

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
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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**

EDWARD S. NICGORSKI, R.Ph.,  
RESPONDENT.

98 PHM 29

LS 9811107PHM

The parties to this action for the purposes of §227.53, Wis. Stats., are:

Edward S. Nicgorski  
231 N. Pinecrest Street  
Milwaukee, WI 53208

Wisconsin Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the 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**

1. Respondent Edward S. Nicgorski (dob 2-26-41) is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license # 7332, originally granted on 4-15-64.
2. On 5-4-98, respondent transferred a new prescription of erythromycin and a new prescription of Propulsid® to a patient. The patient asked "Any side effects I need to worry about?" The respondent told the patient "Nothing special, no."
3. In fact, it is well known that taking these two medications together can cause serious heart problems or death. The pharmacy's computer system warned the pharmacist about the possible interaction, but the respondent failed to act upon this warning. The prescriber should have been contacted and the prescriptions should not have been dispensed until the prescriber and pharmacist had discussed the matter.
4. Respondent later stated to the Board's investigator that he was the only pharmacist on duty at the time, it was near closing time, and that he recognized that he made an error in dispensing the two medications without contacting the prescriber and, failing that, without warning the patient.

5. The patient in this matter was a journalist doing research, and did not take the medications; there was no harm to a patient on this occasion.

### CONCLUSIONS OF LAW

A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraph 2, above, violated § Phar 7.01(1)(a) and (e) and § Phar 10.03(2) Wis. Stats.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Edward S. Nicgorski, R.Ph. is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$250, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this November 10, 1998.

WISCONSIN PHARMACY EXAMINING BOARD, by:



\_\_\_\_\_

a member of the board

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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

EDWARD S. NICGORSKI, R.Ph.,  
RESPONDENT.

STIPULATION

98 PHM 29

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this 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 agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

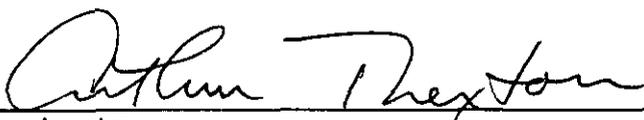
7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent stipulates that there is an adequate factual basis for the discipline imposed herein, although the Findings of Fact may not appear to justify the entire outcome. The language of the Findings has been negotiated as a matter of compromise between the parties, and respondent agrees not to claim in any forum that the discipline imposed was not justified by the Findings of Fact stated

10. 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 the monthly Report of Decisions issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. Other reporting as required by law or department policy will occur.

  
\_\_\_\_\_  
Respondent 10-23-98  
Date

  
\_\_\_\_\_  
Prosecuting Attorney  
Division of Enforcement 10/26/98  
Date

# Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416 -hearing or speech  
TRS# 1-800-947-3529 impaired only

## GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On November 10, 1998, the Pharmacy Examining Board  
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a  
forfeiture.

The amount of the costs assessed is: \$250.00 Case #: LS9811107PHM

The amount of the forfeiture is: \_\_\_\_\_ Case # \_\_\_\_\_

Please submit a check or a money order in the amount of \$250.00

The costs and/or forfeitures are due: December 10, 1998

NAME: Edward S. Nicgorski, R.Ph. LICENSE NUMBER: 7332

STREET ADDRESS: 231 N. Pinecrest Street

CITY: Milwaukee STATE: WI ZIP CODE: 53208

Check whether the payment is for costs or for a forfeiture or both:

COSTS  FORFEITURE

Check whether the payment is for an individual license or an establishment license:

INDIVIDUAL  ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING**  
**1400 E. WASHINGTON AVE., ROOM 141**  
**P.O. BOX 8935**  
**MADISON, WI 53708-8935**

**For Receipting Use Only**

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING  
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Edward S. Nicgorski, R.Ph.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN    )  
  )  
COUNTY OF DANE        )

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

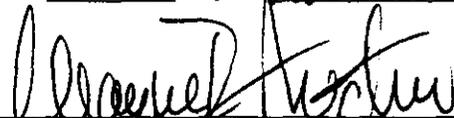
2. On November 11, 1998, I served the Final Decision and Order dated November 10, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9811107PHM, upon the Respondent Edward S. Nicgorski, R.Ph. by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 956.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Edward S. Nicgorski, R.Ph.  
231 N. Pinecrest Street  
Milwaukee WI 53208

  
\_\_\_\_\_  
Kate Rotenberg  
Department of Regulation and Licensing  
Office of Legal Counsel

Subscribed and sworn to before me  
this 13<sup>th</sup> day of November, 1998.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent.

## NOTICE OF RIGHTS OF APPEAL

TO: EDWARD S NICGORSKI RPH

You have been issued an Order. For purposes of service the date of mailing of this Order is 11/11/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

### A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

### B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

### SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD  
1400 East Washington Avenue  
P.O. Box 8935  
Madison WI 53708-8935