FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JAMES W. SIEG, R.Ph., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER LS9205012PHM

The State of Wisconsin, Pharmacy Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 10th day of November, 1992.

Thomas McGregor

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST JAMES W. SIEG, R.PH., RESPONDENT.	: : : : :	PROPOSED DECISION LS9205012PHM

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

James W. Sieg, R.Ph., Ph.D.
1439C Gray Hawk Road
Lexington, KY 40502

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

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

A hearing was held in the above-captioned matter on July 22, 1992. Arthur K. Thexton, Attorney at Law, appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, James W. Sieg, R.Ph., did not appear at the hearing.

Based upon the record herein, the Administrative Law Judge 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, James W. Sieg, (dob 3/23/45), 1439C Gray Hawk Road, Lexington, KY 40502, was at all times material to the Complaint filed in this matter licensed as a pharmacist in the State of Wisconsin (license #8061).

2. On January 29, 1988, respondent pled guilty to and was adjudged guilty of the crime of receiving stolen property under $100.00, by a Circuit Court, in Kentucky. A 30-day jail sentence was withheld and probation was imposed. The statute under which respondent was convicted substantially relates to the practice of pharmacy.

3. On or about August 27, 1988, the Kentucky Board of Pharmacy filed a Complaint against respondent which alleged the following:

> 1. That between March 1985 and April 1985, James W. Sieg dispensed without a prescription, a schedule IV controlled substance, Ionamin capsules, to Deanne Dingis in violation of KRS 218A.140 (3) and KRS 218A.180 (2), all of which was in violation of KRS 315.121 (f).

2. That James W. Sieg failed to maintain proper records of controlled substances used by him during 1985 as required by KRS 218A.200 (3) and (4). The controlled substances records produced by James W. Sieg at the request of Dana Droz, a pharmacist consultant with the Kentucky Cabinet for Human Resources, on October 28, 1985, failed to meet the requirements of KRS 218A.200 (4), all of which was in violation of KRS 315.121 (f).

4. On or about February 8, 1989, pursuant to an "Agreed Order", the Kentucky Board of Pharmacy suspended respondent's pharmacist license for a period of 2 years. All but 30 consecutive days of the 2 year suspension was withheld and respondent was placed on probation for 5 years. The Agreed Order contains an admission by respondent that he dispensed a Schedule IV controlled substance, Ionamin capsules, to a person without a prescription and that he failed to maintain proper records of controlled substances used by him during 1985. The Order also required respondent to pay a $1,000 fine, and to refrain from violating any federal or state law or regulation.

5. On or about May 16, 1990, the Kentucky Board of Pharmacy suspended respondent's pharmacist license for a period of 15 days, from June 1, 1990 to June 15, 1990, and ordered him to pay a $500.00 fine. The Board found that respondent violated KRS 218A.200 (3) and (4), in violation of its Agreed Order of February 8, 1989, and KRS 315.121 (1)(e) and (f).

6. On or about May 16, 1990, the Kentucky Board of Pharmacy suspended respondent's pharmacist license for a period of 15 days, from June 16, 1990 to June 30, 1990,, and ordered him to pay a $500.00 fine. The Board found that respondent violated KRS 218A.180 (2) and 21 CFR 1306.21, in violation of its Agreed Order of February 8, 1989 and KRS 315.121 (1)(e) and (f).

7. A Notice of Hearing and Complaint filed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement, dated April 27, 1992, was served on respondent by certified mail on May 1, 1992. A United States Postal Service domestic return receipt evidencing delivery of the certified mail bears the signature "James W. Sieg" and shows a delivery date of "5-5-92".

8. Respondent did not file an Answer to the Notice of Hearing and Complaint filed in the above-captioned matter, and did not appear at the hearing held in this matter on July 22, 1992.

CONCLUSION OF LAW

1. The Pharmacy Examining Board has jurisdiction in this matter pursuant to s. 450.10 (1) (a) and (b) Wis. Stats., and s. Phar 10.03 Wis. Adm. Code.

