FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JOHN J. CZERNIEJEWSKI, RESPONDENT	:	96 MED 401

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

John J. Czerniejewski
Oak Hill Correctional Institution
P.O. Box 238
Oregon, WI 53575-0238

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. John J. Czerniejewski (D.O.B. 12/27/56) is duly certified to practice as a respiratory care practitioner in the state of Wisconsin (license #928). This license was first granted on April 29, 1992.

2. Mr. Czerniejewski's most recent address on file with the Wisconsin Medical Examining Board is 2945 S. 10th St., Milwaukee, WI 53215. Mr. Czerniejewski's most recent mailing

address known to the Department is Oak Hill Correctional Institution, P.O. Box 238, Oregon, WI 53575-0238.

3. On or about November 8, 1996, Respondent was found guilty of obtaining a prescription drug by fraud and theft, in violation of secs. 450.11(7)(a) and 943.20(1)(a), Stats. As a part of his sentence and as a condition of probation following his term of incarceration, respondent was ordered by the court to surrender his license to practice. A true and correct copy of the criminal complaint and judgment of conviction in this matter is attached to this document as Exhibit A. Exhibit A is incorporated by reference into this document.

4. On or about July 21, 1993, Respondent was found guilty of obtaining a prescription drug by willful misrepresentation, in violation of sec. 450.11, Stats. A true and correct copy of the criminal complaint and judgment of conviction in this matter is attached to this document as Exhibit B. Exhibit B is incorporated by reference into this document.

5. On or about June 4, 1991, Respondent was found guilty of theft of a controlled substance, in violation of secs. 943.20(1)(a) and 943.20(3)(a), Stats. A true and correct copy of the criminal complaint and judgment of conviction in this matter is attached to this document as Exhibit C. Exhibit C is incorporated by reference into this document.

6. On or about March 11, 1991, Respondent was found guilty of obtaining a prescription drug by fraud and theft, in violation of sec. 450.11(7)(a), Stats. A true and correct copy of the criminal complaint and judgment of conviction in this matter is attached to this document as Exhibit D. Exhibit D is incorporated by reference into this document.

7. In resolution of this matter, Mr. Czerniejewski consents to the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter, pursuant to sec. 440.26, Stats.

2. The Wisconsin Medical Examining Board is authorized to enter into the attached stipulation, pursuant to sec. 227.44(5), Stats.

3. The convictions referred to in paragraphs 3, 4, 5 and 6 above constitute violations of. Wisconsin Administrative Code §§ Med 10.02(2)(h), (j), (p), (r) and (z).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Board accepts SURRENDER of the certificate and license of John J. Czerniejewski (license #928) to practice as a Respiratory Care Practitioner in the State of Wisconsin.

IS FURTHER ORDERED that should Mr. Czerniejewski reapply for Wisconsin certification and licensure, the Board may in its sole discretion determine whether, and under what terms and conditions, a certificate may be reissued. Denial in whole or in part of an application for relicensure shall not give rise to a contested case within the meaning of secs. 227.01(3) and 227.42, Stats.

MEDICAL EXAMINING BOARD

By: Glenn Hobey III 4-23-97

On behalf of the Board Date

STATE OF WISCONSIN

State vs John J. Czerniejev .i

Date of Birth: 12-27-1956

JUDGMEI OF CONVICTION

Sentence to Wisconsin State Prisons

Case No.: 96CF000193

The ☒ Court ☐ Jury found the defendant guilty of the following crime(s):

Ct.	Crime(s)	Wis Stat. Violated	Plea	Fel. or Misd.	Date(s) Crime Committed
1	Obtain Prescription Drug w/ Fraud [939.62 Habitual Criminality]	450.11(7)(a)	Guilty	MU	July 1995

IT IS ADJUDGED that the defendant is convicted on **11-08-1996** as found guilty and is sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Concurrent with/Consecutive to/Comments	Agency
1	11-08-1996	State Prisons	3 YR		WPS
1	11-08-1996	Costs			

Conditions of Sentence/Probation

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
10.00	20.00				50.00		

IT IS ADJUDGED that 7 days sentence credit are due pursuant to § 973.155 Wisconsin Statutes.

IT IS ORDERED that the Sheriff execute this sentence.

