct described in paragraph 3, above, violated § Phar 7.01(1)(c) and (d), Wis. Adm. Code, in that a pharmacist is not verifying the accuracy of the agent's action in all cases, and is not making a final check on the accuracy and correctness of every prescription. 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. Schmidt, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

Dated this March 12, 1997.

WISCONSIN PHARMACY EXAMINING BOARD

Cynthia Berry RPh
a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT E. SCHMIDT, R.Ph.,
RESPONDENT.

STIPULATION
96 PHM 4

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 denies committing any unprofessional conduct, but solely to avoid the expense and uncertainties of litigation, and for purposes of this action only, 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.

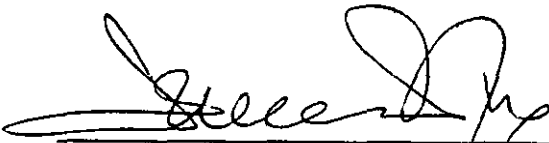
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

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

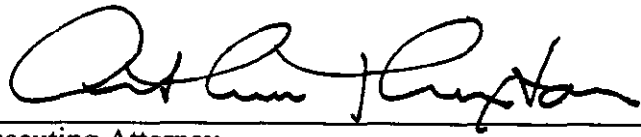
9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually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



Robert E. Schmidt 2/6/97
Date



Terence P. Fox, Attorney for Robert E. Schmidt 2-10-97
Date



Prosecuting Attorney 2/17/97
Date
Division of Enforcement

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:

March 17, 1997

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.)