2. Respondent's conduct as described in Findings of Fact #2 constitutes a violation of s. 450.10 (1) (a) 2 and (1) (b) 1 Wis. Stats.

3. Respondent's conduct as described in Findings of Fact #3 and #4 constitutes a violation of s. Phar 10.03 (17) Wis. Adm. Code.

4. Respondent's conduct as described in Findings of Fact #5 and #6 constitutes a violation of s. Phar 10.03 (17) Wis. Adm. Code.

5. Respondent, by failing to file an answer to the Notice of Hearing and Complaint filed in the above-captioned matter, and by failing to appear at the July 22, 1992 hearing is in default pursuant to s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the pharmacist license (#8061) of respondent, James W. Sieg, be and hereby is, **REVOKED.**

IT IS FURTHER ORDERED that:

1. Pursuant to s. RL 2.14 Wis. Adm. Code, complainant's motion for default, be and hereby is GRANTED.

2. Pursuant to s. 440.22 Wis. Stats., respondent shall pay the costs of this proceeding, which shall be payable to the Department of Regulation and Licensing.

This order is effective on the day on which it is signed by the Pharmacy Examining Board or its designee.

OPINION

A hearing was held in the above-captioned matter on July 22, 1992. Arthur K. Thexton, Attorney at Law, appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, James W. Sieg did not appear at the hearing. Pursuant to s. RL 2.14 Wis. Adm. Code, complainant moved for an order granting default.

I. ANALYSIS

COUNT I

The complainant alleges in Count I of the Complaint that:

> On or about March 18, 1985, respondent violated s. 450.10 (1)(a) 2 Wis. Stats., in that on January 29, 1988 he was, on his plea of guilty, convicted of violating a state statute substantially relating to the practice of pharmacy, to wit: on March 18, 1985, respondent used progesterone which he obtained by virtue of his office as a pharmacist and teacher of pharmacy at the University of Kentucky School of Pharmacy, to compound and sell progesterone suppositories to other pharmacies in Kentucky, all without authorization or authority.

Section 450.10 (1) (a) 2 Wis. Stats., read as follows:

> *450.10 Disciplinary proceedings; immunity; orders. (1)(a) In* this subsection, "unprofessional conduct" includes, but is not limited to:
>
> 2. Violating this chapter or ch. 161 or any federal or state statute or rule which substantially relates to the practice of pharmacy.

The evidence establishes that in January, 1988, respondent pled guilty to and was convicted of receiving stolen property under $100.00. A 30-day jail sentence was withheld and he was placed on probation for 90 days. Except for allegations contained in the Complaint filed in this matter which are deemed admitted by respondent, there is no specific evidence in the record which describes the factual basis for respondent's criminal conviction. The criminal complaint filed in Kentucky was not offered as evidence at the hearing. Although the record contains statements made by complainant's attorney at the hearing during closing summation, which describes in some detail the background, nature and basis of respondent's criminal conviction, such statements do not have evidentiary value. (Trans. p. 4-12).

In reference to respondent's admissions, s. RL 2.09 (3) Wis. Adm. Code, states that averments in a complaint are admitted when not denied in the answer. In this case, respondent elected not to file an answer; therefore, the allegations contained in the Complaint are deemed admitted. Paragraph #2 of the Complaint alleges that in 1985, without authority or authorization, respondent obtained progesterone by virtue of his position as a pharmacist and teacher at the University of Kentucky School of Pharmacy and after compounding sold progesterone suppositories to other pharmacies in Kentucky.

It is clear from the evidence, based upon the circumstances surrounding respondent's conviction as noted in his admission, and the elements of the crime for which he was convicted that respondent violated a state law which substantially relates to the practice of pharmacy.

COUNT II

The complainant alleges in Count II of the Complaint that on or about February 8, 1989, the respondent violated s. Phar 10.03 (17) Wis. Adm. Code, in that he had his pharmacy license in the Commonwealth of Kentucky suspended.

