

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



**Before the
State of Wisconsin
Pharmacy Examining Board**

In the Matter of Disciplinary Proceedings Against
Walter P. Matoska, R.P.H., Respondent

FINAL DECISION AND ORDER
ORDER 0006636
Order No. _____

Division of Legal Services and Compliance Case No. 18 PHM 001

The State of Wisconsin, Pharmacy Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 30 day of January, 2020.

Member
Pharmacy Examining Board



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
WALTER P. MATOSKA, R.PH., Respondent

DHA Case No. SPS-19-0050
DLSC Case No. 18 PHM 001

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Walter P. Matoska, R.Ph.
1625 27th Avenue
Kenosha, WI 53140

Wisconsin Pharmacy Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Carley J. Peich Kiesling
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On September 18, 2019, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal complaint against Respondent Walter P. Matoska, R.Ph., alleging that the Respondent engaged in unprofessional conduct pursuant to the following: (1) by administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law, in violation of Wis. Admin. Code § Phar 10.03(1); (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, in violation of Wis. Admin. Code § Phar 10.03(2); and (3) by practicing pharmacy while the ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease, in violation of Wis. Stat. § 450.10(1)(a)3.

The Division served Respondent on September 18, 2019, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department, via certified and regular mail, pursuant to Wis. Admin. Code § SPS 2.08. Respondent was given 20 days from the date of service to file an Answer. No Answer was filed.

At the expiration of the 20-day time period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone pre-hearing conference for October 21, 2019. On October 21, 2019, both parties appeared for the telephone pre-hearing conference. The Division moved for default based on Respondent's failure to file a timely Answer, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The Respondent requested an opportunity to file an Answer and indicated that he could do so by the end of business on October 25, 2019. Therefore, the ALJ granted the Respondent an opportunity to file a written Answer and instructed the Respondent to file the answer by the end of business on October 25, 2019. The ALJ further advised Respondent that a failure to file an Answer could result in a finding of Default. The extension for filing an Answer was memorialized in a Prehearing Conference Report and Scheduling Order. The Order also advised the Respondent that a failure to file an Answer by the deadline would result in the issuance of an Order that the Division file a proposed Decision and Order for Default.

When the Respondent failed to file an Answer by the deadline afforded by the ALJ, the Division renewed its request for default on October 31, 2019. On October 31, 2019, the ALJ found Respondent in default and issued a Notice of Default and Order pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). Wisconsin Administrative Code § SPS 2.14 provides that when a Respondent is in default, "the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." In addition, pursuant to the Notice of Default and Order dated October 31, 2019, the ALJ ordered that the Division file a recommended proposed decision and order by December 2, 2019.

Subsequent to the deadline for filing an Answer, the Respondent emailed both the Division and the ALJ suggesting that he failed to file an Answer due to requiring medical care on the evening of October 25, 2019. However, the Respondent's numerous emails did not provide any clear justification or explanation as to why he was unable to file an Answer before the close of business on October 25, 2019, only that he sought medical care after the close of business.¹ Therefore, the Division of Hearings and Appeals advised the Respondent that on or before December 13, 2019, he should provide documentation from a medical provider with written explanation as to why he was unable to timely answer the complaint in this matter. Once again, the Respondent failed to file a response in compliance with the directives and opportunities given to him. To date the Respondent has never submitted an Answer to the Complaint and therefore, the allegations are deemed admitted. Wis. Admin. Code § SPS 2.09(3). The Division timely filed a recommended proposed decision and order on November 26, 2019.

¹ Additionally, the Respondent's emails were largely incoherent and rambling statements of the Respondent's ongoing personal issues. Regardless, the Respondent's correspondence neither amounts to a proper Answer to the Complaint consistent with Wis. Admin. Code § SPS 2.09 nor do the Respondent's numerous emails refute the underlying facts in the Complaint.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-13 are taken from the Division's Complaint in this matter.

1. Respondent Walter P. Matoska, R.Ph., (DOB XX/XX/1977) is licensed in the state of Wisconsin to practice pharmacy, having license number 13912-40, first issued on July 2, 2003, and current through May 31, 2020.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is located in Kenosha, Wisconsin 53140.

3. At all times relevant to this proceeding, Respondent was employed as a pharmacist at a medical center (Center) located in Kenosha, Wisconsin.

4. On December 10-11, 2017, Respondent worked an overnight shift at the Center.

5. On December 11, 2017, Respondent's co-worker found Respondent with his head down at his workstation. The house supervisor was informed.

