

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
KENNETH J. HERRERA, :
RESPONDENT. : ORDER0020227

Division of Legal Services and Compliance (DLSC) Case Nos. 23 PHM 131 and 24 PHM 002

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

Kenneth J. Herrera
Soldiers Grove, WI 54655

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 these matters agree to the terms and conditions of the attached Stipulation as the final disposition of these matters, subject to the approval of the Pharmacy Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in these matters adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Kenneth J. Herrera (Respondent), (Year of Birth 1983) is licensed in the state of Wisconsin as a pharmacist, having license number 15146-40, first issued on May 9, 2008, and expired as of June 1, 2024. Respondent retains the right to renew his license through May 31, 2029, pursuant to Wis. Stat. § 440.08(3). Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services is in Soldiers Grove, Wisconsin 54655.

2. At all times relevant to these proceedings, Respondent worked as a pharmacist at a hospital located in Viroqua, Wisconsin.

3. In December 2021, Respondent sent explicit instructions and money to a videographer in Indonesia in exchange for the production of a video depicting the physical abuse of a juvenile macaque monkey.

4. On January 26, 2022, agents from the FBI and U.S. Fish and Wildlife Service interviewed Respondent. During this interview, Respondent admitted that he ordered and paid for videos of the monkey abuse from the videographer. Thereafter, Respondent cooperated with law enforcement authorities in the investigation and prosecution of other parties involved in the same or similar conduct.

5. On August 8, 2023, Respondent signed a plea agreement where he plead guilty to one count of Depiction of Animal Cruelty in violation of Title 18, U.S. Code, Section 48(a)(2) and (b)(2), and Title 18, U.S. Code, Section 2, a felony. The plea agreement was filed with the U.S. District Court for the Western District of Wisconsin on August 15, 2023.

6. DLSC Case Number 23 PHM 131 was opened following notice of the plea agreement.

7. On December 20, 2023, Respondent was convicted of one count procuring/causing the creation, sale and distribution of an animal crush video contrary to Title 18 USC Section 48(a)(2) and (b)(2), and Title 18, U.S. Code, Section 2, a felony. Respondent was sentenced to 366 days in prison and ordered to pay a \$5,000 fine. Upon completion of his sentence, Respondent will be subject to three years of supervised release.

8. DLSC Case Number 24 PHM 002 was opened following notice of the conviction.

9. On July 22, 2024, following a period of incarceration, Respondent was released to a residential reentry facility and is scheduled to be released from that facility sometime in September 2024.

10. In resolution of these matters, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 450.10 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 by violating a federal statute which substantially relates to the practice of pharmacy pursuant to Wis. Stat. § 450.10(1)(a)2.

3. By the conduct described in the Findings of Fact, Respondent has been found guilty of an offense the circumstances of which substantially relate to the practice of Respondent pursuant to Wis. Stat. § 450.10(1)(b)3.

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

ORDER

1. The attached Stipulation is accepted.
2. Respondent's license to practice pharmacy in the state of Wisconsin (license number 15146-40), as well as his right to renew such license, are **SUSPENDED** indefinitely.
3. The suspension of Respondent's license to practice pharmacy in the state of Wisconsin (license number 15146-40), and Respondent's right to renew such license, may be stayed upon Respondent petitioning the Board and providing proof, that he is in compliance with the following:
 - a. The terms and conditions of Respondent's release from incarceration and the residential reentry facility do not prohibit or restrict him in any way from practicing pharmacy in Wisconsin.
 - b. Within sixty (60) days following release from the residential reentry facility, Respondent shall, at his own expense, undergo a fitness for practice evaluation with a Board 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 to practice. The fitness for practice evaluation shall evaluate Respondent's fitness to practice as a pharmacist.
 - d. Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.
 - e. 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.
 - f. Respondent shall comply with any and all reasonable requests by the Evaluator for purposes of scheduling and completing the evaluation, including additional testing the Evaluator deems helpful. Any lack of reasonable and timely cooperation, as determined by the Evaluator, may constitute a violation of this Order.
 - g. Within fifteen (15) days of the completion of the evaluation, a written report regarding the results of the evaluation 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. Respondent is responsible for ensuring that the results of the evaluation are sent to the Department Monitor.
 - h. Respondent shall execute necessary documents authorizing the Division to obtain records of the evaluation, and to discuss Respondent and his 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.

- i. Upon review of the Evaluator's assessment, the Board may continue the suspension, stay the suspension and impose additional limitations upon Respondent's license as appropriate to address any recommendations resulting from the evaluation, or lift the suspension without imposing additional limitations. The Board's decision is discretionary and is not reviewable. Limitations may include, but are not limited to:
 - a. 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.
 - b. Additional professional education in any identified areas of deficiency.
 - c. 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.
- j. Should the Board continue the suspension of Respondent's license following receipt of the Evaluator's assessment, the suspension shall continue until Respondent provides proof sufficient to convince the Board 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.

4. Within six (6) months following Respondent's release from the residential reentry facility, Respondent shall pay COSTS of this matter in the amount of \$2234.00. If costs are not paid within six (6) months following Respondent's release from the residential reentry facility, interest shall accrue at the statutory rate of 12% per annum, pursuant to Wis. Stat. § 440.22(2).

5. Any requests, petitions, payments 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>.

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

WISCONSIN PHARMACY EXAMINING BOARD

By:  _____
A Member of the Board

8/29/2024 _____
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
KENNETH J. HERRERA,	:	
RESPONDENT.	:	ORDER0020227

Division of Legal Services and Compliance Case Nos. 23 PHM 131 and 24 PHM 002

Kenneth J. Herrera (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 pending investigations by the Division of Legal Services and Compliance. Respondent consents to the resolution of these investigations 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. Respondent is represented by Attorney Mario Mendoza.

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 or Respondent's attorney, 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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Data Bank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Kenneth J. Herrera (Aug 15, 2024 20:01 CDT)

Kenneth J. Herrera, Respondent
Soldiers Grove, WI 54655
License No. 15146-40

Aug 15, 2024

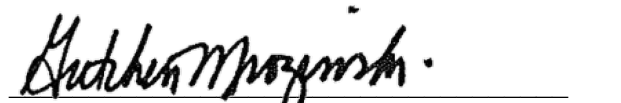
Date



Mario Mendoza, Attorney for Respondent
Murphy Desmond, S.C.
33 E. Main St., Suite 500
Madison, WI 53703

August 16, 2024

Date


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

8/16/24

Date