Section Phar. 10.03 (17) Wis. Adm. Code, provides that having a pharmacist license revoked or suspended in another state or United States jurisdiction constitutes unprofessional conduct.

The evidence establishes that respondent's pharmacist license was suspended in 1989 by the Kentucky Board of Pharmacy. In August 1988, the Kentucky Board of Pharmacy filed a complaint against respondent alleging that he violated various provisions of Kentucky statutes. Respondent signed an "Agreed Order", dated February 9, 1989, in which he admitted that he dispensed a Schedule IV controlled substance, Ionamin capsules, to a person without a prescription and that he failed to maintain proper records of controlled substances used by him during 1985. Pursuant to the Agreed Order, the Board suspended respondent's license for 2 years, but ordered that all but 30 days of the suspension be withheld and that he be placed on probation for 5 years. The Board also ordered respondent to pay a $1,000 fine. (Ex. #2 and #3).

COUNT III

The complainant alleges in Count III of the Complaint that on or about May 16, 1990, the respondent violated s. Phar 10.03 (17) Wis. Adm. Code in that he had his pharmacy license in the Commonwealth of Kentucky suspended.

The evidence establishes that on May 16, 1990, the Kentucky Board of Pharmacy suspended respondent's license for a total period of 30 days for violating its Agreed Order of February 8, 1989, which required respondent to refrain from violating any federal or state law or regulation. The Board's May 16, 1990 order also required respondent to pay $1,000.00 in fines. (Exhibits #2 and #3).

II. DISCIPLINE

Having found that the respondent violated the provisions of ch. 450 Stats., and s. Phar. 10.03 (17) Wis. Adm. Code as set forth in the proposed Conclusions of Law herein, a determination must be made regarding whether discipline should be imposed and if so, what discipline is appropriate.

The purposes of 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).

Based upon the evidence, the Administrative Law Judge recommends that the respondent's pharmacist license be revoked. This measure is designed primarily to insure protection of the public and to deter other licensees from engaging in similar misconduct.

It is apparent that prior measures designed to assure protection of the public from respondent's misconduct have not succeeded. Respondent has shown by his conduct that he is unwilling to comply with state and federal laws relating to the practice of pharmacy. Despite his conviction in 1988 and the suspension of his license and imposition of fines by the Kentucky Board of Pharmacy in 1989, respondent was not persuaded to refrain from violating state and federal laws relating to the practice of pharmacy. In May 1990, the Kentucky Board suspended respondent's pharmacist license again and imposed additional fines totalling $1,000. The Board found that respondent had violated its February, 1989 order by violating Kentucky statutes and federal law relating to the practice of pharmacy.

The Kentucky Board's May 1990, order does not contain any facts which identify the type of conduct which respondent engaged in at the time he violated the previous Board order; however, one can gain insight into the nature of the violations by reviewing the language of the statutes cited by the Board in its May 1990 order. The statutes cited by the Board are as follows: ss. KRS 218A.180 (2); KRS 218A.200 (3) and (4); KRS 315.121 (1)(e) and (f), and 21 CFR 1306.21.

The text of ss. KRS 218A.180 (2) and KRS 218A.200 (3) and (4) reads:

KRS 218A.180 Distribution by practitioner or pharmacist-Prescription requirements.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules II, IV and V, which is a prescription drug, shall not be dispensed without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written or oral shall be required.

KRS 218A.200 Record-keeping requirements.

(3) Pharmacist shall keep records of all controlled substances received and disposed of by them.

(4) The record of controlled substances shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity. Every such record shall be kept for a period of two (2) years. The keeping of a record under the federal controlled substances laws containing substantially the same information as is specified herein, shall constitute compliance with this section. A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the cabinet for human resources as soon as practical.

