

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 :
 :
DAVID L. KLEINGARTNER, R.PH., : FINAL DECISION AND ORDER
RESPONDENT. :
 :
 : 0004040

Division of Legal Services and Compliance Case No. 14 PHM 082

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

David L. Kleingartner, R.Ph.
1624 Wexford Way
Woodbury, MN 55125

Wisconsin Pharmacy Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 David L. Kleingartner, R.Ph., (dob November 27, 1951) is licensed in the state of Wisconsin to practice pharmacy, having license number 8865-40, first issued on July 23, 1975 and current through May 31, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1624 Wexford Way, Woodbury, Minnesota 55125.

2. On June 10, 1998, in Case No. 98 PHM 14, the Board indefinitely suspended Respondent's license to practice pharmacy and imposed an impairment order. Respondent, as the managing pharmacist, ordered controlled substances for a pharmacy that did not dispense controlled substances. Respondent diverted, for his own use and without a valid prescription,

large quantities of non-controlled and controlled substances from the pharmacy. On August 13, 2003, the Board terminated the suspension and granted Respondent full licensure.

3. This matter involves the first complaint filed with the Board against Respondent since August 13, 2003.

4. At all times relevant to this proceeding, Respondent was employed as a pharmacist in Barron, Wisconsin.

5. On June 24, 2014, Respondent, while working as a pharmacist, took an unknown amount of metoprolol (blood pressure medication) from a stock bottle in the pharmacy, placing the pills in a smaller bottle and placing the smaller bottle of medication in his pocket.

6. On June 27, 2014, Respondent, while working as a pharmacist, took one tablet of pantoprazole (stomach acid medication) for his personal use.

7. Respondent did not pay for the medications he took, nor did he have permission to take the medication from stock for personal use.

8. Respondent had current prescriptions for metoprolol and pantoprazole.

9. During the pendency of this investigation Respondent voluntarily submitted to a hair test for controlled substances. The test was negative for any controlled substances.

10. Respondent does not recall taking the medications, but he does not deny doing so. In resolution of this matter, Respondent consents to 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), 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, David L. Kleingartner, R.Ph., engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(1), by obtaining a drug other than in legitimate practice, or as prohibited by law.

3. As a result of the above violation, David L. Kleingartner, R.Ph., is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

ORDER

1. The attached Stipulation is accepted.

2. Respondent David L. Kleingartner, R.Ph., is REPRIMANDED.

3. Within ninety (90) days from the date of this Order, David L. Kleingartner, R.Ph., shall pay COSTS of this matter in the amount of \$506.75.

4. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent 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 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

5. 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 or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of costs as ordered, Respondent's license (no. 8865-40) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of costs.

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

6/3/15
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID L. KLEINGARTNER, R.PH.,
RESPONDENT.

:
:
:
:
:

STIPULATION

0004040

Division of Legal Services and Compliance Case No. 14 PHM 082

Respondent David L. Kleingartner, R.Ph., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- 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 on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Pharmacy Examining (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.

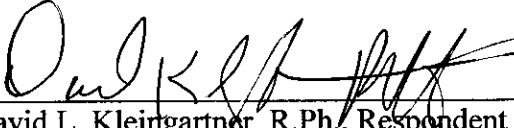
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the 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 Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such 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.

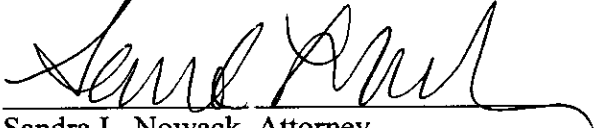
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



David L. Kleingartner, R.Ph., Respondent
1624 Wexford Way
Woodbury, MN 55125
License no. 8865-40

3/25/15

Date



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P.O. Box 7190
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Tel. (608) 266-8098
Fax (608) 266-2264
sandra.nowack@wisconsin.gov

3/31/15

Date