

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
KELLY L. FAUSEK, R.Ph., :
RESPONDENT. : **ORDER 0007112**

Division of Legal Services and Compliance Case No. 20 PHM 115

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

Kelly L. Fausek, R.Ph.
West Allis, WI 53227

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 Kelly L. Fausek, R.Ph., (DOB xx-xx-1982) is licensed in the state of Wisconsin to practice pharmacy, having license number 18057-40, first issued on July 21, 2015, and current through August 30, 2020.¹ Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in West Allis, Wisconsin 53227.

¹ Respondent submitted a timely application for renewal of her license, which is currently pending before the Board. Wisconsin Stat. § 227.51(2) provides that Respondent's license remains active until the application has been finally acted upon by the Board.

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

3. On September 27, 2016, the Pharmacy's loss prevention officer contacted the West Allis Police Department to report that Respondent had written and filled fraudulent prescriptions for herself for the last eleven months totaling \$15,940.37.

4. Respondent wrote telephone order prescriptions for herself as if the prescriptions were called into the Pharmacy by a physician. Respondent fraudulently used two physician's names and processed the prescriptions through an insurance company, which billed back the Pharmacy when the fraud was discovered.

5. Respondent admitted to writing fourteen fraudulent prescriptions at the Pharmacy, some having refills, that had not been authorized by a prescriber. Respondent also admitted to conversion of Pharmacy property and agreed to make full restitution.

6. On July 6, 2020, Respondent was convicted in Milwaukee County Circuit Court Case No. 2018CF005985 of one (1) count of Theft-Movable Property < \$2500, a misdemeanor, in violation of Wis. Stat. § 943.20(1)(a).

7. On July 13, 2020, Respondent reported the conviction to the Department.

8. 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 violated Wis. Stat. § 450.10(1)(b)3., by being found guilty of an offense the circumstances of which are substantially related to the practice of the licensee.

3. By the conduct described in the Findings of Fact, Respondent 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 legitimate practice, or as prohibited by law.

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

ORDER

1. The attached Stipulation is accepted.

2. The license to practice pharmacy issued to Respondent (license number 18057-40) is SUSPENDED for thirty (30) days from the date of this Order.

3. After thirty (30) days from the date of this Order, the license to practice pharmacy issued to Respondent (license number 18057-40) is further LIMITED as follows:

- a. Respondent shall provide her pharmacy employer with a copy of this Order before engaging in any pharmacy employment. Respondent shall provide the Department Monitor with written acknowledgment from each pharmacy employer that a copy of the Order has been received within fourteen (14) days of beginning new employment.
- b. Respondent shall arrange for her pharmacy employer(s) to send to the Department Monitor quarterly reports, reporting the terms and conditions of Respondent's employment and evaluating her work performance.
- c. Respondent shall arrange for a certified professional counselor, who has been pre-approved by the Board and provided a copy of this Order, to send to the Department Monitor quarterly reports evaluating Respondent's progress in therapy.
- d. The following certified professional counselor is pre-approved by the Board: Maureen Pohle (License No. 3946-125), Creating Balance LLC, 385 Williamstowne, Suite 105, Delafield, Wisconsin, 53018.
- e. Respondent shall notify the Department Monitor of any change of pharmacy employment. Notification shall occur within fifteen (15) days of a change of employment and shall include an explanation of the reasons for the change.

4. Respondent is responsible for all costs associated with complying with the above limitations.

5. After two (2) consecutive years of successful compliance with the above limitations while working as a pharmacist at least half-time, the Respondent may petition the Board for the removal of the limitations and the return of full licensure. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

6. Within 120 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$441.00.

7. All reports required by this Order and 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

Respondent may also submit this information online via DSPS' Monitoring Case Management System, here:
<https://dpsmonitoring.wi.gov>

8. In the event that Respondent violates any term of this Order, Respondent's license (No. 18057-40) 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.

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

WISCONSIN PHARMACY EXAMINING BOARD

By: Philip Trapstein 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

KELLY L. FAUSEK, R.Ph.,
RESPONDENT.

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:
:
:
:

STIPULATION

ORDER 000711z

Division of Legal Services and Compliance Case No. 20 PHM 115

Respondent Kelly L. Fausek, 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.



Kelly L. Fausek, R.Ph., Respondent
West Allis, WI 53227
License No. 18057-40

10/1/2020
Date



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

10/01/2020
Date