

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

MARK H. HENSTEIN, R.PH.,
RESPONDENT.

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FINAL DECISION AND ORDER

0005129

Division of Legal Services and Compliance Case No. 16 PHM 020

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

Mark H. Henstein, R.Ph.
618 Sutherland Drive
Woodbury, MN 55129-8542

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 Mark H. Henstein, R.Ph., (dob December 31, 1952) is licensed in the state of Wisconsin to practice pharmacy, having license number 14555-40, first granted on September 20, 2005, and current through May 31, 2018. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 618 Sutherland Drive, Woodbury, Minnesota 55129-8542.

2. On February 2, 2016, the State of Wisconsin Controlled Substances Board (Board) received notice from the Program Manager of the Minnesota Prescription Monitoring Program (PMP) that Respondent may have improperly accessed confidential Prescription Drug

Monitoring Program (PDMP) information in violation of Wisconsin PDMP and Minnesota PMP requirements.

3. The Board investigated the matter and found that on January 21, 2016, Respondent attempted to access PDMP confidential information using a multiple state query to retrieve Minnesota and Wisconsin prescription drug information concerning one or more individuals.

4. Respondent was not authorized to attempt to access these individuals' confidential patient healthcare records.

5. On February 5, 2016, the Board suspended Respondent's access to the PDMP.

6. On January 21, 2016, Respondent accessed PDMP at the request of a local deputy sheriff. Respondent had worked with the deputy sheriff in the past regarding forgery and diversion.

7. The deputy sheriff gave the PDMP information to an agent from the United States Drug Enforcement Administration (DEA).

8. Respondent and the deputy sheriff were not aware, at that time, that law enforcement needed a warrant to obtain PDMP information.

9. Respondent, at that time, believed he was accessing PDMP for the purpose it was intended, to prevent abuse and diversion.

10. Since this occurrence, Respondent has read numerous PDMP guidelines and policies to ensure that he understands the regulations applicable to the program. Respondent will be careful not to release confidential information improperly in the future.

11. 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, Mark H. Henstein, R.Ph., engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar. 10.03(6), by disclosing to the public information concerning a patient without the consent of the patient unless the information is requested by the pharmacy examining board or the department of safety and professional services or unless release is otherwise authorized by law.

3. As a result of the above violations, Mark H. Henstein, R.Ph., is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

ORDER

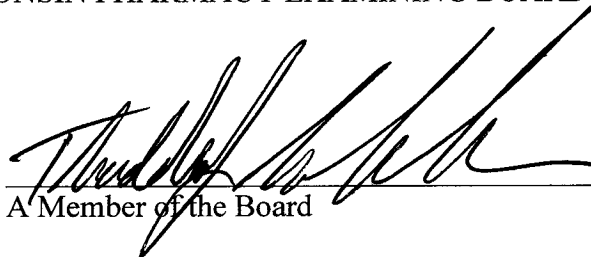
1. The attached Stipulation is accepted.
2. Respondent Mark H. Henstein, R.Ph., is REPRIMANDED.
3. Within ninety (90) days from the date of this Order, Mark H. Henstein, R.Ph., shall pay COSTS of this matter in the amount of \$350.00.
4. Payment of costs (made payable to the Wisconsin Department of Safety 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. In the event that Respondent violates any term of this Order, Respondent's license to practice pharmacy in the state of Wisconsin may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.
6. 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

MARK H. HENSTEIN, R.PH.,
RESPONDENT.

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STIPULATION

0005129

Division of Legal Services and Compliance Case No. 16 PHM 020

Respondent Mark H. Henstein, 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.

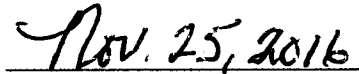
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes 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.

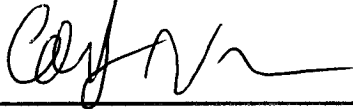
8. ~~The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.~~



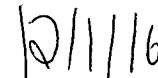
Mark H. Henstein, R.Ph., Respondent
618 Sutherland Drive
Woodbury, MN 55129-8542
License no. 14555-40



Date



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



Date