

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
GEORGE PRUDENT, R.Ph., :
RESPONDENT. :

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53, are:

George Prudent, R.Ph.
1915 Harvest Lane
Waukesha, WI 53186

Pharmacy Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

A hearing was held in this matter on February 23, 1989. The respondent, George Prudent, appeared in person and without legal counsel, and Jonathan Becker, Attorney at Law, appeared on behalf of the complainant, Department of Regulation and Licensing, Division of Enforcement. The hearing examiner filed her Proposed Decision on April 6, 1989. Both parties filed objections thereto.

Based upon the entire record in this case, the Pharmacy Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent George Prudent, is and was at all times relevant to this action, duly licensed and registered to practice pharmacy in the State of Wisconsin, (license #10683-1). This license was granted on June 18, 1985.

2. Respondent George Prudent, was employed as a pharmacist as Florist Serv-U Pharmacy, Milwaukee, Wisconsin from April, 1986 to September, 1986.

3. On a number of separate occasions from June, 1986 through September, 1986, the respondent diverted an unknown quantity of percocet tablets from his employer, Florist Serv-U Pharmacy, during which time he self-administered an average of six percocet tablets per day.

4. Percocet (oxycodone) is a Schedule II controlled substance as defined in sec. 161.01(4) and 161.16, Wis. Stats.

5. The respondent was admitted to Milwaukee Psychiatric Hospital, McBride Center, on September 27, 1986, and discharged on September 29, 1986. The admission diagnosis was opioid abuse and discharge diagnosis was opioid dependence. The respondent was referred to DePaul Rehabilitation Hospital for further treatment, because of his financial inability to continue treatment at Milwaukee Psychiatric Hospital.

6. The respondent was admitted to the DePaul Rehabilitation Hospital, in Milwaukee, on October 7, 1986, and discharged on November 5, 1986. The primary admission diagnosis was opioid dependency and alcohol abuse. The principal discharge diagnosis was opioid dependence syndrome, unspecified with intact denial complex. The treatment program was a 30-day program.

7. The respondent entered into a 2-year outpatient, AODA primary treatment program at the Milwaukee Psychiatric Hospital in March of 1987. The diagnosis was chemical dependency on opiates. Between May, 1987 and June, 1988, the respondent tested positive for opiates at least 12 times. The respondent terminated his participation in the program in June of 1988, rather than consent to a one week evaluation (for chemical dependency) as an inpatient at the hospital. The prognosis is that the respondent will continue to use opiates.

8. Respondent was employed as a pharmacist at Froedtert Memorial Lutheran Hospital in Milwaukee, from December, 1986 to July, 1988. The respondent signed an agreement with his employer in April, 1987, indicating that, as a condition of his employment, he would continue in the AODA treatment program at the Milwaukee Psychiatric Hospital. In July of 1988, the respondent resigned from his employment, rather than consent to a one week evaluation (for chemical dependency) as an inpatient at Milwaukee Psychiatric Hospital.

9. On a number of separate occasions from June, 1986 to February, 1987, respondent abused alcohol.

10. There is insufficient credible evidence to find that the respondent diverted halicon (triazolam) from his employer, or that his use of halicon was for other than legitimate purposes.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this matter pursuant to secs. 450.03 and 450.10, Wis. Stats.

2. Respondent's conduct as set forth in the proposed Findings of Fact constitutes unprofessional conduct as defined in sec. 450.10(1)(a)(3), Wis. Stats. and secs. PHAR 10.03(3) and (7), Wis. Adm. Code.

3. The evidence does not establish that the respondent diverted halicon (triazolam) from his employer, or that his use of halicon was for other than legitimate purposes.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of George W. Prudent, R.Ph., to practice as a pharmacist shall be, and hereby is REVOKED, effective ten (10) days after the date of this Final Decision and Order.

