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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST DAVID J. PROHASKA, R. PH., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER

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

David J. Prohaska, R. Ph.
906 College Avenue
Ladysmith, WI 54848

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

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

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 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. That David J. Prohaska, hereinafter the respondent, held a license as a Registered Pharmacist in the State of Wisconsin at all times relevant to this complaint.

2. That the respondent's license is number 8106 and was issued on February 3, 1971.

3. That the respondent's address is 906 College Avenue, Ladysmith, Wisconsin, 54848.

4. That on July 9, 1986, the respondent was disciplined by the Wisconsin Pharmacy Examining Board. A copy of said Final Decision and Order is attached as Exhibit A.

5. That said Final Decision and Order required that the respondent perform 150 hours of acceptable community service before September 1, 1988.

6. That the respondent did not complete the 150 hours of required community service by September 1, 1988.

7. That by a letter dated August 28, 1988, the respondent requested that the Board extend the time for completing the community service requirement.

8. That by a letter dated September 21, 1988, the Pharmacy Examining Board advised the respondent that his request for an extension was not granted and that as of September 1, 1988, the Board had accepted 72 1/2 hours of community service.

9. That a formal administrative complaint was filed against the respondent on November 4, 1988, alleging a failure to complete the required community service.

10. That in a letter received by the department on December 1, 1988, the respondent provided documentation regarding additional community service as follows:

DATE	COMMUNITY SERVICE	HOURS
September, 1988	Preparation of medication board organizers on behalf of two organizations	26
October 3, 1988	Guest Speaker at Lions Club Dinner on Diabetes and other topics	4½
October 17, 1988	VCR Presentation to Nursing Home	2
October 19, 1988	VCR Presentation to Nursing Home	2½
October 20, 1988	VCR Presentation	2½
November 1&2, 1988 and preceding week	Staffed Pharmacy booth at health Fair	41

11. That respondent has now completed the 150 hours of community service required by the order.

12. That the respondent did not intentionally violate the Board's order and intends to continue to perform community service in the future.

CONCLUSIONS OF LAW

1. That by failing to complete the required community service within the time limits established by the Board order, the respondent has violated an order of the Board contrary to Wisconsin Administrative Code sec. PHAR 10.03(22) and sec. 450.10(1)(a)8., Stats.

2. That the Board has jurisdiction to take disciplinary action against the respondent pursuant to sec. 450.10, Stats.

Therefore, it is hereby ORDERED:

1. That the license of the respondent, David J. Prohaska, as a pharmacist in the State of Wisconsin shall be suspended for a period of two weeks, commencing 45 days from the date of this order.

2. That the costs of the proceeding are assessed against the respondent in the sum of $300 payable to the Department of Regulation and Licensing within 30 days of the date of this order.

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

By: _____ 3/23/89
A Member of the Board Date

MB:mkm
DOEATTY-566

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
David J. Prohaska, R. Ph., RESPONDENT	:	

The parties in this matter agree and stipulate as follows:

1. That this Stipulation is entered in to as a result of a pending investigation of the respondent's licensure by the Division of Enforcement (case file 88 PHM 42). The respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal disciplinary complaint and hearing.

2. The respondent understands by signing the Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the state has the burden of proving the allegations by a preponderance of evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify on his 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 applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. That the respondent and the complainant urge the Pharmacy Examining Board to adopt this Stipulation and the attached Final Decision and Order in this matter.

4. That if the terms of this Stipulation and attached Final Decision and Order are not acceptable to the Board, then neither of the parties shall be bound by any of the terms.

5. That the attached Final Decision and Order may be made and entered in this matter by the Wisconsin Pharmacy Examining Board without prior notice to any party.

6. That the parties agree that counsel for the Department of Regulation and Licensing, Division of Enforcement, and the Board Advisor appointed in this matter may appear before the Board in either open or closed

session without the presence of the respondent to argue in favor of acceptance of this Stipulation and the entry of the attached Final Decision and Order and to answer any questions the Board may have.

Dated this 1st day of March, 1989

Michael J. Berndt, Attorney
Division of Enforcement

Dated this 8th day of March, 1989

David J. Prohaska, R. Ph., Respondent

MB:mkm
DOEATTY-565

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 the 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 the State of Wisconsin Pharmacy Examining 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: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is March 24, 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.