

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF :
MARC C. ERTZ, R.PH., : FINAL DECISION AND ORDER
LICENSEE. : FOR REMEDIAL EDUCATION
: **ORDER 0007108**

Division of Legal Services and Compliance Case No. 19 PHM 020

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

Marc C. Ertz, R.Ph.
Holmen, WI 54636

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. Licensee Marc C. Ertz, R.Ph., (DOB XX/XX/1970) is licensed in the state of Wisconsin to practice pharmacy, having license number 12180-40, first issued on August 31, 1994 and current through May 31, 2022. Licensee's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Holmen, WI 54636.
2. At all times relevant to this proceeding, Licensee was employed as a pharmacist at a pharmacy (Pharmacy), located in La Crosse, Wisconsin.
3. On October 26, 2018, Patient A presented a prescription to the Pharmacy for lorazepam 1 mg, 135 tablets (45-day supply). Licensee dispensed 90 tablets (30 days) and left a refill on the prescription for the remaining 15-day supply.

4. On November 26, 2018, Patient A picked up the remaining medication from the original script. On December 1, 2018, the Pharmacy converted its computer system to a new prescription software program.

5. Patient A was able to obtain two (2) additional refills (45 tablets, 15 days) on December 10, 2018 and January 3, 2019 without the provider's authorization. The unauthorized refills on December 10, 2018 and January 3, 2019 were after the computer transition. It is unclear if this error was due to the computer transition.

6. On January 22, 2019, the Pharmacy received a refill request via fax from Patient A's provider. The faxed order had two (2) prescriptions. Both medications had an order date of December 4, 2018 on the computer printed prescription. However, the prescription was signed by a nurse practitioner with a date of December 4, 2016.

7. Licensee interpreted the date of December 4, 2016 as an error since the order date electronically printed on the prescription was December 4, 2018. Licensee had verifiable information that the date provided by the nurse practitioner was wrong, but Licensee did not initial, date, or indicate this modification in Patient A's pharmacy records.

8. The prescription faxed on January 22, 2019 was for lorazepam 1 mg, 90 tablets (30-day supply). Due to product unavailability, Licensee substituted .5 mg, 180 tablets. Licensee noted the modification in the electronic record and initialed and dated the change. There is no indication that the Licensee discussed the substitution with the provider or that there was verifiable and retrievable information maintained by the pharmacist that allowed this.

9. 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).

ORDER

1. The attached Stipulation is accepted.
2. Within six (6) months of the date of this Order, Respondent shall at his own expense take and successfully complete two (2) hours of education on the topic of pharmacy law, and two (2) hours of education on the topic of pharmacy law as it relates controlled substances as follows:
 - a. Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Licensee shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the courses from the Board or its designee. Licensee must take and pass any exam offered for the course(s).

- b. Licensee shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.
 - c. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Respondent. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.
 - d. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.
3. Request for approval of courses and proof of successful course completion shall be sent by Licensee 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

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

<http://dpsmonitoring.wi.gov>

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

WISCONSIN PHARMACY EXAMINING BOARD

by: Philip Tsapras c.p.
A Member of the Board

12/3/2020
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARC C. ERTZ, R.PH,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0007108

Division of Legal Services and Compliance Case No. 19 PHM 020

Respondent Marc C. Ertz, 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.



Marc C. Ertz, R.Ph., Respondent
Holmen, WI 54636
License no. 12180-40



Date



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

11/18/20

Date