IT IS FURTHER ORDERED that respondent may not reapply for a license to practice pharmacy until such time as he demonstrates to the satisfaction of the board that he has successfully completed at least two (2) years of a program acceptable to the board for the treatment of alcohol and chemical dependency, and that he has remained free of alcohol, and prescription drugs and controlled substances not prescribed for a valid medical purpose during that time.

IT IS FURTHER ORDERED that upon respondent's satisfactorily meeting the requirements set forth in the foregoing paragraph, and upon the submission of an application for licensure, the board may require the respondent to be retested as it deems necessary. As a minimum retesting requirement, the respondent shall take and pass each of the following examinations by a minimum score of 75.0--as provided in Wis. Adm. Code sec. Phar 3.04(2)--before being granted licensure:

- a. State Practice of Pharmacy.
- b. Jurisprudence, related to state and federal requirements.

IT IS FURTHER ORDERED that upon respondent's satisfactorily meeting the foregoing requirements for licensure, the board may grant respondent a license to practice pharmacy upon such terms and conditions deemed appropriate by the board.

EXPLANATION OF VARIANCE

The hearing examiner issued a Proposed Decision in this case finding, among other things, that respondent had self-administered percocet which he had diverted from his employer in 1986, abused alcohol, and had been diagnosed as suffering from opioid dependency and alcohol abuse. The findings of the examiner also set forth respondent's unsuccessful treatment for his chemical dependencies. Accordingly, respondent was found to have engaged in unprofessional conduct.

Subsequent to the issuing of the Proposed Decision, respondent filed objections to the factual findings and contested the imposition of any discipline. The complainant also filed objections regarding the discipline recommended to be imposed in this case.

After a review of the record, including the consideration of the post-evidentiary hearing objections by the parties, the board has accepted the examiner's Findings of Fact and Conclusions of Law in their entirety. However, the board has modified the examiner's proposed disciplinary recommendation of a stayed revocation, and ordered that respondent be suspended for a period of at least two years, prior to becoming conditionally eligible for reinstatement to pharmacy practice.

In accepting the Findings of Fact, the board reviewed respondent's objections that they were based upon "...hearsay, inuendo & circumstantial evidence." However, a review of the record in this case indicates that there is clear, credible and reliable evidence to support each of the examiner's findings. Respondent's objections to the findings, in light of the record, appears to this board as a manifestation of his current personal denial of having an abuse problem.

As indicated above, both parties objected to the recommended discipline. The sanction suggested--primarily the imposition of a stayed revocation dependent upon successful participation in a chemical dependency treatment program--is similar to that which this board has imposed in a number of impaired practitioner cases. However, respondent argues that no discipline of any nature is appropriate in his case, because:

"I am not practicing as a pharmacist & do not plan to renew my license and therefore if it is concluded that I have diverted drugs it can not be shown that I would be a threat to the public."

The problem with respondent's proposal is that, if accepted, he would have the ability to resume practice at any time he desired, and under any conditions he alone believed appropriate. However, in order to fulfill its responsibility of protecting the public in this case, it is necessary that respondent's authority to practice pharmacy not be one of his own personal choice. Rather, it is the duty and responsibility of this board, in light of the unprofessional conduct found, to determine whether, or the conditions under which respondent should be permitted to practice. Respondent's argument opposing the imposition of any discipline in this case must be rejected.

Complainant, on the other hand, argues that the board's final discipline should include a period of imposed suspension, given respondent's past failed attempts at recovery from chemical dependency and current denial of his problem. As the record demonstrates, respondent has participated in a treatment program in the past. However, during that period he tested positive for opiates on at least twelve occasions, and ultimately left the program in June of last year. As argued by complainant, respondent's history, and current status is one of:

"...demonstrat(ing) that he cannot or will not tackle his problem. Indeed, Mr. Prudent continues to refuse to admit that he does have a problem, that he did steal drugs from his employer, and that he is dependent on opiates...."

