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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST DAVID R. NAHIN, M.D., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER 93 MED 079

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

David R. Nahin, M.D.
1175 Gray Fox Hollow
Waukesha, WI 53186

Wisconsin Medical 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. David R. Nahin, M.D., Respondent herein, (D.O.B. 11/03/48) is duly licensed and registered to practice medicine and surgery in the State of Wisconsin, pursuant to license number 20828, which license was first granted on 7/01/77.

2. Respondent's license to practice medicine and surgery was summarily suspended by the Wisconsin Medical Examining Board by Order dated March 25, 1993.

3. Respondent's latest address on file with the Department of Regulation and Licensing is 1175 Gray Fox Hollow, Waukesha, WI 53186.

4. That oxycodone (brand names Percodan, Percocet and Roxicet, among others) is a Schedule II controlled substance pursuant to sec. 161.16(2)(a)11, Wis. Stats.

5. Sec. 161.43(1)(b), Wis. Stats., makes it a felony criminal offense for any person to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

6. That from January 8, 1990 through June 26, 1991, Respondent forged the signature of other practitioners to prescriptions for oxycodone, which prescriptions were made out to the Respondent. Respondent then presented the forged prescriptions to pharmacies and had them filled for the purpose of satisfying Respondent's chemical dependence. During this period of time, Respondent filled at least 36 such prescriptions in amounts varying from 25 units to 40 units.

7. That in July 1991, Respondent entered a drug treatment program at Milwaukee Psychiatric Hospital in Milwaukee, WI.

8. That from October, 1992 through March, 1993, Respondent forged the signature of Gary Shepherdson, M.D. to prescriptions for oxycodone, which prescriptions were made out to Respondent. Respondent then presented the forged prescriptions to pharmacies in Waukesha County and had them filled, as follows:

	DATE	UNITS	PHARMACY
1.	10/19/92	30	F & M Pharmacy #41, Brookfield
2.	10/24/92	30	Drug Emporium #5, Waukesha
3	10/26/92	30	Phillips Westbrook Pharmacy, Waukesha
4.	10/30/92	30	F & M Pharmacy #41, Brookfield
5.	11/02/92	30	Phillips Westbrook Pharmacy, Waukesha
6.	11/10/92	30	Drug Emporium #5, Waukesha
7.	11/19/92	30	F & M Pharmacy #41, Brookfield
8.	11/20/92	30	Drug Emporium #5, Waukesha
9.	11/23/92	30	Phillips Westbrook Pharmacy, Waukesha
10.	11/28/92	30	Wal Mart Pharmacy, Waukesha
11.	12/01/92	30	F & M Pharmacy #41, Brookfield
12.	12/03/92	30	Drug Emporium #5, Waukesha
13.	12/06/92	30	Wal Mart Pharmacy, Waukesha
14.	12/11/92	30	Phillips Westbrook Pharmacy, Waukesha
15.	12/22/92	30	F & M Pharmacy #41, Brookfield
16.	12/26/92	30	Drug Emporium #5, Waukesha
17.	12/30/92	30	Phillips Westbrook Pharmacy, Waukesha
18.	01/03/93	30	F & M Pharmacy #41, Brookfield
19.	01/06/93	30	Drug Emporium #5, Waukesha
20.	01/10/93	30	Phillips Westbrook Pharmacy, Waukesha
21.	01/13/93	30	F & M Pharmacy #41, Brookfield
22.	01/20/93	30	Drug Emporium #5, Waukesha
23.	01/24/93	30	Phillips Westbrook Pharmacy, Waukesha
24.	01/25/93	30	F & M Pharmacy #41, Brookfield
25.	01/31/93	30	Drug Emporium #5, Waukesha
26.	02/02/93	30	F & M Pharmacy #41, Brookfield
27.	02/03/93	30	Phillips Westbrook Pharmacy, Waukesha
28.	02/09/93	30	F & M Pharmacy #41, Brookfield
29.	02/12/93	30	Drug Emporium #5, Waukesha
30.	02/16/93	30	Phillips Westbrook Pharmacy, Waukesha
31.	02/18/93	30	F & M Pharmacy #41, Brookfield
32.	02/23/93	30	Drug Emporium #5, Waukesha

33.	02/25/93	30	F & M Pharmacy #41, Brookfield
34.	02/26/93	30	Phillips Westbrook Pharmacy, Waukesha
35.	03/02/93	30	Wal Mart Pharmacy, Waukesha

9. That on 2/27/93, Respondent presented another forged prescription to the pharmacist at the F & M Pharmacy. That pharmacist had been in contact with Dr. Shepherdson and the Division of Enforcement a few days earlier. At the request of the Division, the pharmacist asked Respondent to show his drivers license, which Respondent did. The pharmacist determined that the photograph on the Wisconsin Drivers license for David R. Nahin, which was provided at that time, was of the person presenting the prescription.

10. The pharmacist, who had been advised by Dr. Shepherdson that Dr. Shepherdson was not writing any prescriptions for Respondent, refused to fill the prescription. The pharmacist told Respondent that he had been contacted by authorities in Madison and the Respondent replied that this was probably a good thing and that he needed to get off the stuff anyway.

CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has authority to enter into this stipulated resolution pursuant to secs. 227.44(5) and 448.02(5), Wis. Stats.

2. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

3. That Respondent's conduct, as set out above, is a violation of Wis. Stats. sec. 448.02(3), and Wis. Adm. Code sec. MED 10.02(2)(p) as the obtaining of controlled substances as prohibited by law.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's voluntary surrender of his license to practice medicine and surgery in the state of Wisconsin is hereby accepted, effective immediately.

IT IS FURTHER ORDERED that if Respondent shall ever reapply for a license to practice medicine and surgery in the state of Wisconsin, and if the Wisconsin Medical Examining Board chooses to grant Respondent a license to practice medicine and surgery in the state of Wisconsin, the Board may impose on that license whatever conditions and limitations it deems appropriate.

Dated at Madison, Wisconsin this 28th day of April, 1993.

Clark O. Olsen, M.D., Secretary
Wisconsin Medical Examining Board

DOEATTY-2478

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST DAVID R. NAHIN, M.D., RESPONDENT.	: : : : :	STIPULATION

It is hereby stipulated and agreed, by and between, David R. Nahin, M.D., Respondent; Daniel P. Fay, attorney for Respondent; and, John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding (file 93 MED 079).

2. The parties agree that this stipulated resolution may be presented directly to the Wisconsin Medical Examining Board and need not be presented to the Administrative Law Judge appointed in this matter.

3. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

4. Respondent is aware of his right to legal representation, and has obtained such representation, prior to signing this stipulation.

5. Respondent neither admits nor denies the allegations contained in this matter, and has no objection to the adoption of the attached Final Decision and Order by the Medical Examining 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.

6. 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 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.

7. The parties to this stipulation agree that the Respondent, his attorney, and the attorney for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

8. The parties to this stipulation agree that the member of the Board appointed as the investigative advisor in this matter may appear before the Board in open or closed session for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

Dated: April 16, 1993.

David R. Nahin, M.D.
David R. Nahin, M.D.
Respondent

Dated: April 16, 1993.

Daniel P. Fay
Daniel P. Fay
Attorney for Respondent

Dated: April 2, 1993.

John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

DOEATTY-2477

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 Medical 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 Medical 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 Medical Examining Board.

The date of mailing of this decision is May 4, 1993.

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) 1. 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. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par (b) 1 to 4.

2. 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.

3. 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) A copy 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 each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(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.