

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

KEVIN D. LITTEN, R.Ph.,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0006584

Division of Legal Services and Compliance Case No. 16 PHM 201

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

Kevin D. Litten, R.Ph.
433 East MD Street
Cadott, WI 54727-9359

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 Kevin D. Litten, R.Ph., (DOB December 19, 1957) is licensed in the state of Wisconsin to practice pharmacy, having license number 10481-40, first issued on March 20, 1984, and current through May 31, 2020. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 433 East MD Street, Cadott, Wisconsin 54727-9359.

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

3. Respondent regularly dispensed high doses of opioids in which the prescriptions lacked required information such as prescribers' signatures.

4. Respondent regularly dispensed schedule II controlled substances while he knew, or should have known, the prescriber's identifying information was incorrect.

5. Respondent regularly dispensed schedule II controlled substances without a written prescription order from the prescribing practitioner. The purported prescriptions have indications that they were transcribed by Respondent from oral information received over the phone.

6. These phone prescriptions for schedule II controlled substances were dispensed in excess of an amount required to treat the patient through an emergency period and were not properly noted for emergency dispensing.

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, Kevin D. Litten, R.Ph., engaged in unprofessional conduct as defined by Wis. Admin. Code § Phar 10.03(1), by administering, dispensing, supplying or obtaining a drug other than in the legitimate practice or as prohibited by law.

3. By the conduct described in the Findings of Fact, Kevin D. Litten, R.Ph., engaged in unprofessional conduct as defined by 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.

4. By the conduct described in the Findings of Fact, Kevin D. Litten, R.Ph., violated Wis. Admin. Code § Phar 8.05(1), by dispensing controlled substances pursuant to an incomplete prescription order.

5. By the conduct described in the Findings of Fact, Kevin D. Litten, R.Ph., violated Wis. Admin. Code § Phar 8.05(4), by dispensing schedule II controlled substances without a hard or electronic copy in a non-emergency circumstance.

6. By the conduct described in the Findings of Fact, Kevin D. Litten, R.Ph., violated Wis. Stat. § 450.11(1), by dispensing a prescribed drug pursuant to an incomplete prescription order, including orders without a signature from the practitioner.

7. As a result of the above violations, Kevin D. Litten, R.Ph., is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

ORDER

1. The attached Stipulation is accepted.
2. The license to practice pharmacy issued to Kevin D. Litten, R.Ph., (license number 10481-40) is SUSPENDED for two (2) weeks from the date of this Order.
3. The license to practice pharmacy issued to Kevin D. Litten, R.Ph., (license number 10481-40) is LIMITED as follows:
 - a. Respondent shall, within one hundred eighty (180) days from the date of this Order, take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE) and submit proof of passage to the Department Monitor at the address stated below.
 - b. For a period of at least one year while working as a pharmacist, accountability audits shall occur as follows:
 - i. Respondent shall obtain from the managing pharmacist, an agreement to conduct a full and exact count of all controlled substances in inventory immediately before Respondent commences practice following the date of this Order. Respondent shall provide a copy of such agreement to the Department Monitor prior to commencing practice as a pharmacist.
 - ii. The managing pharmacist who performs the accountability audit must hold an active license to practice pharmacy in Wisconsin that is not encumbered by any restrictions or limitations.
 - iii. An accountability audit of all controlled substances shall occur every three months paying particular attention to the prescriptions for controlled substances filled and/or dispensed by Respondent.
 - iv. The Department Monitor and the Board Liaison shall determine what information is required in the accountability audit.
 - v. It is Respondent's responsibility to ensure that the managing pharmacist submits a detailed summary of the accountability audit results within two (2) weeks following each audit to the Department Monitor.
 - vi. Respondent shall not work in the capacity of a "managing pharmacist" or "pharmacist in charge" as defined in Wis. Admin. Code §§ Phar 1.02(6) and 1.02(9) during the time period that accountability audits are required.

vii. Accountability audit results demonstrating less than 100% compliance by Respondent with all applicable legal requirements shall be considered a violation of this Order.

4. Respondent may petition for modification of the terms of this Order and/or return of full licensure after one (1) year of practice as a pharmacist and continuous compliance with the Order, and thereafter on a yearly basis. The decision to modify the terms of this Order and/or return Respondent to full licensure rests entirely within the Board's discretion.

5. Within one hundred eighty (180) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$18,787.00.

6. Any information, submissions, or payment of costs required by this Order (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

You may also submit this information online via DSPS' Monitoring Case Management System, here:

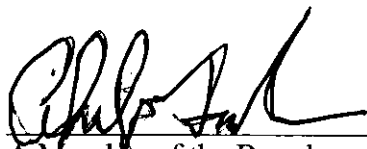
<https://app.wi.gov/DSPSMonitoring>

7. In the event that Respondent violates any term of this Order, Respondent's license (no. 10481-40) 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.

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

12/17/2019
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KEVIN D. LITTEN, R.PH.,
RESPONDENT.

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STIPULATION

ORDER 0006584

Division of Legal Services and Compliance Case No. 16 PHM 201

Respondent Kevin D. Litten, R.Ph., license number 10481-40, 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 J. Drew Ryberg.

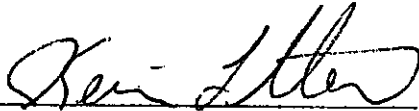
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Pharmacy Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent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



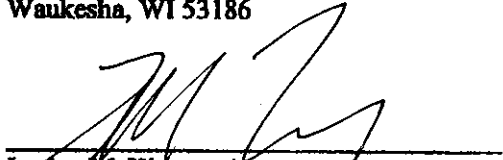
Kevin D. Litten, R. Ph., Respondent
433 East MD Street
Cadott, WI 54727-9359
License no. 10481-40

23 OCT 2019
Date



Jason Franckowiak, Attorney for Respondent
Otjen Law Firm, SC
20935 Swenson Drive, Suite 310
Waukesha, WI 53186

10-24-19
Date



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

10/28/19
Date