"Since Respondent has demonstrated that he will continue to take drugs while in a treatment program and that he will not take such a program seriously, the risk to the public of being served by an impaired pharmacist...is an unwarranted one."

Accordingly, complainant objected to permitting respondent to practice pharmacy at this time in conjunction with a board imposed treatment program.

The board agrees with complainant's argument. In deciding past cases involving impaired pharmacists, the board has often allowed respondents to continue practicing under limited terms similar to that proposed by the examiner in this case. However, those situations have primarily involved instances in which the licensees have recognized their impairment problem and have agreed to the strict monitoring requirements necessary to satisfy the board that the individual rehabilitative factor to be advanced by imposing discipline sufficiently outweighed the potential risk to the public in permitting continued conditional practice.

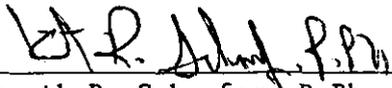
Such is clearly not the case here. Mr. Prudent denies having an alcohol and chemical abuse problem, and although he has previously enrolled in a treatment program, he continued abusing chemical substances even while in treatment. In short, there is nothing in the record of this case to suggest that Mr. Prudent is an appropriate candidate at this time for continued pharmacy practice while undergoing treatment.

In the board's opinion, respondent is not currently competent to practice pharmacy in this state given his impairment problem and refusal to acknowledge and have it treated. However, the board's order is structured so as to permit respondent to reapply for a license in the future should he be able to establish that he has successfully confronted his abuse problem, as well as his denial thereof, through treatment and abstinence for a period of at least two years. Such order provides the respondent with an opportunity to re-enter practice, but only upon a clear demonstration that, in fact, he has been successful in confronting his serious personal problem.

Furthermore, assuming that respondent is able to take that initial step in his recovery through abstinence and treatment for at least two years, the board believes it necessary in the public interest that respondent be required to establish, through testing, that he has retained the knowledge and skills expected of a minimally competent pharmacist prior to his return to practice. The board further reserves the authority, if the foregoing conditions are met, to impose conditions upon respondent's return to pharmacy practice which it believes appropriate and necessary under respondent's circumstances existent at that time, such as continued treatment and evaluation for his dependency.

Dated: June 13, 1989.

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD



Kenneth R. Schaefer, R.Ph.
Chairman

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon

STATE OF WISCONSIN PHARMACY EXAMING BOARD

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following:

STATE OF WISCONSIN PHARMACY EXAMING BOARD

The date of mailing of this decision is June 16, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
:

GEORGE W. PRUDENT, R.PH., :
RESPONDENT. :

NOTICE OF FILING
PROPOSED DECISION

To: George W. Prudent, R.Ph.
1915 Harvest Lane
Waukesha, Wisconsin 53186

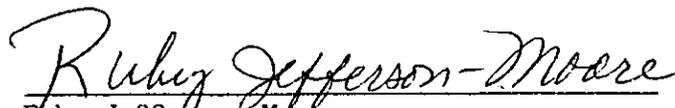
Jonathan Becker
Attorney at Law
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Pharmacy Examining Board by the Hearing Examiner, Ruby Jefferson-Moore. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Pharmacy Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708, on or before May 10, 1989.

The attached Proposed Decision is the Examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 26th day of April, 1989.


Ruby Jefferson-Moore
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : PROPOSED DECISION
GEORGE PRUDENT, R.Ph., :
RESPONDENT. :

The parties to this proceeding for the purposes of Wis. Stats.,
sec. 227.53 are:

George Prudent, R.Ph.
1915 Harvest Lane
Waukesha, Wisconsin 53186

Pharmacy Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708

A hearing was held on this matter on February 23, 1989. The respondent, George Prudent, appeared in person and without legal counsel, and Jonathan Becker, Attorney at Law, appeared on behalf of the complainant, Department of Regulation and Licensing, Division of Enforcement.