Gerald P. Ptacek, Judge
Sharon A Riek, District Attorney
Michael L Chernin, Defense Attorney

BY THE COURT:

Deri Daniel

Circuit Court Judge/Clerk/~~Deputy Clerk~~

November 12, 1996
Date

TARAESA L. WHEARY, Clerk of the Circuit Court, Racine County, State of Wisconsin, does hereby certify that this document is a true and correct copy of the original on file and of record in my office.

Dated: 1-16-97
TARAESA L. WHEARY, CLERK OF CIRCUIT COURT

By Deri Daniel, Deputy

CIRCUIT COURT ★ RACINE COUNTY ★ WISCONSIN

STATE OF WISCONSIN

State vs John J. Czernieje[illegible]

JUDGME[illegible] OF CONVICTION

Sentence Imposed & Stayed, Probation Ordered

Date of Birth: 12-27-1956

Case No.: 96CF000193

The ☒ Court ☐ Jury found the defendant guilty of the following crime(s):

Ct.	Crime(s)	Wis Stat. Violated	Plea	Fel. or Misd.	Date(s) Crime Committed
2	Theft-Movable Property (Special Facts) [939.62 Habitual Criminality]	943.20(1)(a)	Guilty	FD	July 1995

IT IS ADJUDGED that the defendant is convicted on **11-08-1996** as found guilty and is sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Concurrent with/Consecutive to/Comments	Agency
2	11-08-1996	Probation Ordered	3 YR		DOC

	Sentence(s) Stayed		Concurrent with/Consecutive to/Comments	Sent. Credit
2	State Prison	3 YR	Consecutive - stayed	0 days

Conditions of Sentence/Probation

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
10.00	20.00			57.20	70.00		

Conditions

Ct.	Condition	Length	Agency/Program	Begin Date	Begin Time	Comments
2	Jail Time	1 YR	County			stayed

Miscellaneous Conditions:

Ct.	Condition	Agency/Program	Comments
2	Restitution		Restitution, if any, plus 10% P/A and 5% surcharge to be determined and paid during term of probation.
2	Costs		
2	Other fees		
2	Alcohol treatment		No alcohol, randon UA's every 60 days at defendant's expense.
2	Drug Treatment		No drugs, random UA's every 60 days at defendant's expense.
2	Other		No contact directly or indirectly with victim's family, or with any patients, medical facility or Home Care type patient. No contact where controlled substances are dispensed. Continue treatment. Surrender license to practice. No employment in hospital, nursing home or medical facility. Defendant must obey all rules and regulations while on probation.

STATE OF WISCONSIN | CIRCUIT COURT | RACINE CO.

State vs John J. Czerniejewski

JUDGMENT OF DISMISSAL/~~ACQUITTAL~~

Date of Birth 12-27-1956

Case No. 96CF000193

~~The defendant was found not guilty of the following offense(s):~~

Count	Offense Charged	Statute Number	Disposition
3	SH.III,IV Drug Dispens. w/o Prescription	161.38(3)	Dismissed /Pr Motion

IT IS ADJUDGED THAT the defendant is not guilty.

IT IS ORDERED THAT the defendant is discharged and any bond posted is to be returned.

BY THE COURT:

Court Official

November 12, 1996

Date

CIRCUIT COURT RACINE COUNTY WISCONSIN

TARAESA L. WHEARY, Clerk of the Circuit Court, Racine County State of Wisconsin, does hereby certify that this document is a true and correct copy of the original on file and of record in my office.

Dated: 1-16-97

TARAESA L. WHEARY, CLERK OF CIRCUIT COURT

By _____, Deputy

WFPD 825565 & RCSD 825714 | Summons | SR
STATE OF WISCONSIN | CIRCUIT COURT | RACINE COUNTY

Court Case #96- | DA Complaint #96-F-172

STATE OF WISCONSIN, Plaintiff, vs. JOHN J. CZERNIEJEWSKI, dob 12/27/56 6125 W. Morgan Avenue Milwaukee, WI 53220 Defendant(s).	Crime(s) & Statute(s) Violated: Ct. 1: Del. Prescrip. Drug Ct. 2: Obtain a C.S. by Subterfuge Ct. 3: Del. a Schedule III C.S. Sec. 450.11(9)(b), 161.43(1)(a)(2), 161.41(1)(b), 161.50
DESCRIPTION: M/W; Br hair/Hzl eyes; 210#; 6'	VICTIM: Elden Bodendorfer

