

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

JAMES L. MOORE, R.PH.,
RESPONDENT.

98 PHM 28

LS 9811106 PHM

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

James L. Moore, R.Ph.
18020 Ironhorse Rd.
Tomah, WI 54660

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 James L. Moore (dob 9-19-56) 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 #12416, originally granted on 1-19-96. At all times relevant to the matters set forth below, respondent was the managing pharmacist of Wal-Mart Pharmacy, Tomah, Wisconsin, where the conduct set forth below took place.

2. On 1-12-98, respondent dispensed dicloxacillin for himself without first obtaining a prescription order from a physician.

3. On 2-3-98, respondent dispensed indomethacin and Pepcid® for his friend Robert Fink, without first obtaining a prescription order from a physician.

4. On 4-25-98, respondent dispensed Viagra® for Robert Fink without first obtaining a prescription order from a physician. On 5-16-98, respondent refilled this same prescription.

5. On 5-1-98, respondent dispensed Lindane® 1% shampoo for Robert Fink without first obtaining a prescription order from a physician.

6. Robert Fink is a resident of Georgia and told respondent that Dr. L. was his primary physician. Respondent did not call Dr. L. for authorization or to verify the prescription orders.

Dr. L. has not seen Mr. Fink since 9-5-97 and no prescriptions have been authorized since 10-30-97.

8. Respondent initially recorded the prescriptions as being prescribed by "Dr. Wal-Mart." He later recorded Mr. Fink's four prescriptions as prescription orders that Dr. L. telephoned into Wal-Mart Pharmacy. Dr. L. has no record of telephoning or authorizing any prescription orders of indomethacin, Pepcid®, Viagra®, and Lindane® 1% shampoo for Mr. Fink.

9. When this matter came to the attention of his supervisor, respondent stated to his supervisor that he had telephoned the physician, and obtained the authorization. In fact, he had not done so and the statement to his supervisor was false. Respondent was then discharged by his employer.

10. Respondent then repeated this false statement in an undated letter to the Board's investigator assigned to this matter, which letter was postmarked 7/17/98: "I did obtain authorization after filling said rx's." Respondent later admitted to Board staff that he had never obtained physician authorization for any of the prescriptions.

CONCLUSIONS OF LAW

A. 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.

B. The conduct described in paragraphs 2-5, above, violated §§450.10(1)(a)2 and 6, and 450.11(1), Wis. Stats., and § Phar 10.03(1) and (2), Wis. Adm. Code. The conduct described in paragraph 8, above, violated § Phar 10.03(5), Wis. Adm. Code. The conduct set forth in paragraph 10, above, violated § Phar 10.03(8), 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 James L. Moore, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent's license to practice pharmacy is LIMITED in the following respect: respondent shall not be the managing pharmacist of any pharmacy until the Board removes this limitation, nor shall he dispense any prescriptions for himself or any member of his own household, or for Robert Fink or any member of Mr. Fink's immediate family.

The Board may remove this limitation in whole or in part, in its sole discretion, if respondent petitions the Board to have this limitation removed, respondent personally appears before the Board, and the Board is satisfied that respondent has the professional ethical standards necessary to be a managing pharmacist, and the personal ability to abide by them.

Respondent may first petition the Board to remove this limitation after twelve months have passed following the date of this order. The Board may require respondent to undergo any testing or examinations it deems appropriate, in conjunction with such petition, and may modify, condition, or otherwise limit its approval of such petition in any reasonable manner.

As long as this limitation is in effect, respondent shall provide all employers with a copy of this order, before commencing or (in the case of his present employer(s)), continuing any pharmacy practice, and respondent shall report all employers to the Department Monitor before

commencing employment, or (in the case of his current employer(s)) within 5 days of the date this order is mailed to him.


IT IS FURTHER ORDERED, that respondent shall FORFEIT \$100 for each dispensing, and \$1,000 for making the false statement to the Board's investigator, for a total of \$1,600, to be paid within 30 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$300, 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 11/10, 1998

WISCONSIN PHARMACY EXAMINING BOARD, by:



a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

JAMES L. MOORE, R.PH., :
RESPONDENT. :

STIPULATION

98 PHM 28

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 Case 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 stipulates that there is an adequate factual basis for the discipline imposed herein, although the Findings of Fact may not appear to justify the entire outcome. The language of the Findings has been negotiated as a matter of compromise between the parties, and respondent agrees not to claim in any forum that the discipline imposed was not justified by the Findings of Fact stated.

10. 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. Other reporting as required by law or department policy will occur. This is standard department procedure and in no way specially directed at Respondent.

11. Respondent agrees to deliver respondent's credentials to the Board immediately upon receipt of the Final Decision and Order resulting from this Stipulation. Respondent will then be provided with the standard credential issued by the department to those practicing under limitations. This is standard department procedure and in no way specially directed at Respondent.

James Lee Moore 10-29-98
Respondent Date

William Thayer 11/3/98
Prosecuting Attorney Date
Division of Enforcement

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416 -hearing or speech
TRS# 1-800-947-3529 -impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On November 10, 1998, the Pharmacy Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$300.00 Case #: LS9811106PHM

The amount of the forfeiture is: \$1,600.00 Case # LS9811106PHM

Please submit a check or a money order in the amount of \$1,900.00

The costs and/or forfeitures are due: December 10, 1998

NAME: James L. Moore, R.Ph. LICENSE NUMBER: 12416

STREET ADDRESS: 18020 Ironhorse Road

CITY: Tomah STATE: WI ZIP CODE: 54660

Check whether the payment is for costs or for a forfeiture or both:

X COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935**

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
G:\BDLS\FM2145.DOC

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

James L. Moore, R.Ph.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)


I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On November 11, 1998, I served the Final Decision and Order dated November 10, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9811106PHM, upon the Respondent James L. Moore, R.Ph. by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 955.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

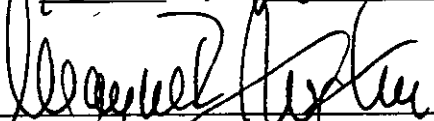
James L. Moore, R.Ph.
18020 Ironhorse Road
Tomah WI 54660



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 13th day of November 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JAMES L MOORE RPH

You have been issued an Order. For purposes of service the date of mailing of this Order is 11/11/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935