Based upon the record herein, the examiner recommends that the Pharmacy Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent George Prudent, is and was at all times relevant to this action, duly licensed and registered to practice pharmacy in the State of Wisconsin, (license #10683-1). This license was granted on June 18, 1985.
2. Respondent George Prudent, was employed as a pharmacist at Florist Serv-U Pharmacy, Milwaukee, Wisconsin from April, 1986 to September, 1986.
3. On a number of separate occasions from June, 1986 through September, 1986, the respondent diverted an unknown quantity of percocet tablets from his employer, Florist Serv-U Pharmacy, during which time he self-administered an average of six percocet tablets per day.

4. Percocet (oxycodone) is a Schedule II controlled substance as defined in sec. 161.01(4) and 161.16, Wis. Stats.

5. The respondent was admitted to Milwaukee Psychiatric Hospital, McBride Center, on September 27, 1986, and discharged on September 29, 1986. The admission diagnosis was opioid abuse and the discharge diagnosis was opioid dependence. The respondent was referred to DePaul Rehabilitation Hospital for further treatment, because of his financial inability to continue treatment at Milwaukee Psychiatric Hospital.

6. The respondent was admitted to the DePaul Rehabilitation Hospital, in Milwaukee, on October 7, 1986, and discharged on November 5, 1986. The primary admission diagnosis was opioid dependency and alcohol abuse. The principal discharge diagnosis was opioid dependency syndrome, unspecified with intact denial complex. The treatment program was a 30-day program.

7. The respondent entered into a 2-year outpatient, AODA primary treatment program at the Milwaukee Psychiatric Hospital in March of 1987. The diagnosis was chemical dependency on opiates. Between May, 1987 and June, 1988, the respondent tested positive for opiates at least 12 times. The respondent terminated his participation in the program in June of 1988, rather than consent to a one week evaluation (for chemical dependency) as an inpatient at the hospital. The prognosis is that the respondent will continue to use opiates.

8. Respondent was employed as a pharmacist at Froedtert Memorial Lutheran Hospital in Milwaukee, from December, 1986 to July, 1988. The respondent signed an agreement with his employer in April, 1987, indicating that, as a condition of his employment, he would continue in the AODA treatment program at the Milwaukee Psychiatric Hospital. In July of 1988, the respondent resigned from his employment, rather than consent to a one week evaluation (for chemical dependency) as an inpatient at Milwaukee Psychiatric Hospital.

9. On a number of separate occasions from June, 1986 to February, 1987, respondent abused alcohol.

10. There is insufficient credible evidence to find that the respondent diverted halicon (triazolam) from his employer, or that his use of halicon was for other than legitimate purposes.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this matter pursuant to secs. 450.03 and 450.10, Wis. Stats.

2. Respondent's conduct as set forth in the proposed Findings of Fact constitutes unprofessional conduct as defined in sec. 450.10(1)(a)(3), Wis. Stats. and secs. PHAR 10.03(3) and (7), Wis. Adm. Code.

3. The evidence does not establish that the respondent diverted halicon (triazolam) from his employer, or that his use of halicon was for other than legitimate purposes.

ORDER

IT IS ORDERED THAT the license of George Prudent, R.Ph., to practice as a pharmacist, be and hereby, is REVOKED.

IT IS FURTHER ORDERED THAT the REVOCATION SHALL BE STAYED for a period of three (3) months conditioned upon compliance with the conditions and limitations set forth in the conditions of stay outlined in paragraph (b) herein.