6. At approximately 1:23 a.m. on December 11, 2017, the house supervisor arrived. Respondent was standing in front of his computer in a hypnotic state with his eyes open. Respondent was initially unresponsive.

7. Respondent was having difficulties staying awake during his shift on December 10-11, 2017. Respondent said he was having an adverse reaction to medication and should not have reported to work.

8. Respondent was taken to the Center's Emergency Department (ED) at approximately 1:25 a.m., where he was placed under observation, during which time Respondent slept for approximately five (5) hours.

9. While at the ED on December 11, 2017, Respondent submitted to a urine drug screen, which was positive for amphetamines and opiates.

10. As of December 10, 2017, Respondent had prescriptions for the following medications: Lyrica, Cymbalta, hydromorphone, trazadone, testosterone cypionate, Vraylar, zolpidem, and temazepam. Respondent did not have a prescription for amphetamines as of December 10, 2017.

11. Respondent admitted to taking Adderall on December 9, 2017, which was prescribed to his nephew. Adderall is a brand name for a combination of amphetamine and dextroamphetamine.

12. Pursuant to Wis. Stat. § 961.16(5)(a), an amphetamine is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

13. On December 29, 2017, the Center terminated Respondent's employment for his actions on December 10 and 11, 2017.

Facts Related to Default

14. The Notice of Hearing and Complaint were served on Respondent on September 18, 2019, by both certified and first-class mail, consistent with Wis. Admin. Code § SPS 2.08. The notice of hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

15. Respondent failed to file an Answer to the Complaint within 20 days as required by Wis. Admin. Code § SPS 2.09(4).

16. At the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone pre-hearing conference for October 21, 2019. Both parties participated in the October 21, 2019 telephone pre-hearing conference. At the pre-hearing the Respondent acknowledged he had not filed an Answer but requested additional time to file an Answer and indicated that he could file an Answer by the end of business October 25, 2019. The Division moved for default based on Respondent's failure to file an Answer; however, the ALJ denied the Division's motion and granted the Respondent until the end of business on October 25, 2019 to file his answer. The ALJ further advised Respondent that a failure to file an Answer could result in a finding of Default.

17. The ALJ issued a Prehearing Conference Report and Scheduling Order on October 22, 2019 that memorialized the October 21, 2019 prehearing conference. The Prehearing Conference Report and Scheduling Order stated that "[t]he Respondent shall file a written answer to the Notice of Hearing dated September 18, 2019 on or before the end of business, Friday October 25, 2019. If the written answer is filed by mail, it must be postmarked by the October 25th deadline. If the Respondent fails to file an Answer by the deadline, an Order will be issued directing the Division of Legal Services and Compliance (the Division) to file a proposed Decision and Order for Default."

18. The Respondent failed to file an Answer by the close of business October 25, 2019.

19. The Division renewed its motion for default on October 31, 2019 based on Respondent's continued failure to file an Answer to the Complaint.

20. On October 31, 2019, the ALJ issued a Notice of Default and Order which required that the Division file a recommended proposed decision and order by December 2, 2019, which the Division timely filed on November 26, 2019.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

Pursuant to Wis. Admin. Code § 2.10(2), the ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

By failing to file an Answer to the complaint, Respondent violated Wis. Admin. Code § SPS 2.09(4). As stated in the October 31, 2019 Notice of Default and Order, Respondent is in default for failing to file an answer. The Respondent neither filed an Answer within 20 days of his receipt of the Notice of Hearing and Complaint served upon him nor did he file an Answer by the extended October 25, 2019 deadline granted by the ALJ during the October 21, 2019 prehearing conference. *See* Wis. Admin. Code § SPS 2.14. Allegations in a Complaint are deemed admitted when not denied in an Answer. Wis. Admin. Code § SPS 2.09(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

Violations

Pursuant to Wis. Stat. § 450.10(1)(b)1, the Wisconsin Pharmacy Examining Board (Board) possesses the authority to discipline any licensee or license holder for violating the standards of conduct established by the examining board under Wis. Stat. § 440.03(1) and for engaging in unprofessional conduct under Wis. Admin. Code §§ Phar 10.03(1) and 10.03(2), and Wis. Stat. § 450.10(1)(a)3.

The following conduct is considered unprofessional conduct for pharmacists pursuant to the Standards of Professional Conduct under Chapter Phar 10 of the Wisconsin Administrative Code:

1. Administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law;
2. 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...

