

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
OMNICARE OF MILWAUKEE, :
RESPONDENT. : **ORDER 0007241**

Division of Legal Services and Compliance Case Nos. 19 PHM 111 and 19 PHM 279

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

Omnicare of Milwaukee
Milwaukee, WI 53221

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. Omnicare of Milwaukee (Respondent pharmacy) is licensed in the state of Wisconsin to practice as a pharmacy, having license number 7847-42, first issued on April 16, 1999, and current through May 31, 2022. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Milwaukee, Wisconsin.

19 PHM 111

2. On May 16, 2019, the Department received a report of two losses of controlled substances from Respondent pharmacy's Drug Loss Program Coordinator. Both losses were considered packaging discrepancies, as all other types of theft or loss were ruled out. A

packaging discrepancy could include improper documentation by the pharmacy or, in the case of contingency boxes, improper documentation by the facility, as well as shortages reported while reducing bulk supply to individual doses or medication cards.

3. The first packaging discrepancy occurred on April 30, 2019, and included one fentanyl patch and 199 doses of oxycodone HCL solution (5mg/5ml).

4. The second packaging discrepancy occurred on May 8, 2019, and included a single fentanyl patch. At the time of this loss, Respondent pharmacy had reported 7 thefts/losses in the past 24 months.

19 PHM 279

5. Between July 13, 2016, and October 25, 2019, Respondent pharmacy's Drug Loss Program Coordinator reported thirteen losses of controlled substances. Six of those losses were attributed to packaging discrepancies, as all other types of theft or loss were ruled out in those instances.

6. The first packaging discrepancy occurred on May 3, 2019. It involved 5 fentanyl patches and 107 doses of hydrocodone syrup.

7. The second packaging discrepancy occurred on August 30, 2019. It involved 2 fentanyl patches, 3 hydrocodone/acetaminophen 5-325mg tablets, 2 hydrocodone/acetaminophen 10-325mg tablets, and 9 oxycodone 5mg tablets.

8. The third packaging discrepancy occurred on September 5, 2019. It involved 44 morphine 15mg tablets.

9. The fourth packaging discrepancy occurred on September 12, 2019. It involved 66 hydrocodone/acetaminophen 10-325mg tablets and 23 fentanyl patches.

10. The fifth packaging discrepancy occurred on September 18, 2019. It involved 71 hydrocodone/acetaminophen 5-325mg tablets.

11. Pharmacist A, the current pharmacist in charge at Respondent pharmacy, stated that all five of these losses were "unknown losses."

12. The sixth packaging discrepancy occurred on October 24, 2019. It involved 40 hydrocodone/acetaminophen 5-325mg tablets. At the time of this loss, Respondent pharmacy had reported 18 thefts/losses in the past 24 months.

Both 19 PHM 111 and 19 PHM 279

13. Pharmacist B was the pharmacist in charge at Respondent pharmacy from January 2019 through December 2019, when all of the above losses were reported. Pharmacist B reports that, while he was the pharmacist in charge, an investigation conducted by Respondent pharmacy's loss prevention unit concluded there was not a significant risk of internal diversion. The investigation concluded that there was a need to fix Respondent pharmacy's workflow processes.

14. Pharmacist B reported that, when he began working at Respondent pharmacy, he discovered file cabinets full of "random" controlled substances. This included large bulk bottles with crushed, broken, and "random" controlled substance tablets. Pharmacist B also reported that staff responsible for documenting Respondent pharmacy's narcotic inventory did not have enough time to complete monthly inventory counts on a regular basis.

15. Pharmacist B reported that when he began his employment, the culture at Respondent pharmacy was to report every loss; prior to his employment at Respondent pharmacy, the pharmacy culture related to reporting losses was different. The packaging discrepancies reported to the DEA while he was pharmacist in charge in 2019 were discovered while implementing new workflow changes and a result of reporting every loss discovered.

16. The eight instances of reported packaging discrepancies described above were a result of Respondent pharmacy's failure to implement effective workflow and documentation processes.

17. In resolution of this matter, Respondent pharmacy 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 pharmacy 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.

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

ORDER

1. The attached Stipulation is accepted.
2. Respondent pharmacy is REPRIMANDED.

3. Within ninety (90) days from the date of this Order, Respondent pharmacy shall pay a FORFEITURE in the amount of \$2,000.00, pursuant to Wis. Stat. § 450.10(2).

4. Within ninety (90) days from the date of this Order, Respondent pharmacy shall pay COSTS of this matter in the amount of \$2,500.00.

5. Payment of costs and forfeiture (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent pharmacy 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

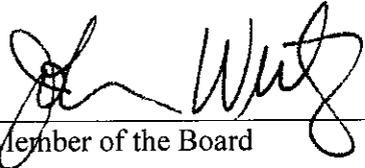
Respondent pharmacy may also submit this information online at: <https://dspsmonitoring.wi.gov/>

6. In the event that Respondent pharmacy violates any term of this Order, Respondent pharmacy's license (no. 7847-42) to practice as a 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 pharmacy 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.

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

WISCONSIN PHARMACY EXAMINING BOARD

by:


A Member of the Board

4 March 2021

Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

OMNICARE OF MILWAUKEE,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0007241

Division of Legal Services and Compliance Case Nos. 19 PHM 111 and 19 PHM 279

Respondent Omnicare of Milwaukee 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 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.

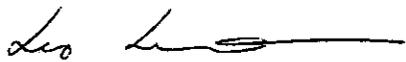
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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, 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.



Omnicare of Milwaukee, Respondent
Milwaukee, WI 53221
License No. 7847-42

2/18/21
Date



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

2/19/2021
Date