Complainant, being first duly sworn on oath, on information and belief, says that in July of 1995, within the Town of Waterford, County of Racine, State of Wisconsin, the defendant did:

COUNT 1: Knowingly, unlawfully, and feloniously, deliver a Prescription Drug in Violation of Section 450.11; said offense subjects the defendant to penalties of a fine of not more than $10,000, imprisonment for not more than five (5) years, or both; contrary to Wis. Stats. Section 450.11(9)(b);

COUNT 2: Knowingly, unlawfully, and feloniously, obtain a Controlled Substance by Subterfuge; said offense subjects the defendant to penalties of a fine not to exceed $30,000, imprisonment for not more than four (4) years, or both, driving privileges suspended not less than six (6) months nor more than five (5) years; contrary to Wis. Stats. Section 161.43(1)(a) and (2) and 161.50(1);

COUNT 3: Knowingly, unlawfully, and feloniously, deliver a Schedule III Controlled Substance to another; said offense subjects the defendant to penalties of a fine of not more than $15,000, imprisonment for not more than five (5) years, or both, driving privileges suspended not less than six (6) months nor more than five (5) years;

contrary to Wis. Stats. Section 161.41(1)(b) and 161.50(1); and prays that said defendant be dealt with according to law; the basis for the complainant's charge of such offense is:

Your complainant states that he is employed as a law enforcement officer by the Racine County Sheriff's Department and has read and relies upon reports prepared under Town of Waterford Complaint No. 825565 prepared by Sgt. Spletter of the Town of Waterford Police Department and under Complaint No. 825714 prepared by Inv. Lucci of the Racine County Sheriff's Department whose reports your complainant relies upon inasmuch as they are prepared pursuant to an official law enforcement investigation;

Your complainant states that Elden Bodendorfer had been hospitalized at St. Francis Hospital from June 25, 1995 to July 14, 1995 and while hospitalized at St. Francis Hospital became acquainted with John J. Czerniejewski, the defendant, as John Czerniejewski was a Respiratory Therapist employed by the hospital.

Joy M. Stuedemann states that she is Elden Bodendorfer's daughter and that on July 10, 1995, the defendant told Joy Stuedemann and Clara Bodendorfer, Elden Bodendorfer's wife, that he wanted to come out to the Bodendorfer residence and check it out so he could see if (NEXT PAGE)

they were eligible for Hospice Service. At that time, the defendant stated that he had a friend who worked at Hospice who would work with him to help

Bodendorfers get Hospice Service but he needed to come out to make sure that they qualified first.

Joy Stuedemann states that on Sunday, July 10, 1995, the defendant came out to the residence at approximately 3:30 p.m. Joy Stuedemann states that when the defendant arrived at the residence, he stated that he wanted to check out Mr. Bodendorfer's medications particularly emphasis on the pain medication and also had to check the circuit breakers within the residence. Joy Stuedemann states that at that point the defendant was shown the pain medications that had been prescribed for Elden Bodendorfer as Elden Bodendorfer had terminal cancer and was shown the location of those drugs, that being in the kitchen above the sink in a cabinet.

On July 16, 1995, the defendant again came out to the residence and brought with him two (2) inhalers, one for Ventolin and one for Atrovent. Defendant handed the inhalers to Elden Bodendorfer and stated, "Don't tell anyone I'm giving you these." The defendant then had Clara Bodendorfer at the table in the living room checking all the medications. When Clara went into the kitchen to retrieve the medication, the defendant went along with her so he would know where she kept the medications. Clara Bodendorfer states he went through all the medications and also had a book of all medications from St. Francis Hospital with him.

The defendant brought with him a bottle of Ibuprofen and indicated that they should give Mr. Bodendorfer the Ibuprofen in between his regular pain pill, Roxicet, and also told Clara Bodendorfer and Joy Stuedemann not to give Mr. Bodendorfer all the Roxicet because they did not know where his pain tolerance was. Clara Bodendorfer then indicated that she would give Mr. Bodendorfer the pain medication as it was prescribed by the doctor.

Joy Stuedemann states that in all the conversations with the defendant, the defendant kept telling them not to tell anyone that he was there and not to tell anyone about the medications.

