

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 :
 : FINAL DECISION AND ORDER
STEPHEN D. HERBST, R. PH., :
RESPONDENT. : **0004459**

Division of Legal Services and Compliance Case No. 14 PHM 078

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

Stephen D. Herbst, R. Ph.
312 Cypress Point
North Prairie, WI 53153

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 Stephen D. Herbst, R. Ph. (dob October 6, 1976) is licensed in the state of Wisconsin to practice pharmacy, having license number 13448-40, first granted on July 6, 2001, and current through May 31, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 312 Cypress Point, North Prairie, Wisconsin 53153.

2. At all times relevant to this proceeding, Respondent was employed as a pharmacist at a pharmacy (Pharmacy) located in Mukwonago, Wisconsin.

3. On May 12, 2014, Respondent reviewed a prescription order for methadone presented by a customer and compared it against the data entered into Pharmacy's electronic filing system by the pharmacy technician.

4. Respondent noted the type of drug, the date the prescription was available to be filled, and the quantity of drug.

5. However, Respondent failed to note the discrepancy in dosage between the prescription presented and the electronically entered file.

6. Respondent filled the methadone prescription with 10mg tablets instead of 5mg tablets.

7. In resolution of this matter, Respondent 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), 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, Stephen D. Herbst, R. Ph., violated Wis. Admin. Code § Phar 10.03(2), by engaging in any pharmacy practice which constitutes a danger to the health, welfare, or safety of patient or public, including but not limited to, practicing in a manner which substantially departs from the standard of care ordinarily exercised by a pharmacist which harmed or could have harmed a patient.

3. As a result of the above violation, Stephen D. Herbst, R. Ph., is subject to discipline pursuant to Wis. Stat. § 450.10(1).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Stephen D. Herbst, R. Ph., is REPRIMANDED.

3. The license to practice pharmacy issued to Stephen D. Herbst, R. Ph., (license number 13448-40) is LIMITED as follows:

a. Within ninety (90) days of the date of this Order, Respondent shall successfully complete eight (8) hours of education on the topic of controlled substances (can include dangers of pain medication) offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.

b. Respondent shall submit proof of successful completion of the ordered 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, and also may not be used in future attempts to upgrade a credential in Wisconsin.

c. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

4. Within ninety (90) days from the date of this Order, Stephen D. Herbst, R. Ph., shall pay COSTS of this matter in the amount of \$500.00.

5. Request of approval of courses, proof of successful course completion and 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:

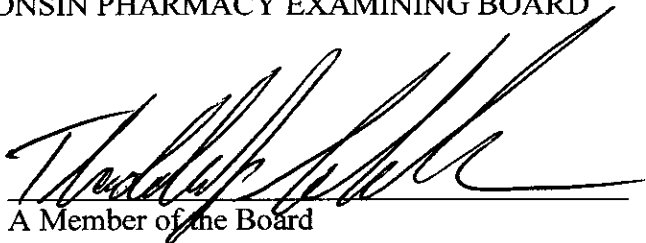
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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 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 or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 13448-40) 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 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


Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

STEPHEN D. HERBST, R.Ph.,
RESPONDENT.

:
:
:
:
:
:

STIPULATION

0004459

Division of Legal Services and Compliance Case No. 14 PHM 078

Respondent Stephen D. Herbst, 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. Respondent is represented by Attorney Michael P. Russart.


4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Pharmacy Examining Board (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 or Respondent's attorney, 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.



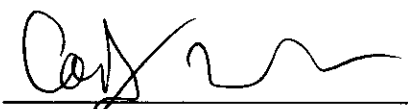
Stephen D. Herbst, R.Ph., Respondent
312 Cypress Point
North Prairie, WI 53153
License no. 13448-40

12-8-2015
Date



Michael P. Russart, Attorney for Respondent
Hinshaw & Culbertson LLP
100 E. Wisconsin Ave., Ste 2600
Milwaukee, WI 53202

12-18-2015
Date



Cody Wagner, Prosecuting Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

12/27/15
Date