

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
JOHN R. LEMBERGER, R.Ph., :
 : LS0802065PHM
RESPONDENT. :

Division of Enforcement Case # 06 PHM 022

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

John R. Lemberger, R.Ph.
7020 N. 98th Street
Milwaukee, WI 53224

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. John R. Lemberger, (DOB 12/24/1953) is duly licensed as a pharmacist in the state of Wisconsin (license # 40-9338). This license was first granted on March 8, 1978.
2. Respondent's most recent address on file with the Wisconsin Pharmacy Examining Board is 7020 N. 98th Street, Milwaukee, Wisconsin, 53224.
3. On March 28, 2006, a Division of Enforcement investigator conducted an unannounced inspection of a pharmacy where Respondent was working as a float pharmacist. She observed a pharmacy technician handing a prescription medication to a patient without any contact from the pharmacist and without offering a consultation.
4. When the inspector pointed out to Respondent that he had not performed a consultation as required by pharmacy board rules, he stated that the pharmacy was busy and if he performed consultations as required, he would not get

any work done.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §450.10, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 3-4 above constitutes a violation of Wisconsin Administrative Code §§ Phar 7.01(e) and (em) and Phar 10.03(2) and subjects Respondent to discipline pursuant to Wis. Stat. §§ 450.10(1)(a)2 and 450.10(1)(b)1.

ORDER

IT IS ORDERED:

1. John R. Lemberger, R.Ph. is REPRIMANDED.
2. On or before March 31, 2008, Respondent shall pay a forfeiture of Two Hundred and Fifty Dollars (\$250.00).
3. On or before March 31, 2008, Respondent shall pay costs of this proceeding in the amount of Four Hundred Dollars (\$400.00).
4. Payments of forfeitures and costs shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

5. In the event Respondent fails to timely submit any payment of the forfeiture as set forth above, or fails to pay costs as ordered, the Respondent's license(# 40-9338) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

6. This Order is effective on the date of its signing.

Dated this 6th day of February, 2007.

PHARMACY EXAMINING BOARD

By: Gregory C. Weber
A Member of the Board

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 : STIPULATION
JOHN R. LEMBERGER, R.Ph., : LS# _____
RESPONDENT. :

Division of Enforcement Case # 06 PHM 022

Respondent John R. Lemberger, R.Ph., personally on his own behalf, and Jeanette Lytle, attorney for the Department of Regulation and Licensing, Division of Enforcement, stipulate:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (case # 06 PHM 022). Respondent consents to the resolution of this investigation by stipulation.

2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain the advice of legal counsel prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Pharmacy Examining Board. The parties to the Stipulation 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, 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 consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Pharmacy Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. 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 accordance with standard Department procedure.

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

John R. Lemberger, R.Ph.
7020 N. 98th Street
Milwaukee, WI 53224

Date

Jeanette Lytle, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date