On July 18, 1995, the defendant returned to the Bodendorfer's home at 7104 N. Tichigan Road, in the Town of Waterford, County of Racine, State of Wisconsin. At that time as in previous times in the past, the defendant brought with him a maroon duffel bag. Joy Stuedemann states that the defendant was inside and outside of the house several times and made numerous trips to the bathroom. That at several times, he was alone in the kitchen in the area where the pain medications were located.

On July 19, 1995, at approximately 8:00 p.m., Joy Stuedemann was sitting in the living room talking to her father when Clara Bodendorfer called her out, asking her about Mr. Bodendorfer's pain pills, the Roxicet. Clara Bodendorfer states that she had given Elden Bodendorfer his pain pills earlier in the day and that Elden Bodendorfer had pointed out to her that the two pills were different. Clara Bodendorfer states that when she dumped the pills out, that there were two different (NEXT PAGE)

types of pills in the Roxicet bottle. Joy Stuedemann states that she then looked at both the pills and called Walgreen's and was able to identify one as the Roxicet and the other as Tylenol 3. After numerous phone calls she was able to determine that 53 of the Roxicet were missing from the Roxicet bottle. Joy Stuedemann also states that her father, Elden Bodendorfer, was not supposed to be given Tylenol 3 as one of the active ingredients in that medication was codeine and Elden Bodendorfer had become allergic to the codeine. Clara Bodendorfer states that with the exception of the defendant, only she and her daughter knew the location where the medications were kept in the house.

Complainant states that the Roxicet taken from Elden Bodendorfer's home was a Schedule II Controlled Substance. Tylenol 3 provided to Elden Bodendorfer to replace the Roxicet was a Schedule III Controlled Substance.

Your complainant states that Inv. Lucci of the Racine County Sheriff's Department then had contact with John Monsen, director of the Respiratory Therapy Department at St. Francis Hospital and spoke to him regarding the defendant's actions. John Monsen states that there would be no circumstances in which a Respiratory Therapist from St. Francis Hospital would ever have to have contact with the patient outside of the hospital. John Monsen was advised that the defendant did go to the home of a patient that was released from St. Francis Hospital to determine if they qualify for Hospice Services and Monsen then indicated that that would not be a duty of the defendant, that once a patient leaves the hospital, the Respiratory Therapy Department has no responsibility towards the patient. John Monsen also identified the two inhalers that had been given to Elden Bodendorfer as being the type that must be prescribed by a physician and was asked whether a Respiratory Therapist would be able to dispense those types of medications and he indicated no. John Monsen also indicated that the defendant had worked for a Home Health Care Company in the past while he was employed by St. Francis Hospital but that the defendant no longer worked for that Home Health Care Company.

Your complainant relies upon the statements of Joy Stuedemann and Clara Bodendorfer inasmuch as they are citizens, eyewitnesses and their statements are based upon their personal knowledge and observations. Your complainant relies upon the statements of John Monsen inasmuch as he is a citizen, eyewitness and his statements are based upon his personal knowledge and observations.

Complainant

Subscribed & sworn to before me this 26 day of February, 1996.

Assistant District Attorney

Approved for filing by
Robert S. Flancher, District Attorney
State Bar # 01015530
730 Wisconsin Avenue
Racine, WI 53403 (414) 636-3172

TARAESA L. WHEARY, Clerk of the Circuit Court, Racine County, State of Wisconsin, does hereby certify that this document is a true and correct copy of the original on file and of record in my office.

Dated: 1-16-97
TARAESA L. WHEARY, CLERK OF CIRCUIT COURT
By _____, Deputy

STATE OF WISCONSIN - CIRCUIT COURT : CRIMINAL DIVISION : RACINE COUNTY

STATE OF WISCONSIN,
Plaintiff,

vs. **Case No. 96-CF-193**

JOHN J. CZERNIEJEWSKI, dob: 12/27/56
Defendant(s).

AMENDED INFORMATION

I, ROBERT S. FLANCHER, District Attorney for Racine County, State of Wisconsin, do hereby inform the Court that **in July, A.D., 1995,** in the County of Milwaukee, State of Wisconsin, said defendant(s) did:

COUNT 1: knowingly, unlawfully and feloniously obtain a prescription drug by fraud, as an habitual offender,

contrary to the form of the statute, **section 450.11(7)(a) and 939.62(1)(a),** in such case made and provided, and against the peace and dignity of the State of Wisconsin.

