

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF THE LICENSE OF	:	
	:	FINAL DECISION AND ORDER
JOHN H. WAGNER, R.Ph.	:	FOR REMEDIAL EDUCATION
	:	LS0806253PHM

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[Division of Enforcement Case # 07 PHM 067]

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

John H. Wagner, R.Ph.  
5249 Zachary Drive  
Racine, WI 53403

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

Wisconsin Pharmacy Examining Board  
Department of Regulation and 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 Wisconsin 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 H. Wagner, R.Ph, Licensee, date of birth August 12, 1946, is licensed by the Wisconsin Pharmacy Examining Board as a pharmacist in the state of Wisconsin pursuant to license number 8002, which was first granted April 3, 1970.
2. Licensee's address of record with the Department of Regulation and Licensing (DRL) is 5249 Zachary Drive, Racine, WI 53403.
3. On all dates relevant to the facts set out below, Respondent was employed as a pharmacist at Aurora Pharmacy (Pharmacy), 3900 Erie Street, Racine, WI 53402.
4. On January 16, 2008, a DRL investigator observed a pharmacy technician transfer a prescription directly to a consumer without a pharmacist consultation.
5. Licensee was not present in the pharmacy area at the time the investigator observed the technician transfer the prescription.

6. The investigator first spoke with the managing pharmacist about the consult practice at the Pharmacy and was informed that for every new prescription, the technicians get the pharmacist on duty to complete a consult. Pharmacists do not consult for prescription refills unless the consumer has questions.

7. The investigator then spoke with Licensee and asked him about his consult practice. Licensee explained that he always performs consults for new prescriptions and when consumers have any other questions, consistent with the policy the managing pharmacist conveyed. The investigator did not see Licensee commit a violation.

8. Wisconsin Admin. Code § PHAR 7.01(e) requires that the pharmacist provide direct consultation on all prescriptions, including new prescriptions and refills.

### CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 450.10.

2. The Wisconsin Pharmacy Examining Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Within 180 days of the date of this Order, Licensee shall provide proof sufficient to the Board, or its designee, of Licensee's satisfactory completion of a total of 2 hours of continuing education in legal aspects of pharmacy practice, which course(s) shall first be approved by the Board, or its designee.

2. Each course attended in satisfaction of this Order must be preapproved by the Pharmacy Examining Board or its designee. Licensee shall be responsible for locating courses satisfactory to the Board and for obtaining the required approval of the courses from the Board or its designee. Licensee shall, within 60 days of completion of this educational requirement, file an affidavit with the Board stating under oath that he has attended in its entirety each of the courses approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations. This affidavit and the supporting documentation of attendance shall be filed with:

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

All certifications, affidavits or other documents required to be filed with the Board will be deemed filed upon receipt by the Department Monitor.

3. Licensee shall be responsible for paying the full cost of attendance at these courses. Licensee shall not apply any of the continuing education credits earned in satisfaction of this Order toward satisfaction of her Wis. Stat. § 450.08(2)(a) biennial training requirements.

IT IS FURTHER ORDERED:

4. In the event Licensee fails to timely comply with the ordered continuing education, Licensee's license SHALL BE SUSPENDED, without further notice or hearing, until Licensee has complied with the terms of this Order. The Board or its designee shall remove the suspension, if provided with sufficient information that Licensee is in compliance with the Order and that it is inappropriate for the suspension to remain in effect. The Board in its discretion may impose additional conditions

and limitations for a violation of any of the terms of this Order.

5. Licensee is responsible for compliance with all of the terms and conditions of this Final Decision and Order.
6. This Order is effective on the date of its signing.

WISCONSIN PHARMACY EXAMINING BOARD

By: Gregory C. Weber  
A Member of the Board

6/25/08  
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF :
:
JOHN H. WAGNER, R.Ph. : STIPULATION
: LS PHM
:

[Division of Enforcement Case # 07 PHM 067]

It is hereby stipulated and agreed, by and between John H. Wagner, R.Ph., Licensee, and Sandra L. Nowack, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

- 1. This Stipulation is entered into as a result of a pending investigation of Licensee by the Division of Enforcement (file 07 PHM 067). Licensee consents to the resolution of this investigation by stipulation and without a hearing.
2. Licensee 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. Licensee has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Licensee agrees to the adoption of the attached Final Decision and Order by the 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. Licensee 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 the 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 Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Licensee or Licensee's attorney, if any, 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 case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Licensee 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 Licensee in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Racine, WI 53403

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Sandra L. Nowack  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date