1. Respondent may apply for consecutive three (3) month extensions of the stay of revocation, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent's practice during the prior three (3) month period.
2. Upon successful compliance for a period of four (4) years with the terms of the conditions of stay, the Board shall grant a petition by the respondent for return of full licensure.
3. The applications for extensions of the stay of revocation shall be due on the following dates: _____

_____.

(b) CONDITIONS OF STAY

1. Within forty-five (45) days from the date of this order, Mr. Prudent shall obtain a chemical dependency assessment at a treatment facility acceptable to the Board and submit the results of the assessment to the Board offices. The facility performing the assessment shall be provided with copies of the Division of Enforcement investigative materials which formed the basis for the disciplinary proceedings against Mr. Prudent for review prior to the date of the assessment. The chemical dependency assessment report shall include: diagnosis of Mr. Prudent's condition, recommendations for treatment, an evaluation of Mr. Prudent's level of cooperation in the assessment process, work restriction recommendations, if any, and Mr. Prudent's prognosis for recovery.
2. Mr. Prudent must remain in a program acceptable to the Board for the treatment of alcohol and chemical dependency. As a part of treatment, Mr. Prudent must attend therapy on a schedule as recommended by his therapist. In addition, Mr. Prudent must attend Alcoholics Anonymous or Narcotics Anonymous at least one time per week.
3. Upon request of the Board, Mr. Prudent must provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records.
4. Mr. Prudent must remain free of alcohol, prescription drugs and controlled substances not prescribed for a valid medical purpose during the period of limitation.

5. Respondent shall initiate and participate in a program of random and witnessed monitoring of his blood and/or urine for the presence of controlled substances and alcohol, on the basis of at least six times per month.

Mr. Prudent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required.

To be an acceptable program, the monitoring facility must agree to provide random and witnessed gatherings of specimens for evaluation. It must further agree to file an immediate report with the Pharmacy Examining Board upon such failures to participate as: if Mr. Prudent fails to appear upon request; or if a drug or alcohol screen proves positive; or if Mr. Prudent refuses or fails to give a specimen for analysis upon a request authorized under the terms of this Order.

6. Mr. Prudent shall arrange for written quarterly reports to the Pharmacy Examining Board from his employer evaluating his work performance; from the monitoring facility providing the dates and results of the screenings performed; and from the counselor evaluating Mr. Prudent's attendance and progress in therapy as well as evaluating his level of participation at AA/NA meetings. The employer reports must include a description of any access to controlled substances by Mr. Prudent.

7. Mr. Prudent shall report to the Board within five (5) days of any change in employment status.

8. Mr. Prudent may not be employed as or work in the capacity of a "pharmacist-in-charge" as the term is defined in Wis. Adm. Code, sec. PHAR 1.02(5).

(c) Upon successful compliance with the provisions of paragraph (b) for a period of two (2) years, Mr. Prudent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions.

(d) Violations of any of the terms of this Order may result in a summary suspension of Mr. Prudent's license and the denial of an extension of the stay of revocation.

(e) This Order shall become effective upon signing.

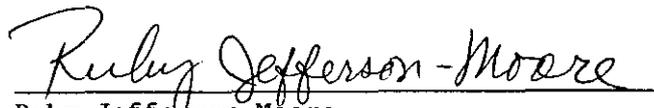
OPINION

Based upon the evidence presented at the hearing, it is clear that Mr. Prudent is chemically dependent on opiates (specifically percocets, his "drug of choice"), and that he has abused alcohol. His previous rehabilitative efforts have not been successful. There is no evidence that he has participated in a treatment program since his withdrawal from the AODA program at Milwaukee Psychiatric Hospital in 1988. The prognosis is that he will continue to use opiates. Until Mr. Prudent is completely rehabilitated, he should not be permitted to practice as a pharmacist without limitations. The potential danger to the public is too great.

It is well established that the purposes for imposing discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

Revocation of the respondent's license is recommended to insure protection of the public. It is the only way to insure that the respondent will not continue to practice while impaired. A suspension of the license would not provide the incentive the respondent needs to complete a treatment program, nor would it insure protection of the public. The stay of the revocation is recommended for the purpose of providing the respondent with the opportunity and incentive to seek rehabilitation.

Dated this 25th day of April, 1989.


Ruby Jefferson-Moore
Hearing Examiner

RNJ:vec
BDLS-450