Wis. Admin. Code § Phar 10.03(1) and (2). It is also unprofessional conduct under Wisconsin Statutes to practice pharmacy while the ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease. Wis. Stat. §450.10(1)(a)3.

The Complaint in this matter sets forth facts alleging violations of the Standards of Professional Conduct set forth above. Because the Respondent failed to file an Answer to the Complaint, Respondent is in default and the ALJ may take the allegations in the Complaint as true and enter an order on the basis of the Complaint. *See* Wis. Admin. Code §§ SPS 2.09(3) and 2.14. Moreover, throughout his participation in a prehearing conference on October 21, 2019 and

numerous email correspondence sent to the Division and ALJ, the Respondent has not raised any denials or defenses to the facts set forth in the Complaint.

The undisputed facts in this matter as set forth in the Complaint are as follows:

On December 10-11, 2017, Respondent was employed as a pharmacist at a medical center (Center) located in Kenosha, Wisconsin, and was working an overnight shift at the Center. On December 11, 2017, Respondent's co-worker found Respondent with his head down at his workstation. The house supervisor was informed and at approximately 1:23 a.m. on December 11, 2017, the house supervisor arrived. Respondent was observed standing in front of his computer in a hypnotic state with his eyes open and was initially unresponsive. Not only was the Respondent having difficulties staying awake during his shift on December 10-11, 2017, he reported having an adverse reaction to medication and admitted he should not have reported to work.

Respondent was taken to the Center's Emergency Department (ED) at approximately 1:25 a.m., where he was placed under observation, during which time Respondent slept for approximately five (5) hours. While at the ED on December 11, 2017, Respondent submitted to a urine drug screen, which tested positive for amphetamines and opiates.

As of December 10, 2017, Respondent had prescriptions for the following medications: Lyrica, Cymbalta, hydromorphone, trazadone, testosterone cypionate, Vraylar, zolpidem, and temazepam. Respondent did not have a prescription for amphetamines as of December 10, 2017.

Respondent admitted to taking Adderall on December 9, 2017, which was prescribed to his nephew. Adderall is a brand name for a combination of amphetamine and dextroamphetamine. Pursuant to Wis. Stat. § 961.16(5)(a), an amphetamine is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

On December 29, 2017, the Center terminated Respondent's employment for his actions on December 10 and 11, 2017.

The undisputed facts establish that the Respondent engaged in unprofessional conduct. Specifically, by taking someone else's prescription medication for which the Respondent did not have a valid prescription, the Respondent violated Wis. Admin. Code § Phar 10.03(1). In addition, the Respondent's conduct in reporting to work under the influence and impairment of multiple prescribed and non-prescribed drugs endangered the health, welfare, and safety of patients and the public, and substantially departed from the standard of care ordinarily exercised by a pharmacist in violation of Wis. Admin. Code § Phar 10.03(2) and Wis. Stat. § 450.10(1)(a)3.

As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other

credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). However, the primary purpose must be to protect the public interest and assure the moral fitness and professional competency of those who hold professional license. *See State v. MacIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969). "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940).

When a license is granted to an individual, the Board is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the Board, via the Department, cannot assure the public of the licensee's competence to practice the profession, then suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

The Division recommends that the license of Respondent Walter P. Matoska, R.Ph., be suspended pursuant to the terms and conditions of the Order section below, including the requirement of a Fitness to Practice assessment and an Alcohol and Other Drug Abuse (AODA) assessment. Because the recommended discipline is consistent with the goals articulated in *Aldrich* and *MacIntyre*, and Board precedent, I adopt the Division's recommendation.

In the present case, the unrefuted facts establish that the Respondent was impaired while at work. He was observed with his head down at his workstation, standing in front of his computer in a hypnotic state with his eyes open, and having difficulties staying awake. He admitted that he should not have reported to work in that state. Although the Respondent claimed that his condition was the result of an adverse reaction to medication, at the time of this incident, Respondent was prescribed at least eight (8) medications, including opiates. Furthermore, Respondent admitted that he ingested a controlled substance that was not prescribed to him on the day before this incident. In order to protect the public and for the Board to assure the public that the Respondent is competent and safe to practice, it is necessary for Respondent to undergo Fitness to Practice and AODA assessments to assess his physical and mental health, including his use of both prescribed and unprescribed medications, to ensure that he is both morally and physically fit and competent to practice as a pharmacist. The terms and conditions of the proposed Order also allow the Board to impose additional restrictions or limitations on Respondent's license, if necessary, based on the results of the Fitness to Practice and AODA assessments. The Board cannot ensure that Respondent will practice safely as a pharmacist unless he is evaluated and required to participate in treatment program(s) and monitored. The Board can then determine whether the Respondent should be allowed to practice dependent upon the recommendations of his evaluators.