COUNT 2: intentionally and unlawfully take and carry away the movable property of Elden Bodendorfer without the owner's consent and with intent to deprive the owner permanently of possession of such property, as an habitual offender,

contrary to the form of the statute, **section 943.20(1)(a) and 939.62(1)(a),** in such case made and provided, and against the peace and dignity of the State of Wisconsin.

And, I do further inform the Court that said defendant was convicted of a felony offense, to-wit:

Obtaining a Prescription Drug by Fraud on 03/11/91, Case No. 2-019647;

Attempt to obtain a Prescription Drug by Willful Misrepresentation on 07/21/93, Case No. 2-306272;

Theft of a Controlled Substance on 06/04/91, Case No. 2-106252;

in the Milwaukee County Circuit Court, and that said conviction is within five (5) years of the dates of the above offenses excluding any time in custody, and that said conviction remains of record and unreversed,

contrary to the form of the statute, **section 939.62,** in such case made and provided and against the peace and dignity of the State of Wisconsin.

Dated at Racine, Wisconsin this _____ day of _____, 1996.

Robert S. Flancher

Robert S. Flancher, District Attorney
Racine County, Wisconsin
State Bar No. 01015530

P.O. ADDRESS:
Racine County District Attorney
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403
414/636-3172

inform.mar:120

STATE OF WISCONSIN
Circuit Court, Milwaukee County } SS.

I, GARY J BARCZAK, Clerk of the Circuit Court, Director of Court Services, do hereby certify that I have compared the foregoing copy X with the original

JUDGMENT OF CONVICTION IN COURT CASE NO. 2-306272;

STATE OF WISCONSIN VS JOHN CZERNIEJEWSKI.

entered in the action therein entitled, that it is a correct transcript therefrom and of the whole thereof as the same remains of record in my office

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, on January 20, 1997
(Month, Day, Year)

Gary J Barczak
Clerk of the Circuit Court
Criminal Division

2813 R5

EXHIBIT B

WISCONSIN CIRCUIT BRANCH #44 MILWAUKEE COUNTY

State of Wisconsin, Plaintiff
-vs-
John Czerniejewski, Defendant
12-27-56
Defendant's Date of Birth

TYPE OF CONVICTION (Select One)
___ Sentence to Wisconsin State Prisons
___ Sentence Withheld, Probation Ordered
✓ Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER 2-306272

The defendant entered plea(s) of: [X] Guilty [ ] Not Guilty [ ] No Contest

The [X] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
Attempt to obtain a Prescription Drug by Willful Misrepresentation	450 11	M		6-3-93

FILED
CRIMINAL DIVISION
JUL 21 1993
GARY J. BARCZAK
CLERK OF CIRCUIT COURT

IT IS ADJUDGED that the defendant is convicted on 7-21-93 as found guilty and:

[ ] on _____ is sentenced to prison for _____

[ ] on _____ is sentenced to intensive sanctions for _____

[X] on 7-21-93 is sentenced to county ~~jail~~/HOC for 6 months

[X] on 7-21-93 is placed on probation for 2 years

CONDITIONS OF SENTENCE/PROBATION

Obligations: (Total amounts only)

Fine $ 100.00 incl
(Includes jail assessments; drug assessments; penalty assessments) VWSC, & surcharges

Court costs $ 40.00+
(Includes service fees; witness fees; restitution surcharge; domestic abuse fees; subpoena fees; automation fees) appl. surcharge

Attorney fees included in $100 fine $ _____
Restitution $ _____

Other $ _____
Mandatory victim/witness surcharge(s)
felony _____ counts $ _____
misdemeanor 1 counts $ 30.00

Jail: To be incarcerated in the county jail/HOC for _____

Confinement Order For Intensive Sanctions sentence only - length of term: _____

Miscellaneous AODA treatment + program, mental health assessment, no illegal use of drugs, 2 urine screenings each week as necessary, 100 hrs. of community service in the first year of probation

IT IS ADJUDGED that — days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of _____