Based upon the Kentucky Board's May 1990 order and the Kentucky statutes set forth above, it can be inferred that sometime between February, 1989 and April, 1990, respondent violated the statutes by:

(1) dispensing a Schedule II, IV or V controlled substance without a prescription, or refilling a prescription by failing to record the date, quantity and his initials on the prescription, and/or by filling or refilling a prescription more than 6 months after the proper date or refilling a prescription more than 5 times without a new prescription, and

(2) failing to maintain proper records of controlled substances.

The evidence presented establishes that between 1985 and 1990 respondent repeatedly violated numerous provision of Kentucky statutes and federal laws relating to the practice of pharmacy. Respondent has shown by his conduct that he is unwilling to comply with applicable state and federal laws. In this case, based upon respondent's repeated violations and total disregard of state and federal laws, revocation of his pharmacist license is the only viable measure available to insure protection of the public.

Based upon the evidence presented and the discussions set forth herein, the Administrative Law Judge recommends that the Pharmacy Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin, this 2nd day of September, 1992.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

BLDS2:2183

NOTICE OF APPEAL INFORMATION

(N tice f Rights for Rehearing r Judicial Review, th times allowed for each, and th 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 peri d commences the day after personal service or mailing of this decision. (Th 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 dispositi n 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 November 11, 1992.

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JAMES W. SIEG, R.PH., RESPONDENT.	: : : : :	**AFFIDAVIT OF COSTS** LS9205012PHM

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services to provide legal services.

2. That in the course of her employment, she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief the costs for services provided by affiant are as follows:

DATE	ACTIVITY	TIME
07/22/92	Preparation/conduct of hearing	1 hr.
08/31/92	Review of record/draft decision	2 hrs.
09/02/92	Draft/proposed decision	1 hr.

Total costs for Administrative Law Judge: $76.00 .

3. That upon information and belief the costs for court reporting services provided by Magne-Script are as follows: $84.60 .

Total costs for Office of Board Legal Services: $160.60.

Ruby Jefferson-Moore
Ruby Jefferson-Moore

Sworn to and subscribed to before me
this 17th day of November, 1992.

Donna R. Rittel
Notary Public
My Commission: is Permanent

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST JAMES W. SIEG, R.PH., PH.D., RESPONDENT.	: : : : :	AFFIDAVIT IN SUPPORT OF MOTION FOR COSTS LS9205012PHM

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Arthur Thexton, being duly on affirmation, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
3/24/92	Review file, confer with Inv. Johnson	0.5
4/41/92	Review additional materials from Inv. Johnson	0.5
4/27/92	Prepare and issue complaint and notice of hearing	2.0
5/4/92	Letters to KY authorities for certified copies	0.7
5/12/92	Receive and review certified copies	0.2
5/??/92	Telephone conference with respondent	0.4
7/22/92	Prepare for and conduct hearing	2.0
9/3/92	Receive and review ALJ proposed decision	0.4

11/12/92	Prepare affidavit of costs	1.0
	TOTAL HOURS	7.7 hours

Total attorney expense for 7.7 hours at $30.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: $ $231.00

INVESTIGATOR EXPENSE FOR JOHN G. JOHNSON

Date	Activity	Time Spent
7/18/90	Review file, summary memo and letter to board advisor	2.0
8/14/90	Confer with board advisor, memo of same	0.6
8/17/90	PIC memo to Atty Ganch	0.7
3/24/92	Confer with Atty Thexton re: add'l inv.	0.3
3/27/92	Telephone conference with Inv. Osmund of Kentucky	0.4
4/10/92	Telphone conference with Inv. Osmund, letter to KY board of pharmacy requesting file.	0.8
	TOTAL HOURS	4.8 hours

Total investigator expense for 4.8 hours at $18.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: $ 86.40

MISCELLANEOUS DISBURSEMENTS

Records from KY Board of Pharmacy $ 19.70

TOTAL ASSESSABLE COSTS **$ 337.10**

Arthur Thexton, Prosecuting Attorney

Subscribed and ~~sworn~~ affirmed to before me this 12th day of November, 1992.

Notary Public
My Commission is permanent.

akt
2979