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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
KURT E. KIESLING, R.Ph.,	:	LS0508311PHM
RESPONDENT	:	

Division of Enforcement Case # 04 PHM 040

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

Kurt E. Kiesling, R.Ph.
N113 W17053 Driftwood Ct. Apt. 4
Germantown, WI 53022

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Pharmacy Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 Pharmacy Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Kurt E. Kiesling, (DOB 05/25/1972) is duly licensed as a pharmacist in the state of Wisconsin (license # 40-14006). This license was first granted on 09/19/2003.
2. Respondent's most recent address on file with the Wisconsin Pharmacy Examining Board is N113 W17053 Driftwood Ct. Apt. 4, Germantown, Wisconsin.
3. At all times relevant to this action, Respondent was working as pharmacist in Wisconsin.
4. On May 17, 2004, Kiesling was confronted by his employer with evidence that he had diverted drugs, specifically hydromorphone. Kiesling did not respond to the accusations on advice of criminal defense counsel. He was placed on investigative suspension and escorted off the premises.

5. On May 19, 2004, Kiesling was found in his apartment, alive, but with toxic levels of hydromorphone in his system. His wife was found dead in the apartment, of an overdose of hydromorphone. Evidence indicated that the couple had made a suicide pact and both attempted to kill themselves with an overdose of hydromorphone. Kiesling admitted to assisting his wife in her suicide.

6. The hydromorphone found in Kiesling's apartment was of the same lot number as the hydromorphone missing from Kiesling's employer.

7. Hydrocodone, marijuana and drug paraphernalia were also found in Kiesling's apartment.

8. Kiesling pled guilty to four counts: assisting suicide, felony possession of narcotic drugs, misdemeanor possession of controlled substance, and misdemeanor possession of drug paraphernalia.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 440.10,[\[smg1\]](#) and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4-8 above constitutes a violation of Wisconsin Administrative Code § Phar 10.03(1), and Wis. Stat. §§ 450.10(1)(a)2, 450.10(1)(b)3, 450.10(1)(a)6.

ORDER

IT IS ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

A.1. The license of Kurt Kiesling to practice as a pharmacist in the State of Wisconsin (license # 40-14006) is SUSPENDED AN INDEFINITE PERIOD OF TIME.

A.2 Respondent shall mail or physically deliver all indicia of licensure to the Department Monitor within 14 days of the effective date of this order.

STAY OF SUSPENSION

B.1. AFTER TWO YEARS from the date of this Order, the suspension may be stayed upon Respondent providing proof, v determined by the Board or its designee to be sufficient, of all of the following conditions:

- a. Respondent must have undergone a thorough psychological evaluation, at his own expense, by a psychologist approved in advance by the Pharmacy Examining Board, with recommendation from the Division of Enforcement. This psychologist may not have treated Respondent at any time. The psychologist must, minimum, be experienced in assessing suicide risk, assessing risks related to any conduct that could cause injury or death, and in assessing health care practitioners with addictions.
- b. Before beginning the evaluation, the evaluating psychologist must have been provided with a copy of the license as well as copies of all relevant police reports.
- c. Before beginning the evaluation, Respondent must have completed all necessary release forms to allow evaluating psychologist to exchange information and documents with the Board, the Department Monitor and the Division of Enforcement.
- d. Respondent's evaluating psychologist must appear before the board and state his belief that Respondent is able to safely practice as a pharmacist on a limited basis and must be able to articulate reasons for that belief to the board's satisfaction.

- e. Prior to appearing before the board, Respondent's evaluating psychologist must provide his or her reassessment believing that Respondent is able to safely practice as a pharmacist in writing, along with a detailed written assessment of the specific types of practice in which he or she believes that Respondent can safely practice and what limitations he or she believes would be appropriate.
- f. Respondent must appear before the board and answer, to the board's satisfaction, any questions the board may have regarding his ability to safely practice as a pharmacist.
- g. Respondent must be in compliance with the provisions of Sections C and D of this Order.

B.2. Upon stay of the suspension, Respondent's license will be LIMITED as the board sees fit after considering the events described in the Findings of Fact, the recommendations of the evaluating psychologist, any recommendations by the Division of Enforcement, and their own observations. The limitations may include, but are not limited to:

- a. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the board by the therapist;
- b. Additional professional education in any identified areas of deficiency.
- c. Restrictions on Respondent's practice.
- d. Continued compliance with sections C and D of this Order.

B.3. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of Sections C or D of this Order or at any time that it determines that the health and safety of the public so warrants. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.5.

B.4. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:

- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
- (b) Actual notice to Respondent or Respondent's attorney.

B.5. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

B.6. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Therapy Required

C.1. Respondent must enter into psychotherapy with a treating therapist approved in advance by the board, as recommended by the therapist but no less often than every other week until such time as the board orders otherwise. Respondent will sign releases allowing the therapist to exchange information with the Board, the Department Monitor and the Division of Enforcement. The therapist will provide quarterly reports to the Department Monitor detailing Respondent's progress in treatment.

Drug and Alcohol Treatment Required

C.2. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.

C.3. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.

- C.4. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.5. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.6. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.7. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.8. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.9. Respondent shall abstain from all personal use of alcohol.
- C.10. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.11. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.12. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.10 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.14. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

- C.15. The Approved Program shall require the testing of urine specimens at a frequency of not less than 96 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.16. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.17. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.18. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.19. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.20. Respondent shall not practice as a pharmacist or in a pharmacy in any capacity unless he is in full compliance with this Order and has been granted a limited license by the board as described in B.2. above.
- C.21. Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in § Phar 1.02(6), Wis. Adm. Code.
- C.22. Respondent shall not be employed as or work in the capacity of a "pharmacist in charge" as defined in § Phar 1.02(9), Wis. Adm. Code.
- C.23. At least five days prior to beginning any employment, Respondent shall provide his managing pharmacists, at any pharmacy where he is performing the functions of a pharmacist or pharmacy technician or otherwise handling medications, with a copy of this Final Decision and Order and all other subsequent orders. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory at any pharmacy where respondent is employed. EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF RESPONDENT HAS BEEN CONVICTED OF ANY FELONY RELATING TO CONTROLLED SUBSTANCES, THE EMPLOYER MUST RECEIVE A WAIVER OF 21 CFR §1301.76 UNDER 21 CFR §1307.03 BEFORE EMPLOYING RESPONDENT.
- C.24. It is Respondent's responsibility to arrange for written reports from his managing pharmacist and any other supervisor to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active pharmacist practice worked during that quarter.
- C.25. Respondent shall obtain agreement from his managing pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abuseable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abuseable prescription drugs. Respondent's managing pharmacist shall include in the quarterly reports a description of Respondent's access to controlled substances and other abuseable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.
- C.26. In addition to the foregoing subparagraph, Respondent shall obtain from his managing pharmacist an agreement to conduct a full and exact (not estimated) count of all controlled substances in inventory immediately, and accountability audits of all controlled substances every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audit required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.
- C.27. Respondent shall arrange for agreement by his managing pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.
- C.28. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.
- C.29. Respondent shall report to the Board any change of employment status, residence, address or telephone number at least five (5) days prior to the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than two years from the date of this Order and no such petition shall occur other than in compliance with paragraph B.1. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.6. Respondent shall pay costs of \$1,500.00 to the Department of Regulation and Licensing, within six (6) months of the date of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (# 40 14006) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Dated at Madison, Wisconsin this 7th day of September, 2005.

PHARMACY EXAMINING BOARD

By: Michael Bettiga
A Member of the Board

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