Respondent's conduct of working while impaired, as well as ingesting controlled substances prescribed to someone else, not only suggests that Respondent is not safe or competent to practice as a pharmacist, but is also serious misconduct and demonstrates Respondent's disregard for the public's trust and his responsibilities to his patients. Imposing anything less than the requested limitations and suspension would not aid in deterrence of other licensees from similar conduct, but could imply that such conduct by a licensed pharmacist is tolerable. Accordingly, the requested limitations and suspension are necessary to deter other licensees from engaging in similar conduct and remains the only appropriate way in which to safeguard the public.

Promoting rehabilitation is also one of the purposes of discipline. Respondent worked while impaired and admitted to ingesting a controlled substance that was not prescribed to him. Requiring treatment, supervision and monitoring, as recommended by the results of Fitness to Practice and AODA assessments, will allow Respondent to maintain his license while he gets the necessary treatment to overcome these issues.

The requested discipline is also consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Jennifer A. Hansen, R.Ph.*, Order Number 0006201 (May 22, 2019) (pharmacist who ingested controlled substances and alcohol with the intent to commit suicide resulting in hospitalization and mental health treatment, and who stole controlled substances from her employer, had her license suspended for three (3) years and was required to undergo fitness to practice and AODA evaluations).² *See In the Matter of Disciplinary Proceedings Against Kathryn M. Lindemann, R.Ph.*, Order Number 0006078 (February 27, 2019) (pharmacist who stole controlled substance and other items from her employer had license suspended for three (3) years and was required to undergo a fitness to practice evaluation).³ *See In the Matter of Disciplinary Proceedings Against Dalton L. Holmen, R.Ph.*, Order Number LS0712052PHM (December 5, 2007) (pharmacist who was convicted of Operating While Under Influence (5th), had a history of multiple suicide attempts via medication overdose, and had a history of bipolar disorder and depression, had his license suspended pending both a mental health and AODA assessment).⁴

Similar to the facts in the prior decisions, where the licensees' conduct raised serious questions regarding the capability of the licensees to practice pharmacy safely and competently, the Respondent's conduct in the present matter also warrants suspension and the requirement of completion of Fitness to Practice and/or AODA assessments in order to ensure the Respondent's competency while also safeguarding the public.

Based upon the facts of this case and the factors set forth in *Aldrich*, as well as prior cases in which the Board found it necessary to ensure the fitness and competency of a licensee to practice, I find the conditions and limitations of the Order section below, including the requirements of both Fitness to Practice and AODA assessments, are warranted.

Costs

The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against the Respondent. *See*, Wis. Stat. § 440.22(2). Section 440.22(2) of the Wisconsin Statutes reads in part:

In any disciplinary proceeding against a holder of a credential in which the department or examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the

² This Order can be found online at <https://online.drl.wi.gov/decisions/2019/ORDER0006201-00015510.pdf>.

³ This Order can be found online at <https://online.drl.wi.gov/decisions/2019/ORDER0006078-00015289.pdf>.

⁴ This Order can be found online at <https://online.drl.wi.gov/decisions/2007/ls0712052phm-00069525.pdf>.

department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder...

Similarly, Wis. Stat. § 441.51 reads in part:

- (5) Additional authorities invested in party state licensing boards.
- (a)(6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

The above statutes do not require any particular analysis when determining whether to assess all or part of the costs in a proceeding against the Respondent. However, in exercising its discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesenv. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385.

