

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
ECONOFOODS PHARMACY #344, : LS0910282PHM
RESPONDENT. :

[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:

Econofoods Pharmacy #344
2351 Coulee Road
Hudson, WI 54016

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 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. Econofoods Pharmacy #344, Respondent, is licensed by the Wisconsin Pharmacy Examining Board as a pharmacy in the state of Wisconsin pursuant to license number 8024, which was first granted November 10, 2000. Respondent's address of record with the Department of Regulation and Licensing is 2351 Coulee Road, Hudson, WI 54016.

COUNT ONE

2. On November 23, 2005, consumer CF filled a prescription for Omnicef 250/5 Suspension on behalf of her 15-month-old son. Respondent's managing pharmacist, Mark Henstein, 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.

3. 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.

4. 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.”

5. The consumer protection investigator contacted Managing Pharmacist Henstein, who reported that staff at Respondent pharmacy first verify prescriptions after they are filled, and then 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.

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

COUNT TWO

7. On February 24, 2006, a family member went to Respondent pharmacy 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 Respondent pharmacy had given him someone else’s prescriptions, which were for Synthroid (.1 mg) and Lisinopril (10 mg).

8. On February 25, 2006, another consumer, MP2, whose last name was similar to MP1’s, called Respondent 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.

9. Eventually, MP1 complained to the Division. On November 28, 2006, Division staff wrote to Respondent pharmacy’s managing pharmacist, Henstein, 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.

10. Finally, on January 19, 2007, Henstein responded 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. Henstein undertook no additional investigation of the incident, took no additional action with staff, and implemented no policy changes to avoid future occurrences of the error.

11. 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.”

12. 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.”

COUNT THREE

13. On December 28, 2006, a consumer protection investigator from the Department of Regulation and Licensing’s Division of Enforcement performed an unannounced inspection of Respondent pharmacy. The consumer protection investigator observed a pharmacy technician transfer a prescription directly to a consumer without a pharmacist consultation.

14. 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.

15. 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.

16. It has been the practice at Respondent pharmacy to permit 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 its patients.

17. If the medication verification and patient follow up had been done properly, the dispensing error described in paragraphs 2-6, could have been avoided.

18. If all consultations had been done properly, the dispensing error described in paragraphs 7-12 could have been avoided.

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 2-6, 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 7-12, 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 13-16, 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).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Econofoods Pharmacy #344, is REPRIMANDED for the conduct set out above.
2. Respondent shall, within 30 days from the date of this Order, pay to the Department of Regulation and Licensing a forfeiture in the amount of \$750.00 per count, a total of \$2,250.00, pursuant to Wis. Stat. § 450.09(8).
2. Respondent shall, within 30 days from the date of this Order, pay to the Department of Regulation and Licensing a portion of the costs of this proceeding in the amount of \$600.00, pursuant to Wis. Stat. § 440.22(2).
3. All payments required by this Order shall be mailed 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

4. In the event Respondent fails to timely submit any payment of the forfeiture as set forth above or fails to pay costs as ordered, Respondent's license 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

10/28/09
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
ECONOFOODS PHARMACY #344, : LS _____ PHM
RESPONDENT. :

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

It is hereby stipulated and agreed, by and between Econofoods Pharmacy #344, 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, Respondent voluntarily and knowingly waives Respondent's rights, including: the right to a hearing on the allegations against Respondent, 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 Respondent; the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the official who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to Respondent 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.

Representative for Econofoods Pharmacy #344

Date

Respondent

2351 Coulee Road

Hudson, WI 54016

Sandra L. Nowack

Date

Attorney for Complainant

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708-8935