NAME OF JUDGE DANIEL L. KONKOL

DISTRICT ATTORNEY Steve Biedrzycki

DEFENSE ATTORNEY Michael Chernin

BY THE COURT: Diane Smolarek
~~Circuit Court~~ Judge/Clerk/Deputy Clerk

7-21-93
Date Signed

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

COURT COPY
DO NOT REMOVE

STATE OF WISCONSIN CRIMINAL DIVISION MILWAUKEE COU

STATE OF WISCONSIN, Plaintiff(s) Page

vs

JOHN J. CZERNIEJEWSKI 122756
3034 S. 15th Place
Milwaukee, WI 53215

Defendant(s)

CRIMINAL COMPLAINT

CRIME(S) OR VIOLATION(S)
Attempt to Obtain a Prescriptio
Drug by Willful Misrepresentati

STATUTE(S) OR ORDINANCE(S) VIOLATED
450.11(7)(a)(9)

COMPLAINING WITNESS

CASE NUMBER 2306272

THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN SAYS THAT THE ABOV NAMED DEFENDANT(S) IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN

On June 3, 1993, at 3333 S. 27th Street, City of Milwaukee, did attempt obtain possession of a controlled substance, to wit: Vicodan, E.S. #60 by willful misrepresentation, contrary to Wisconsin Statute section 450.11(7)(a)(9).

Upon conviction of this charge, the maximum possible penalty shall be a fine of not more than $500 or imprisonment for not more than 6 months, o both.

~~Upon conviction of this offense, the court shall suspend or revoke the defendant's operating privilege for not less than 6 months not more tha years pursuant to section 161.50(1), Stats. If the court suspends the defendant's operating privileges, the court shall impose a reinstatement assessment fee of $50.00.~~

Complainant states that he is a City of Milwaukee police officer and bas this report upon the following:

Complainant's reading of an official City of Milwaukee Police Department ~~report prepared by fellow~~ City of Milwaukee Police Officer Kenneth Kmichik, whose reports complainant has relied on in the past and found t be truthful and reliable and has been used in the regular course of business and the City of Milwaukee Police Department. Said reports reflect that on June 4, 1993, Police Officer Kenneth Kmichik was dispatched to a forgery complaint for a prescription at Walgreens Drug Store, 3333 S. 27th Street, City of Milwaukee, Milwaukee County, Wisconsin. Officer Kmichik spoke with the pharmacist, Cheryl A. Peters, who is employed by the Walgreens Drug Store, located at 3333 S. 27th Street, City and County of Milwaukee, State of Wisconsin, who stated tha on June 3, 1993, at approximately 3:15 p.m., a person identified himself as John Czerniejewski presented a prescription for "Vicodan" E.S. #60 to be filled. Peters was suspicious about the way that the prescription wa written and told John Czerniejewski that the prescription could not be filled until the next day.

Complainant further states that a review of the reports revealed that on June 4, 1993, another pharmacist from the Walgreens Drug Store contacted Dr. Krishna S. Neni, who was the doctor's prescription and was informed that no prescription was filled out for John Czerniejewski for "Vicodan" and a note was attached to the prescription that the police should be

CIRCUIT COURT
STATE OF WISCONSIN CRIMINAL DIVISION MILWAUKEE COUN

STATE OF WISCONSIN, Plaintiff(s) Page 2

CRIMINAL COMPLAINT

vs

CRIME(S) OR VIOLATION(S)
Attempt to Obtain a Prescription Drug by Willful Misrepresentatio

JOHN J. CZERNIEJEWSKI 122756
3034 S. 15th Place
Milwaukee, WI 53215

STATUTE(S) OR ORDINANCE(S) VIOLATED
450.11(7)(a)(9)

Defendant(s)

COMPLAINING WITNESS

CASE NUMBER 2306272

called if anyone attempts to pick up the prescription.

Further, reports also indicate that Officer Kmichik spoke with Carol Czerniejewski, the sister of John Czerniejewski, who was contacted to pi up the prescription at Walgreens that he dropped off the previous day.

Complainant further states that he spoke with John Czerniejewski and defendant stated that he did drop off a prescription for Vicodan at Walgreens 6/3/93 but he works with Dr. Neni at the hospital and doctor h on numerous occasions filled out part of the prescription and let him fi out the rest. Defendant stated that there may be a problem with the prescription but he was told that it could not be filled until the next day and he already contacted Dr. Neni about it and that the officer was free to contact Neni and check that the doctor has prescribed Vicodan in the past.

