

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

DANIEL J. JANKE, R.PH.,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:

ORDER 0007578

Division of Legal Services and Compliance Case No. 21 PHM 028

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

Daniel J. Janke, R.Ph.
Lake Geneva, WI 53147

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. Daniel J. Janke, R.Ph. (Respondent), (Year of Birth 1989) is licensed in the state of Wisconsin to practice pharmacy, having license number 17767-40, first issued on October 22, 2014. This license expired on May 31, 2018 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until May 31, 2023. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Lake Geneva, Wisconsin 53147.

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

3. The Pharmacy investigated several reports from patients that the tablet count was off on their prescriptions.

4. The Pharmacy's review of surveillance video showed Respondent handling medication and placing it in his pocket.

5. The Pharmacy conducted an audit of controlled substances and determined a total of 264 tramadol hydrochloride 50 mg tablets and 5 fentanyl 50 mcg/hour patches were unaccounted for.

6. On March 6, 2018, the Pharmacy contacted the City of Delavan Police Department to report the employee theft. An officer arrived at the Pharmacy and interviewed Respondent.

7. During the interview, Respondent admitted to diverting tramadol from the Pharmacy from mid-December 2017 to March 4, 2018 and was charged with theft and possession of controlled substance.

8. The Pharmacy terminated Respondent's employment on March 6, 2018.

9. On June 13, 2018, Respondent pled guilty and was convicted in Walworth County District Court Case Number 2018CM00247 of one (1) count of Possession of Controlled Substances, a misdemeanor, in violation of Wis. Stat. § 961.41(3g)(b).

10. The Division opened file 18 PHM 050 to investigate the matter but closed its file in May 2019 after Respondent's license expired.

11. Respondent has requested to renew his license and the matter has been reopened as DLSC Case Number 21 PHM 028.

12. 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 engaged in unprofessional conduct as defined by Wis. Stat. § 450.10(1)(a)2., by violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. By the conduct described in the Findings of Fact, Respondent was found guilty of an offense(s) the circumstances of which substantially relate to the practice of pharmacy within the meaning of Wis. Stat. § 450.10(1)(b)3.

4. 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.

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

ORDER

1. The attached Stipulation is accepted.

2. This Final Decision and Order (Order) is effective on the date of its signing.

3. The Respondent's license to practice pharmacy, (license no. 17767-40) and any appurtenant right to renew are **SUSPENDED** as follows:

SUSPENSION

A.1. Respondent's license and any appurtenant right to renew, to practice pharmacy in the state of Wisconsin are **SUSPENDED** for an indefinite period.

STAY OF SUSPENSION

B.1. The suspension shall not be stayed for the first three (3) months, but any time after three (3) months the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of this Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:

(a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services (Department) pursuant to Wis. Stat. § 440.11; or

(b) Actual notice to Respondent or Respondent's attorney.

B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Alcoholics Anonymous and/or Narcotics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.

- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed, or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner prescribing the controlled substance. Respondent shall, at the time the controlled substance is prescribed, immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of administration, fill, or refill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered, or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of the prescription to the Department Monitor.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends, and holidays.

- (b) Production of a urine, blood, sweat, nail, hair, saliva, or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year (one of which may be a hair test at the Board's discretion), for at least the first year of this Order. Thereafter the Board may adjust the frequency of testing on its own initiative at any time, and/or Respondent may petition for modification of testing frequency per paragraph D.5.
- C.15. If any urine, blood, sweat, nail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations, as the Board or its designee shall determine to be appropriate, to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed valid. Respondent must prove, by a preponderance of the evidence, an error in collection, testing, fault in the chain of custody, or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent shall not practice as a pharmacist in any capacity unless Respondent is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.
- C.20. Respondent shall only practice as a pharmacist while in the presence of another pharmacist. Respondent may petition the Board for modification of this prohibition pursuant to the terms of paragraph D.4. In addition to complying with the conditions of paragraph D.4., any such petition shall be accompanied by written request of the managing pharmacist, which shall include a complete work schedule of all pharmacists employed in the pharmacy indicating the proposed work schedule and supervision pattern for Respondent. The Board in its discretion may at any time modify any of the terms regarding practice by Respondent as the Board deems appropriate. Grounds for modification or removal of the authorization to practice as a pharmacist may include, but shall not be limited to, change in employer, managing pharmacist or residence address of the Respondent.
- C.21. Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in Wis. Admin. Code § Phar 1.02(6), without approval of the Board.

- C.22. Respondent shall not be employed as or work in the capacity of a pharmacy technician, a pharmacy delegate, and/or a pharmacy intern, without approval of the Board.
- C.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel (including the managing pharmacist) at all pharmacies where Respondent is engaged in the practice of pharmacy as defined in Wis. Stat. § 450.01(16). The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where Respondent is employed as a pharmacist.
- C.24. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance and shall include the number of hours of active pharmacist practice worked during that quarter. Assessment of Respondent's work performance shall include Respondent's clinical and practice competence.
- C.25. Respondent shall obtain an agreement from his managing pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abuseable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abuseable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abuseable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.
- C.26. Respondent shall obtain from his supervising pharmacist agreement to conduct a full and exact (not estimated) count of all controlled substances in inventory immediately, and accountability audits of all controlled substances every six (6) months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than Respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit. However, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.
- C.27. Respondent shall arrange for agreement by his managing pharmacist to immediately report to the Board and to the Treater any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.
- C.28. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.
- C.29. Respondent shall report to the Board any change of employment status, residence, address, or telephone number within five (5) days of the date of change.

MISCELLANEOUS
Department Monitor

- D.1. Any requests, petitions, reports, payment of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of Treater, the treatment facility, the Approved Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address, and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board, or its designee, determines Treater or the Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board, or its designee, may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall

not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

- D.6. Respondent may petition the Board for termination of this Order after demonstrating five (5) years of successful compliance with all terms of this Order, including at least 2000 hours of approved pharmacy practice within the most recent 24 months of the order. The Board may, on its own motion, grant full Wisconsin licensure at any time.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision, and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.


Costs of Proceeding

- D.8. Within 120 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$442.00.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

WISCONSIN PHARMACY EXAMINING BOARD

By: 
A Member of the Board

9/2/2021

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DANIEL J. JANKE, R.Ph.,
RESPONDENT.

STIPULATION

ORDER 0007578

Division of Legal Services and Compliance Case No. 21 PHM 028

Daniel J. Janke, R.Ph. (Respondent), 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 (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.



Daffiel J. Janke, R.Ph., Respondent
Lake Geneva, WI 53147
License No. 17767-40

6/17/2021

Date



Alicia Kennedy, Prosecuting Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

6/18/21

Date