

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
RICHARD D. MOE, R.PH., : FINAL DECISION AND ORDER
RESPONDENT. : LS0902047PHM
 :

Division of Enforcement Cases 03PHM015 and 03PHM062

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

Richard D. Moe, R.Ph.
2287 East Birch Trail Road
Superior, WI 54880

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 & 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. Richard D. Moe, Respondent herein, date of birth 8/6/59, is duly licensed as a pharmacist in the state of Wisconsin, license # 11924-40. This license was first granted on 3/11/93 and is current and active through 5/31/10.
2. Respondent's most recent address on file with the Wisconsin Pharmacy Examining Board is 2287 East Birch Trail Road, Superior, Wisconsin 54880
3. At all times relevant to this action, Respondent was employed as a pharmacist at Falk's Lignell Pharmacy, 69 North 28th Street East, Suite 36, Superior, Wisconsin 54880.
4. Between August 2002 and April 6, 2004, the Falk's Lignell Pharmacy was engaged in an internet pharmacy prescription fulfillment practice pursuant to a pharmacy provider agreement with Medical Web Services, Inc. and/or World Wide Web Services. The individual who initiated a request to Medical Web Services, Inc. to fill a prescription completed an online questionnaire requesting a specific medication. The requesting individual provided some personal information and medical history. The individual submitted the completed questionnaire via the internet to Medical Web Services, Inc. which transmitted the information to a physician associated with Medical Web Services, Inc. Although none of the physicians associated with Medical Web Services were licensed to practice medicine and surgery in the state of Wisconsin, all were licensed in either another state or in Puerto Rico. The physician made a decision whether or not to issue an electronic prescription for the requested medication. If the physician issued an electronic prescription for the requested medication, the electronic prescription was transmitted via the internet to Falk's Lignell Pharmacy, or another pharmacy, to be filled and mailed to the individual who requested the medication.
5. A prescription for a controlled substance may only be issued by a physician in the usual course of professional practice pursuant to a legitimate physician-patient relationship. The indicia of a legitimate physician-patient relationship include a relationship in which the physician has had an opportunity to fully inquire into the patient's medical history, perform a physical examination as indicated by the patient's presenting symptoms, order and evaluate the results of diagnostic testing as indicated by the patient's presenting condition and assess the patient in follow-up to determine the effectiveness of the medication in treating the patient's condition and to determine if the patient is experiencing any adverse reactions to the medication prescribed.
6. Wis. Admin. Code sec. MED 10.02(2)(zb) defined the conditions which must be satisfied before anorectic medications designated as schedule III, IV or V controlled substances could be legitimately prescribed or dispensed in the usual course of professional treatment. Wis. Admin. Code sec. MED 10.02(2)(zb) provided:

“The term ‘unprofessional conduct’ is defined to mean and include but not be limited to the following, or aiding or abetting the same:
Prescribing, ordering, dispensing, administering, supplying, selling or giving any anorectic drug designated as a schedule III, IV or V controlled substance for the purpose of weight reduction or control in the treatment of obesity unless each of the following conditions is met:

 1. The patient's body mass index, weight in kilograms divided by height in meters squared is greater than 25.
 2. A comprehensive history, physical examination and interpreted electrocardiogram are performed and recorded at the time of initiation of treatment for obesity by the prescribing physician.
 3. A diet and exercise program for weight loss is prescribed and recorded.
 4. The patient is weighed at least once a month, at which time a recording is made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy.
 5. No more than a 30-day supply of drugs is prescribed or dispensed at any one time.
 6. No drugs are prescribed or dispensed for more than 90 days unless all of the following occur:
 - a. The patient has a recorded weight loss of at least 12 pounds in the first 90 days of therapy.
 - b. The patient has continued progress toward achieving or maintaining a target weight.
 - c. The patient has no significant adverse effects from the prescribed program.”
7. According to the prescription information provided by Falk's Lignell Pharmacy, the Respondent was the pharmacist on duty at the Falk's Lignell Pharmacy on each of the dates hereinafter indicated and was responsible on the

specified dates for the dispensing of the medications from the electronic prescriptions issued by the identified physician and received in the pharmacy pursuant to the online internet pharmacy practice as described above:

<u>Date</u>	<u>Patient</u>	<u>Medication</u>	<u>Strength</u>	<u>Quantity</u>	<u>Schedule</u>	<u>Physician</u>
04/07/03	M.A.	Didrex	50 mg	30	III	Ahlawat (New Jersey)
05/23/03	M.A.	Didrex	50 mg	30	III	Ahlawat (New Jersey)
04/23/03	R.S.	Phendimetrazine	35 mg	60	III	Ahlawat (New Jersey)

Respondent has no independent recollection of the above-referenced prescriptions.

