

# 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 DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
MARK H. HENSTEIN, R.Ph., : LS0906245PHM  
RESPONDENT. :

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[Division of Enforcement Case #'s 05 PHM 074 & 06 PHM 075]

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

Mark H. Henstein, R.Ph.  
618 Sutherland Drive  
Woodbury, MN 55129

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 Pharmacy Examining 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. Mark H. Henstein, R.Ph., Respondent, date of birth December 31, 1952, is licensed by the Wisconsin Pharmacy Examining Board as a pharmacist in the state of Wisconsin pursuant to license number 14555, which was first granted September 20, 2005.

2. Respondent's address of record with the Department of Regulation and Licensing (DRL) is 618 Sutherland Drive, Woodbury, MN 55129.

3. At all times relevant to this action, Respondent was working as the managing pharmacist at Econofoods Pharmacy #344, 2351 Coulee Road, Hudson, WI 54016.

4. On November 23, 2005, consumer CF filled a prescription for Omnicef 250/5 Suspension on behalf of her 15-month-old son. Respondent told CF that the child was to take 3 ml's daily for 10 days. When CF got home, she noted the label instructions directed her to give her son 3 teaspoons daily for 10 days. CF called Respondent and spoke with a technician. After purportedly consulting with a pharmacist, the technician told CF to follow the label instructions.

5. Respondent states that the pharmacy technician did not discuss the call with him, and later admitted that she

looked at the prescription label.

6. After a night of medication, the child became extremely restless and vomited often. Eventually CF contacted the physician who confirmed that the medication label was in error and the child should have received only 3 ml's, and not 3 teaspoons per dose.

7. The consumer protection investigator observed the original prescription which clearly stated, "Omnicef (250/5) 3 ml po Qd X 10d." The investigator further observed the medication label, upon which was the instruction, "Give 3 teaspoonfuls daily for 10 days."

8. A Division consumer protection investigator contacted Respondent, who reported that his staff first verify prescriptions after they are filled, and then verify them a second time, usually 24 hours later. He stated that CF's prescription was not verified a second time. He added that the prescription was filled late on the Wednesday before the Thanksgiving holiday.

9. On February 6, 2007, the consumer protection investigator contacted Respondent for follow up and clarification of his initial response. Respondent's reply was to simply send a second copy of his initial letter without further clarification.

10. On February 24, 2006, a family member went to Econofoods Pharmacy #344 to retrieve prescriptions for MP1. MP1's prescriptions were to have been for Ibuprofen (800mg) and Cyclobenzaprine (10 mg). MP1 took the prescriptions for several days and became ill. When he examined the medicine bottles, he discovered that the pharmacy had given him someone else's prescriptions, which were for Synthroid (.1 mg) and Lisinopril (10 mg).

11. On February 25, 2006, another consumer, MP2, whose last name was similar to MP1's, called the pharmacy to report that she had called in a refill prescription but was told it had been dispensed. After checking with her husband, MP2 became aware that no one had picked up the prescription on her behalf. In response, the pharmacists then on duty, Mary Johnson and Laura Eryou, began an investigation to determine what had happened to MP2's prescription. Review of a surveillance tape revealed that on February 24, 2006, a male technician had dispensed the medication to a female customer. Eryou and Johnson documented their efforts on an incident form and signed the form as "originator." The incident form contained signature blanks for the pharmacy manager and the pharmacist involved in the incident; however neither the signature for the managing pharmacist, nor the signature for the pharmacist involved in the incident, were executed.

12. Eventually, MP1 complained to the Division. On November 28, 2006, Division staff wrote Respondent, requesting materials necessary to evaluate the complaint. As of January 4, 2007, the Division received no response, and the consumer protection investigator made a second request.

13. Finally, on January 19, 2007, Respondent replied that he was not on duty on the date of the incident, and that he was not aware of the incident until several days later. He provided the written incident summaries from the two subordinate pharmacists, Mary Johnson and Laura Eryou. Respondent undertook no additional investigation of the incident, took no additional action with staff, and considered no policy changes to avoid future occurrences of the error.

14. On March 1, 2007, the consumer protection investigator had communication with Ms. Johnson and Ms. Eryou. Ms. Johnson indicated that the pharmacist on duty when MP2's prescription was erroneously given to MP1 was a male "floater." Ms. Eryou confirmed that she had not been on duty when the dispensing error occurred, but explained it was her practice to tell technicians she wanted to counsel for every new prescription "and have anyone picking up refills asked if they would like to speak to or had any questions for the pharmacist."

