

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

NEW BERLIN PHARMACY, INC.,
RESPONDENT.

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FINAL DECISION AND ORDER

0004733

Division of Legal Services and Compliance Case No. 14 PHM 081

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

New Berlin Pharmacy, Inc.
14105 West Greenfield Avenue
New Berlin, WI 53151

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 New Berlin Pharmacy is licensed in the state of Wisconsin as a pharmacy, having license number 8899-42, first issued on November 24, 2008 and current through May 31, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 14105 West Greenfield Avenue, New Berlin, Wisconsin 53151.

2. At all times relevant to this matter, the pharmacy was owned by Jason Kilvinger (Kilvinger).

3. All conduct described below occurred at the pharmacy under license number 8899-42.

4. Kilvinger is not now and has never been licensed to engage in the practice of pharmacy in the state of Wisconsin.

5. Kilvinger is not now and has never been licensed to engage in the practice of pharmacy in any jurisdiction.

6. On January 15, 2015, Kilvinger identified himself as a pharmacist and provided medical advice to a patient concerning drug interactions.

7. On January 22, 2015, Kilvinger filled and dispensed a prescription for 30 tablets/350mgs of carisoprodol (Flexeril®).

8. On January 22, 2015, when Kilvinger engaged in the unlicensed practice of pharmacy, there was no pharmacist on the premises.

9. Between January 2014 and October 2015, Kilvinger engaged in the unlicensed practice of pharmacy on approximately one hundred occasions.

10. On April 3, 2012, Kilvinger attempted to provide controlled substances to an individual who did not have a valid prescription.

11. On multiple occasions between January 2014 and October 2015, Kilvinger, with the knowledge of the managing pharmacist:

- a. billed insurance companies for medications that were not actually dispensed;
- b. took controlled substances from the pharmacy for his personal use without having a valid prescription for the controlled substances; and
- c. falsified pharmacy records to create the appearance that certain drugs were dispensed, when they had not been dispensed.

12. As of March 25, 2016, Respondent voluntarily ceased to engage in the practice of pharmacy in the state of Wisconsin.

13. Kilvinger denies any and all wrong-doing but has elected to resolve this matter by stipulation.

14. 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. Pursuant to Wis. Stat. § 450.09(2), no pharmaceutical service may be provided to any person unless a licensed pharmacist is present in the pharmacy to provide or supervise the practice.

3. Respondent violated Wis. Stat. § 450.09(2), by allowing an unlicensed person to provide pharmaceutical services without a licensed pharmacist present in the pharmacy.

4. By violating Wis. Stat. § 450.09(2), Respondent violated a law substantially related to the practice of pharmacy, which is unprofessional conduct as defined by Wis. Stat. § 450.10(1)(a)2.

5. Respondent, by permitting staff to dispense, supply or obtain a drug other than in legitimate practice, engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(1).

6. Respondent, by permitting staff to falsify patient records or knowingly permitted another to falsifying patient records, engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(5).

7. Respondent, by aiding and abetting the unlicensed practice of pharmacy, engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(10).

8. Respondent, by falsely billing insurance companies for drugs not actually dispensed, engaged in unprofessional conduct as defined by Wis. Stat. § 450.10(1)(a)7.

9. Respondent is subject to disciplinary action pursuant to Wis. Stat. § 450.10(2).

ORDER

1. The attached Stipulation is accepted.

2. The voluntary SURRENDER of the license to practice pharmacy in the state of Wisconsin issued to New Berlin Pharmacy (license no. 8899-42) is hereby accepted.

3. New Berlin Pharmacy Inc., agrees to stop pharmacy practice on the date that the Stipulation is signed.

4. In the event Respondent petitions the Board for reinstatement in the future, the Board may enter an order denying such petition without further notice or hearing. Whether to grant a license and whether to impose any limitations or restrictions on any license shall be in the discretion of the Board. The Board's decision is not reviewable.

5. Within 180 days of this Order, Respondent shall pay the Division's costs in investigating this matter, in the amount of \$1435.50.


6. Respondent shall send payments of costs (payable to the Wisconsin Department of Safety and Professional Services) and shall immediately return all indicia of Wisconsin licensure 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

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

5/25/14
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NEW BERLIN PHARMACY,
RESPONDENT.

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:
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:
:

STIPULATION

0004733

Division of Legal Services and Compliance Case No. 14 PHM 081

Respondent New Berlin Pharmacy 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 Daniel Sanders.

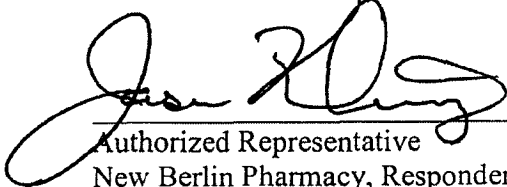
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Pharmacy Examining (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives 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.

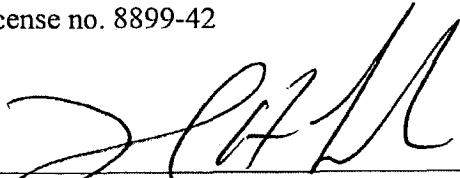
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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.



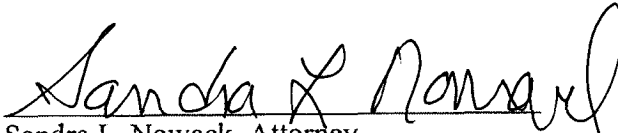
Authorized Representative
New Berlin Pharmacy, Respondent
14105 West Greenfield Avenue
New Berlin, WI 53151
License no. 8899-42

4/21/16
Date



Daniel Sanders, Attorney for Respondent
735 North Water Street
Suite 1212
Milwaukee, WI 53202

4/21/16
Date



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

4/22/16
Date