The Board has also, in previous orders, considered the following factors when determining if all or part of the costs should be assessed against the Respondent: 1) the number of counts charged, contested and proven; 2) the nature and seriousness of the misconduct; 3) the level of discipline sought by the prosecutor; 4) the Respondent's cooperation with the disciplinary process; 5) prior discipline, if any; 6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and 7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

When considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings. Respondent failed to file an Answer to the Complaint despite being given additional time to do so. Subsequent emails received from the Respondent fail to raise any defense or denial to the facts set forth in the Complaint. Quite simply, the Respondent defaulted, and the factual allegations were deemed admitted. Thus, the Division proved all counts alleged. Additionally, the Respondent's conduct was serious. Respondent was impaired at work and admits to having ingested a controlled substance that was not prescribed to him. In addition, Because the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders, fairness weighs in favor of requiring Respondent to pay the costs of this proceeding rather than spreading the costs among all Board licensees in Wisconsin. Accordingly, based upon all of the above, I find it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Walter P. Matoska, R.Ph., (no. 13912-40) and his privilege to practice in Wisconsin are suspended and limited as follows:

1. The license to practice pharmacy issued to Walter P. Matoska, R.Ph., (license no. 13912-40) is SUSPENDED for an indefinite period.
2. The suspension of Respondent's Wisconsin license to practice pharmacy may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the following provisions:
 - a. Respondent shall, within ninety (90) days of the date of this order, at his own expense, undergo and complete a Fitness to Practice evaluation with a pre-approved psychiatrist or psychologist (Evaluator) who has not provided treatment to Respondent and is experienced in evaluating whether a health care professional is fit for practice:
 - i. Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.
 - ii. Respondent shall identify and provide the Evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.
 - iii. Within fifteen (15) days of the completion of the evaluation, a written report regarding the results of the assessment shall be submitted to the Department Monitor at the address below. The report shall address whether Respondent suffers from any condition(s) that may interfere with his ability to practice safely and competently and, if so, shall provide any recommended limitations for safe and competent practice.
 - iv. Respondent shall execute necessary documents authorizing the Division of Legal Services and Compliance (Division) to obtain records of the evaluation, and to discuss Respondent and her case with the Evaluator. Respondent shall execute all releases necessary to permit disclosure of the final evaluation report to the Board or its designee. Certified copies of the final evaluation report shall be admissible in any future proceeding before the Board.
 - v. If the Evaluator determines that Respondent is not fit for practice or is fit for practice with limitations, the Board or its designee may reinstate the suspension of Respondent's license until Respondent

provides proof sufficient to convince the Board or its designee that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents Respondent from practicing in that manner.

- vi. If the Evaluator determines that Respondent is fit for practice or is fit for practice with limitations, the Board or its designee may limit Respondent's license in a manner to address any concerns the Board or its designee has as a result of the conduct set out in the Findings of Fact and to address any recommendations resulting from the evaluation, including, but not limited to:
 - 1. Psychotherapy, at Respondent's expense, by a therapist approved by the Board or its designee, to address specific treatment goals, with quarterly reports to the Board by the therapist.
 - 2. Additional professional education in any identified areas of deficiency.
 - 3. Restrictions on the nature of practice, practice setting, or requirements for supervision of practice by a professional approved by the Board, with periodic reports to the Board by the supervisor.

- b. Respondent shall, within ninety (90) days of the date of this order, at his own expense, undergo and complete an Alcohol and Other Drug Abuse (AODA) assessment with an evaluator pre-approved by the Board or its designee who has experience conducting these assessments:
 - i. Prior to the assessment, Respondent shall provide a copy of this Order to the Evaluator. Respondent shall provide the Department Monitor with written acknowledgment from the evaluator that a copy of this Order has been received by the evaluator. Such acknowledgment shall be provided to the Department Monitor prior to the assessment.
 - ii. Respondent shall provide and keep on file with the evaluator current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to obtain a copy of the assessment. Copies of these releases shall immediately be filed with the Department Monitor.
 - iii. Respondent shall identify and provide the Evaluator with authorizations to communicate with all physicians, mental health professionals, AODA providers or evaluators, and facilities at which

Respondent has been treated or evaluated for any AODA issue or assessment.

- iv. Within fifteen (15) day of the completion of the evaluation, a written report regarding the results of the assessment shall be submitted to the Department Monitor at the address below. The report shall address whether the Respondent suffers from any condition(s) that may interfere with her ability to practice safely and competently and, if so, shall provide any recommended limitations for safe and competent practice.
- v. The Board, or its designee, may impose additional limitations upon Respondent's license based on the results of the assessment and/or the Evaluator's recommendations.
- vi. Respondent shall comply with the Evaluator's recommendations.

IT IS FURTHER ORDERED that, in the event Respondent violates any term of this Order, Respondent's license (13912-40), or Respondent's right to renew his license, 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.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent 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>

IT IS FURTHER ORDERED that the terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on December 27, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax: (608) 264-9885

By: _____


Kristin Fredrick
Administrative Law Judge