15. Through independent investigation, the Division learned that the pharmacist on duty when the MP1 dispensing error occurred was Richard Ziemann. On April 28, 2007, Mr. Ziemann confirmed that he worked on the relevant date, but said he was unaware of the error until the Division contacted him. Ziemann maintains that he offers and attempts to provide consultations to new prescriptions and refills, and that "obviously greater effort would be made on new prescriptions."

16. On December 28, 2006, a consumer protection investigator from the Department of Regulation and Licensing's Division of Enforcement performed an unannounced inspection of Econofoods Pharmacy #344. The consumer protection investigator observed a pharmacy technician transfer a prescription directly to a consumer without a pharmacist consultation.

17. Two pharmacy technicians on duty at the time of the transaction individually reported that the pharmacy's normal practice was for technicians to complete transactions without pharmacist consultations when the transactions involved refills.

18. The consumer protection investigator spoke with Patricia A. Kramer, the pharmacist on duty, who articulated an understanding of the law requiring consultations on all prescriptions. The consumer protection investigator later observed Ms. Kramer perform consultations, but noted that during consultations, Ms. Kramer failed to mention the type of drug the

consumer was expecting to receive.

19. As managing pharmacist at Econofoods Pharmacy #344, Respondent permitted the practice of allowing pharmacy technicians to complete transactions on prescription refills without consultations between the pharmacist and the consumer. This practice constituted repeat violations of Wis. Adm. Code § PHAR 7.01(e) and 7.015(4), and constituted a danger to the safety of patients.

20. If the medication verification and patient follow-up had been done properly, the dispensing error described in paragraphs 4-7, could have been avoided.

21. If all consultations had been done properly, the dispensing error described in paragraphs 9-13 could have been avoided.

22. Pursuant to Wis. Stat. § 450.09(1)(a), a managing pharmacist is responsible for the professional operations of a pharmacy.

23. As managing pharmacist, Respondent failed to adequately investigate and address the dispensing error described in paragraphs 9-13.

24. On June 15, 2007, Respondent resigned his position with Econofoods, indicating that he could not adequately enforce policies, that he was being undermined by staff and because he could not retain quality technicians due to insufficient compensation.

25. Respondent admits that it was his policy on refills to permit technicians to ask whether the consumer had questions about the refill, rather than requiring consultations. Respondent explains that he adopted this policy to accommodate workload and staffing issues.

#### CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 450.10 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

#### COUNT ONE

2. The conduct described in paragraphs 4-8 and 19, above, constitutes a violation of Wis. Admin. Code § Phar 10.03(2) and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1) and (2).

#### COUNT TWO

3. The conduct described in paragraphs 9-14 and 20, above, constitutes a violation of Wis. Admin. Code § Phar 7.01(e) and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1) and (2).

#### COUNT THREE

4. The conduct described in paragraphs 15-18, above, constitutes a violation of Wis. Admin. Code § Phar 7.01(e) and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1) and (2).

#### COUNT FOUR

5. The conduct described in paragraphs 9-13 and 21, creates a danger to patients and constitutes a violation of Wis. Admin. Code § Phar 10.03(2) and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1) and (2).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Mark H. Henstein, R.Ph., is REPRIMANDED for the conduct set out above.
2. Respondent shall, within 180 days of the date of this Order, provide the Board with proof of reexamination with a passing score on the Wisconsin Multistate Pharmacy Jurisprudence Examination (MPJE).
3. Respondent shall, within 90 days of the date of this Order, pay costs in the amount of SIX HUNDRED DOLLARS (\$600.00) and pay a forfeiture in the amount of ONE THOUSAND DOLLARS (\$1,000.00) to the Department of Regulation and Licensing.
4. All requests, notices, proof or payments required by this Order shall be mailed, faxed or delivered to:  

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax: (608) 266-2264  
Telephone: (608) 267-3817
5. In the event Respondent fails to timely submit full payment of the costs or forfeiture as set forth above, or fails to provide timely proof concerning the MPJE, Respondent's license 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.

WISCONSIN PHARMACY EXAMINING BOARD

By: Gregory C. Weber  
A Member of the Board

6/24/09  
Date

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : STIPULATION  
MARK H. HENSTEIN, R.Ph., : LS \_\_\_\_\_ PHM  
RESPONDENT. :

[Division of Enforcement Case #'s 05 PHM 074 & 06 PHM 075]

It is hereby stipulated and agreed, by and between Mark H. Henstein, R.Ph., Respondent, 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 pending investigations of Respondent’s licensure by the Division of Enforcement (files 05 PHM 074 & 06 PHM 075). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
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 advice of legal counsel prior to signing this Stipulation.
4. Respondent 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. 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 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 Respondent or Respondent’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. 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 that the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Mark H. Henstein, R.Ph.  
Respondent

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Date

618 Sutherland Drive  
Woodbury, MN 55129

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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