8. Didrex (benzphetamine) is an anorectic medication classified as a schedule III controlled substance.

9. Phendimetrazine is an anorectic medication classified as a schedule III controlled substance.

10. The Respondent mailed the medications dispensed as indicated in paragraph 7 to the patients' residences at the following locations:

<u>Patient</u>	<u>Location</u>
M.A.	Eau Claire, Wisconsin
R.S.	New Richmond, Wisconsin

11. Respondent should have known that when he filled the electronic prescriptions for the medications indicated in paragraph 7, above, that the electronic prescriptions were not issued by the individual physicians acting in the usual course of professional practice and the prescriptions did not arise out of legitimate physician-patient relationships. Respondent should have known that the prescribing physicians were not obtaining complete medical histories, were not conducting physical examinations, were not ordering and evaluating the results of diagnostic tests and were not having follow-up appointments with the patients to evaluate the effectiveness of the medications and to identify any adverse reactions to the medications prescribed.

12. While Respondent was working for Falk's Lignell Pharmacy, he was informed by Falk's Lignell management that Falk's Lignell management had a legal opinion that the internet prescription fulfillment practice was lawful. Respondent later learned that Falk's Lignell management was communicating with the legal counsel for the Wisconsin Pharmacy Examining Board about its internet pharmacy practice. This communication with the legal counsel for the Wisconsin Pharmacy Examining Board was ongoing from 1/27/04 through 2/24/04. On 2/24/04, the legal counsel for the Wisconsin Pharmacy Examining Board raised an issue with the Falk's Lignell management with regard to the legitimacy of the underlying physician-patient relationships.

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 through 12, above, constitutes a violation of Wis. Stat. §§ 450.10(1)(b)(1) and 450.10(1)(a)(2) and Wis. Admin. Code §§ Phar 10.03(1), Phar 8.05(2) and Phar 8.04(1), thereby subjecting Richard D. Moe, R.Ph. to the imposition of discipline pursuant to Wis. Stat. §§ 450.10(1)(b) and 450.10(2).

3. The Wisconsin Pharmacy Examining Board has the authority pursuant to Wis. Stat. § 440.22 to assess the costs of this proceeding against Richard D. Moe, R.Ph.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Richard D. Moe, R.Ph., license # 11924-40, is hereby REPRIMANDED.

2. Richard D. Moe, R.Ph. shall, within 30 days of the effective date of this Final Decision and Order, pay a forfeiture in the amount of \$1,000.00 made payable to the 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

IT IS FURTHER ORDERED that:

3. Richard D. Moe, R.Ph. shall, within 30 days from the effective date of this Final Decision and Order, pay costs of this proceeding in the amount of \$2,367.54. Payment 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

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. 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 #11924-40 SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Pharmacy Examining Board

By: Gregory C. Weber
A Member of the Board

2/4/09
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
RICHARD D. MOE, R.PH. :
 : LS# _____
RESPONDENT. :

Division of Enforcement Cases 03PHM015 and 03PHM062

It is hereby stipulated between Richard D. Moe, R.Ph. and Gilbert C. Lubcke, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Richard D. Moe’s licensure by the Division of Enforcement, cases 03PHM015 and 03PHM062. Richard D. Moe consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Richard D. Moe 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. Richard D. Moe has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Richard D. Moe enters into this Stipulation with the Division of Enforcement in order to resolve the pending investigation without further expense, inconvenience and uncertainty of the outcome. In entering into this Stipulation, Richard D. Moe neither admits nor denies the truth of the matters set forth in the proposed Findings of Fact, but consents to the entry of the proposed Final Decision and Order. 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. Richard D. Moe 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 Wisconsin Pharmacy Examining Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Richard D. Moe 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. Richard D. Moe understands that the attorney or other agent for the Division of Enforcement or the case advisor, in responding to questions asked by the Board, may be required to provide information to the Board which may be construed by the Board as not weighing in favor of accepting this proposed Stipulation and Final Decision and Order. Richard D. Moe will not contend that any responses made by the attorney or other agent for the Division of Enforcement or by the case advisor in response to questions posed by the Board constitute a failure by the attorney or other agent for the Division of Enforcement or by the case advisor to speak in support of this agreement. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Richard D. Moe 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 Richard D. Moe in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

_____ Richard D. Moe, R.Ph. 2287 East Birch Trail Road Superior, WI 54880	Date _____
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_____ Gilbert C. Lubcke, Attorney Division of Enforcement Wisconsin Department of Regulation and Licensing P.O. Box 8935 Madison, WI 53708-8935	Date _____
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