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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JEROME D. MIDANEK, R.PH.

RESPONDENT.

FINAL DECISION AND ORDER

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LS9912073PHM

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

Jerome D. Midanek, R.Ph.
489 W. Wildspring Rd.
Round Lake, IL 60073

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 Jerome D. Midanek, (dob 11/26/1938) is a registered pharmacist licensed in the State of Wisconsin pursuant to license #12247, originally granted on 1/17/1995. At all times relevant to the matters set forth below, respondent was licensed as a pharmacist in the State of Illinois, and was a staff pharmacist of Landsman Pharmacy, 4000 West Division, Chicago, Illinois, where the conduct set forth below took place.
2. On or about 6/18/1992, respondent purchased 720 tablets of Zantac® 300mg and 48 tablets of Cipro® drug samples from an undercover agent of the Illinois Department of Professional Regulation. The tablets of Zantac® 300mg and Cipro® were in boxes that were clearly marked "samples" and "not for resale". Respondent bought these drug samples from the undercover agent for \$150 in cash.
3. On or about 6/22/1992, respondent purchased 480 tablets of Procardia-XL® drug samples from an undercover agent of the Illinois Department of Professional Regulation. The tablets of Procardia-XL® were in boxes that were clearly marked "samples" and "not for resale". Respondent bought these drug samples from the undercover agent for \$250 in cash.
4. On or about 6/24/1992, respondent purchased 480 tablets of Procardia-XL® drug samples from an undercover

agent of the Illinois Department of Professional Regulation. The tablets of Procardia-XL® were in boxes that were clearly marked "samples" and "not for resale". Respondent bought these drug samples from the undercover agent for \$150 in cash.

5. On or about 6/25/1992, respondent purchased 720 tablets of Zantac® 300mg drug samples from an undercover agent of the Illinois Department of Professional Regulation. The tablets of Zantac® 300mg were in boxes that were clearly marked "samples" and "not for resale". Respondent bought these drug samples from the undercover agent for \$250 in cash.

6. On 6/29/1992, respondent had in his constructive possession at Landsman Pharmacy, various quantities of prescription drugs that had been removed from their original packaging and which were stored in paper or plastic bags.

7. On 8/5/1992, the Illinois Department of Professional Regulation performed an audit at Landsman Pharmacy on 23 drugs covering the period from 5/1/1991 through 6/30/1992. The audit showed that the pharmacy had dispensed more drugs than they had purchased for 18 of the 23 drugs. There were overages for three of the drugs that the respondent had previously purchased from an undercover agent of the Illinois Department of Professional Regulation. 3,400 tablets of Procardia® had been purchased, but 3,403 had been dispensed and 395 remained in inventory for an overage of 398 tablets. 753 Cipro® tablets were purchased, but 3,122 had been dispensed and 150 remained in inventory for an overage of 2,519 tablets. 5,114 tablets of Zantac® 300mg had been purchased, but 6,841 had been dispensed and 30 remained in inventory for an overage of 1,757 tablets.

8. On 8/5/1997, in US District Court for the Northern District of Illinois, respondent pled guilty to, and was convicted of, one count of illegal purchase of drug samples in violation of 21 USC §331(t) and 21 USC §333(b)(1)(B), growing out of the 1992 purchases described above. He was placed on probation for five years, with six months in a halfway house.

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 paragraph 8, above, violated §450.10(1)(a)2., Wis. Stats. 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 Jerome D. Midanek 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 a managing pharmacist, and shall provide a complete copy of this Order to any pharmacy or health care provider for whom he performs any act constituting the practice of pharmacy.

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 December 7, 1999,

WISCONSIN PHARMACY EXAMINING BOARD, by:

s/ Daniel Luce R. Ph.

a member of the board