Further, reports indicate that Dr. Krishna Neni was contacted by Officer Kmichik and stated that he had prescribed Vicodan for Czerniejewski in th past and the last time he could remember prescribing it was about two or two and a half weeks ago. Officer Kmichik informed Dr. Neni that the dat on the prescription was 5/26/93 and Dr. Neni stated he would have view th prescription. Dr. Neni later, on June 5, 1993, reviewed the prescriptior and stated he did not fill anything out on the prescription and that the signature is not his.

Further, reports also indicate that Officer Kmichik contacted Carolyn Peterson, and a photo array was shown and she identified the defendant John Czerniejewski as the person who handed her the forged prescription.

****END OF COMPLAINT****

SUBSCRIBED AND SWORN TO BEFORE ME
AND APPROVED FOR FILING July 21, 1993.

DEPUTY/ASST. DISTRICT ATTORNEY COMPLAINING WITNESS

-- MISDEMEANOR COMPLAINT --

CBULR:ch

STATE OF WISCONSIN
Circuit Court, Milwaukee County } SS.

I, GARY J BARCZAK, Clerk of the Circuit Court, Director of Court Services, do hereby certify that I have compared the foregoing copy X with the original

JUDGMENT OF CONVICTION IN COURT CASE NO. 2-106252;

STATE OF WISCONSIN VS JOHN CZERNIEJEWSKI.

entered in the action therein entitled, that it is a correct transcript therefrom and of the whole thereof as the same remains of record in my office.

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, on January 20, 1997 (Month, Day, Year)

Gary J Barczak
Clerk of the Circuit Court
Criminal Division

2813 R5

EXHIBIT C

WISCONSIN CIRCUIT BRANCH # 32 MILWAUKEE COUNTY

State of Wisconsin, Plaintiff

-vs-

John J. Czernejewski, Defendant

12-27-56
Defendant's Date of Birth

JUDGMENT OF CONVICTION

- [ ] Sentence to Wisconsin State Prisons
- [ ] Sentence Withheld, Probation Ordered
- [x] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER 2-106252

The defendant entered plea(s) of: [ ] Guilty [ ] Not Guilty [x] No Contest

The [x] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
Theft of a Controlled Substance (Morphine)	943.20(1)(a) 943.20(3)(a)	M	A	3-21-91

FILED
36 JUN 28 1991 36
GARY J. BARCZAK
CLERK OF CIRCUIT COURT

The defendant is convicted on 4 day of June 19 91.
The defendant is sentenced on 28 day of June 19 91.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

- [x] is sentenced to the Wis. prison for 9 months HOC
- [x] is placed on probation for 2 years Concurrent to present probation
- [x] is to be incarcerated in the County Jail:
  period of 30 days HOC
  and

- [x] is to pay:
  fine of ..... $
  court costs of ..... 30 within 60 days
  attorney fees of .....
  restitution of ..... as determined by dept
  TOTAL $

- [x] is to pay mandatory victim/witness surcharge(s):
  felony ____ counts ..... $
  misdemeanor 1 counts..... 30 within 60 days
  TOTAL $ 30

- [x] is granted work/study release privileges. & counseling programs
- [x] other: Urine screening, 60 hours community service within 120 days, possess no drugs other than prescribed medications

IT IS ADJUDGED that 8 days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of _____.

NAME OF JUDGE: Joseph P. Callan
DISTRICT ATTORNEY: Mark Michael Steinhafel
DEFENSE ATTORNEY: Michael Chernin

BY THE COURT:

Joseph P. Callan
Circuit Court Judge/Clerk/Deputy Clerk

6-28-91
Date Signed

COURT COPY
DO NOT REMOVE

CIRCUIT COURT

STATE OF WISCONSIN CRIMINAL DIVISION MILWAUKEE COUNT

STATE OF WISCONSIN, Plaintiff

VS.

John J. Czerniejewski 12/27/56
3034 South 15 Place
Milwaukee, WI 53215

Defendant.

