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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAN FITZGERALD PHARMACY, INC., **FINAL DECISION AND ORDER**

RESPONDENT. 99 PHM 43

 LS9910132PHM

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

Dan Fitzgerald Pharmacy, Inc.
424 E. Silver Spring Dr.
Milwaukee, WI 53217

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 Dan Fitzgerald Pharmacy, Inc., is and was at all times relevant to the facts set forth herein a community pharmacy licensed in the State of Wisconsin pursuant to license #7161, originally granted for its current location on 7/1/1991.
- 2. On 6/22/1999, a patient picked up a refill prescription. An unlicensed person transferred the prescription to the patient without consultation from a pharmacist. There were three pharmacists present and on duty at this time, but all three pharmacists allowed the pharmacy clerk to handle the entire transaction. None of the three pharmacists had any interaction with the patient. Two other similar transactions were also observed, where patients received prescriptions from an unlicensed person without consultation by a pharmacist.
- 3. On 7/16/1999, a DOE investigator observed on two occasions an unlicensed person transfer a prescription to a patient without consultation from a pharmacist. The Managing Pharmacist was the only pharmacist present at the pharmacy, but did not have any interaction with either patient.
- 4. On 7/16/1999, the Managing Pharmacist informed a DOE investigator that it is the respondent pharmacy’s routine practice for unlicensed pharmacy staff to transfer refill prescriptions to patients without a consultation from the pharmacist, and that he was aware that the Board’s rules require such consultations.

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, 3, and 4, above, violated § Phar 7.01(1)(e) and (em) Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes. Each and every patient (or patient's agent) must receive a face-to-face consultation from a registered pharmacist (or supervised intern) at the time a prescribed drug or device is transferred to the patient in the pharmacy, whether the prescription is new or a refilled or renewed prescription. This duty is non-delegable and is not satisfied by having auxiliary staff ask if the patient has questions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Dan Fitzgerald Pharmacy is REPRIMANDED for its unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$1,000.00, to be paid within 30 days, for its unprofessional conduct in this matter

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 October 13, 1999.

WISCONSIN PHARMACY EXAMINING BOARD, by

Daniel F. Luce, R.Ph.

a member of the board