

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
MARK S. JOHNSON, R.PH., :
RESPONDENT. :

0005187

Division of Legal Services and Compliance Case No. 16 PHM 133

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

Mark S. Johnson, R.Ph.
415 South Mechanic Street
Albany, WI 53502

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 S. Johnson, R.Ph., (dob January 23, 1961) is licensed in the state of Wisconsin to practice pharmacy, having license number 10660-40, first issued on June 18, 1985, and current through May 31, 2018. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 8635 North John Paul Road, Milton, Wisconsin 53563.

2. Upon information and belief, Respondent's current address is 415 South Mechanic Street, Albany, Wisconsin 53502.

3. In 2013, State of Wisconsin Department of Health Services (DHS) audited Respondent and determined that Respondent had been overpaid about \$1,200,000. The audit indicated that Respondent had billed for quantities in excess of actual services provided to patients.

4. During September 2014, based on the documentation provided by Respondent, DHS reduced Respondent's recoverable overpayment from approximately \$1,200,000 to approximately \$520,000.

5. On October 10, 2014, Respondent appealed the majority of the amount DHS sought to recover on the grounds that DHS had used erroneous calculations in determining the amount. Respondent also submitted an explanation of the dosing calculations that were appropriate for use with the drug he was accused of overbilling for.

6. During May 2015, based on the documentation provided by Respondent during the appeal, DHS reduced Respondent's recoverable overpayment from approximately \$520,000 to approximately \$18,000, which Respondent did not contest.

7. On August 3, 2016, Respondent was charged in United States District Court for the Western District of Wisconsin, case number 16-CR-00072, with the following charges:

- a. Thirty-nine (39) counts of submitting and causing the submission of false and fraudulent claims to Medicaid and Medicare, in violation of 18 U.S.C. § 1347.
- b. One (1) count of knowingly and willfully making materially false, fictitious, and fraudulent statements and representations, and using materially false writings and documents knowing them to contain materially false, fictitious, and fraudulent statement and entries, in connection with the payment for health care benefits and services from Medicaid, in violation of 18 U.S.C. § 1035(a)(2).
- c. Six (6) counts of knowingly possessing and using, without lawful authority, a means of identification of another person, during and in relation to felony violations, in violation of 18 U.S.C. § 1028A(a)(1).

8. On February 23, 2017, the Board approved an Interim Order (0005187) with the following conditions, based on the above mentioned federal charges:

- a. Respondent shall not work as a pharmacist-in-charge;
- b. For the duration of the Interim Order, Respondent shall arrange for his pharmacy employer to send quarterly reports detailing a random audit of 10% of prescriptions filled by Respondent, when Respondent works alone; and
- c. Respondent shall provide all pharmacy employers with a copy of this Order before engaging in any pharmacy employment.

9. On May 24, 2017, Respondent pled guilty in federal court to one (1) count of Medicare/ Medicaid fraud (a felony) with the other forty-five (45) counts dismissed as part of the plea deal.

10. On August 30, 2017, Respondent was sentenced to two (2) years in prison and one (1) year of supervised release with incarceration to begin sometime in October 2017.

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, Respondent Mark S. Johnson, R.Ph., engaged in unprofessional conduct by violating a law substantially related to the practice of pharmacy pursuant to Wis. Stat. § 450.10(1)(a)2.

3. By the conduct described in the Findings of Fact, Respondent Mark S. Johnson, R.Ph., engaged in unprofessional conduct by obtaining or attempting to obtain compensation by fraud or deceit pursuant to Wis. Stat. § 450.10(1)(a)7.

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

ORDER

1. The attached Stipulation is accepted.

2. The SURRENDER of the license to practice pharmacy in the state of Wisconsin issued to Mark S. Johnson, R.Ph., (license no. 10660-40) is hereby accepted.

3. In the event Respondent petitions the Board for reinstatement of his license to practice pharmacy in the state of Wisconsin, 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.

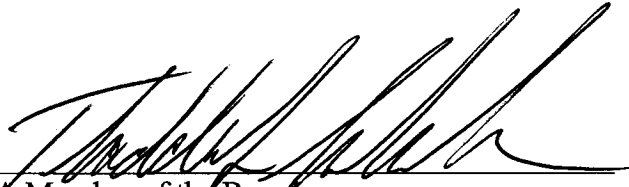
4. Respondent shall immediately return all indicia of Wisconsin licensure to the Department Monitor at the address below:

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

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

10/26/17
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARK S. JOHNSON, R.PH.,
RESPONDENT.

:
:
:
:
:
:

STIPULATION

0005187

Division of Legal Services and Compliance Case No. 16 PHM 133

Respondent Mark S. Johnson, 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 S. Johnson, R.Ph., Respondent
415 South Mechanic Street
Albany, Wisconsin 53502
License no. 10660-40

10-18-2017
Date



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

10-18-2017
Date