

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JEFFREY A. SWANSON, R.PH.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

0002397

Division of Legal Services and Compliance¹ Case No. 11 PHM 065

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

Jeffrey A. Swanson, R.Ph.
6102 W. Wisconsin Avenue
Wauwatosa, WI 53213-5321

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Pharmacy Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Jeffrey A. Swanson, R.Ph., (dob February 5, 1949) is licensed in the State of Wisconsin as a pharmacist, having license number 40-8759, first granted on January 9, 1975, and current through May 31, 2014. Respondent Jeffrey A. Swanson's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 6102 W. Wisconsin Avenue, Wauwatosa, WI 53213-5321.

2. Respondent Jeffrey A. Swanson, R.Ph., was employed as managing pharmacist at Laabs, Inc., in Milwaukee, Wisconsin. Respondent Jeffrey A. Swanson followed the protocols

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

established and required by the non-pharmacist owners of Laabs, Inc. in the operation of the pharmacy.

3. The owners of Laabs, Inc., hired a pharmacy technician who had a felony criminal conviction for possession of cocaine with intent to deliver, and additional criminal arrests for other drug offenses. Respondent Jeffrey A. Swanson was not aware of the pharmacy technician's criminal record.

4. The pharmacy technician had full access to legitimate prescriptions for controlled substances, and the pharmacy computer; he was responsible for entering the legitimate prescriptions into the computer and for creating documents that Respondent Jeffrey A. Swanson and another pharmacist relied upon in filling prescriptions for controlled substances.

5. The protocols established by the owners of Laabs, Inc., included the use of photocopies of prescriptions for controlled substances, where the original paper scrip included two separate prescriptions. Respondent Jeffrey A. Swanson was unsuccessful in persuading the pharmacy's owners not to use such a system, and he was unsuccessful in designing and implementing procedures to prevent unauthorized dispensing of controlled substances based upon photocopies of legitimate scrips.

6. In January 2011, Respondent Jeffrey A. Swanson informed the United States Drug Enforcement Administration that he suspected his subordinate pharmacist of creating fraudulent prescriptions for thousands of tablets of oxycodone, filling those prescriptions, diverting the medication, and reversing the records of the fraudulent prescriptions from the pharmacy computer system.

7. When the United States Drug Enforcement Administration investigated the suspected diversion of controlled substances from Laabs, Inc., it found that pharmacist John R. Lemberger appeared to be routinely filling and dispensing prescriptions for hundreds of tablets of oxycodone to imposter customers, based on the photocopies of the second prescription on the legitimate original scrip, and then reversing the charges in the pharmacy's computer so that the legitimate customer would not be denied dispensing of the second prescription when the legitimate customer requested it.

8. During the course of the DEA investigation of Laabs, Inc. pharmacy and the diversion of controlled substances from the inventory of Laabs, Inc. following his report to the DEA, Respondent Jeffrey A. Swanson cooperated with and assisted in the investigation. Respondent Jeffrey A. Swanson's cooperation with and assistance to the DEA investigation is a mitigation of the serious violations of minimally acceptable pharmacy practice by Respondent Jeffrey A. Swanson that enabled the diversion.

9. Dimitris Joyner, the pharmacy technician, is serving a federal criminal sentence for his role in obtaining controlled substances in furtherance of a conspiracy with multiple other individuals for the illegal distribution of controlled substances.

10. In resolution of this matter, Respondent Jeffrey A. Swanson, R.Ph., consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact, Respondent Jeffrey A. Swanson, R.Ph., violated Wis. Admin. Code § Phar 10.03(2) by failing to control the inventory of the pharmacy and thereby engaged in a pharmacy practice that substantially departs from the standard of care ordinarily exercised by a pharmacist which could have harmed the public.

3. By the conduct described in the Findings of Fact, Respondent Jeffrey A. Swanson, R.Ph., violated Wis. Admin. Code § Phar 10.03(7) by failing to report to the Pharmacy Examining Board that the pharmacy owners were maintaining a system that would not discourage the fraudulent dispensing of controlled substances, which is a practice that constitutes a danger to the health, welfare and safety of the public.

4. As a result of the above violations, Respondent Jeffrey A. Swanson, R.Ph., is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b).

ORDER

1. The attached Stipulation is accepted.
2. Respondent Jeffrey A. Swanson, R.Ph., is REPRIMANDED.
3. It is further ordered that Respondent Jeffrey A. Swanson's license to practice as a pharmacist is LIMITED by the conditions that
 - a. Respondent may not be the managing pharmacist of any pharmacy.
 - b. Respondent must take and pass the Multistate Pharmacy Jurisprudence Examination within three months of the date of this Order.
 - c. every pharmacy at which Respondent is employed must submit audits of the controlled substances inventory of that pharmacy to the Department Monitor each quarter, beginning thirty days from the date of this Order. The reports of each audit shall be co-signed by the managing pharmacist of each pharmacy at which Respondent is employed.
 - d. Respondent shall, at Respondent's own expense, take and successfully complete three hours of education in pharmacy management and three hours of education in the law of pharmacy operations within twelve months of the date of this Order as follows:
 - (1) Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Respondent shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the courses

from the Board or its designee. Respondent must take and pass any exam offered for the course(s).

(2) Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.

e. Respondent may petition for modification or removal of the limitations no earlier than two years from the date of this Order, provided that he supplies satisfactory evidence that he has worked no less than 2000 hours as a pharmacist in every twenty-four month period from and after the date of this Order.

4. Within 90 days from the date of this Order, Jeffrey A. Swanson, R.Ph., shall pay COSTS of this matter in the amount of \$ 2800.00.

5. Proof of successful course completion, proof of successful examination, and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent Jeffrey A. Swanson to the Department Monitor at the address below:

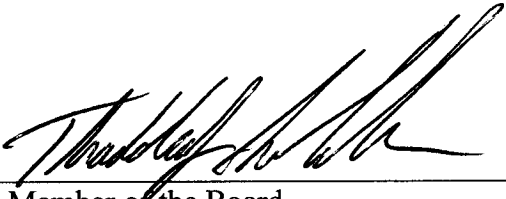
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

6. 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. The Board in its discretion may in the alternative impose additional conditions and limitations for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 40-8759) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs and completion of the education.

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

4/15/13
Date