CRIMINAL COMPLAINT

CRIME OR VIOLATION:

Theft of a Controlled Substance (Morphine)

STATUTE OR ORDINANCE VIOLATED:

943.20(1)(a) and 943.20(3)(a)

COMPLAINING WITNESS:

Fred Bohlmann

CASE NUMBER: Z-10[illegible]

THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN SAYS THAT THE ABOVE NAMED DEFENDANT(S) IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN,

on March 21, 1991, at 3777 South 18 Street, Milwaukee, Wisconsin, did intentionally take and carry away movable property of Anthony Hubert without the consent of said person and with intent to deprive the owner permanently of possession of such property, contrary to Wisconsin Statute section 943.20(1)(a) and 943.20(3)(a).

Upon conviction of this charge, a Class A misdemeanor, the maximum possib penalty is a fine of not more than $10,000 or imprisonment for not more than 9 months or both.

Complainant states that he is a City of Milwaukee police officer. He bas this complaint upon information and belief.

Complainant states that he has reviewed a report prepared by Detective Thomas Casper of the City of Milwaukee Police Department. Complainant believes this report to be truthful and reliable as it was prepared in th ordinary course of the City of Milwaukee Police Department's business. Detective Casper reports that he spoke to Rose Hubert. Ms. Hubert stated that she is married to Anthony Hubert. She further states that she is responsible for providing her husband, Anthony Hubert, with morphine because he is a terminally ill cancer patient. She further indicated tha she obtains prescriptions for this morphine from her husband's doctor and has them filled at the Langer Pharmacy in the City of Milwaukee. She further stated to Detective Casper that she and her husband, Anthony,

reside at the above address in the City and County of Milwaukee, State of Wisconsin.

She further stated to Detective Casper that she knows the above named defendant. She stated that the above named defendant is a respiratory therapist who monitors her husband's oxygen supply on a scheduled basis.

Ms. Hubert further reports that on March 18, 1991, she obtained a prescription from her husband's doctor, Dr. Hanson, for morphine, an opiat which is a Schedule II controlled substance. Ms. Hubert states that she had the prescription filled at the Langer pharmacy which is located in the City of Milwaukee. She was provided a prescription for 100 tablets of morphine with the directions that the morphine be taken four times per day She further states that on March 21, 1991, at 9:30 a.m., she provided her husband with a morphine tablet. She stated at that time she observed that the morphine vial was filled and she removed one of the morphine tablets from the top of the vial. Later that evening, Ms. Hubert stated that she provided her husband with a morphine tablet and noted that the vial was almost empty. She poured out the remaining tablets and recovered the eight tablets that were remaining. She indicated that based upon the prescription recommended by the doctor, there should have been 81 tablets left in the vial.

Ms. Hubert further stated that she spoke to her husband, Tony, who denied taking any drugs other than that which she (Rose) had provided to him. She further stated that the only person in her house on that day was the defendant. She states that at approximately 1:00 p.m. on the above date, the defendant came to her house unexpectedly with bags of medical supplies She further states that the defendant placed a bag on the kitchen counter next to the place where Ms. Hubert keeps her morphine tablets. The defendant stated to Ms. Hubert at that time that the family doctor, Dr. Gary Kuhl, contacted the defendant and indicated that the defendant should go to the Hubert household and walk with Anthony so that he could measure Anthony's oxygen count. She further states that at one point in time she observed the defendant enter the kitchen area and that the defendant was alone in the kitchen area for a short period of time. She further indicated to Detective Casper that the defendant provided her with no receipt for the visit. She indicated that if the defendant's visit was scheduled by the defendant's employer, a receipt would be provided.

Ms. Hubert further told Detective Casper that on March 22, 1991, she contacted Dr. Kuhl. Dr. Kuhl stated to her that he never had any contact with the defendant and told the defendant to get Tony up and have him walk Dr. Kuhl further told Ms. Hubert that he did not know the therapist, that he had never talked to the therapist, and never recommended that this be done.

PAGE 3 RE: JOHN J. CZERNIEJEWSKI
DOB 12/27/56

Ms. Hubert further indicates that no one other than she, her husband, or the defendant were present in the premises on March 21, 1991. She furthe reports that it was only after the defendant's visit that she noticed the pills missing. She further states that neither she nor anybody else gave permission to the defendant to take and carry away these pills.

**** END OF COMPLAINT ****

SUBSCRIBED AND SWORN TO BEFORE ME
AND APPROVED FOR FILING 5-2-91

ASSISTANT DISTRICT ATTORNEY

COMPLAINING WITNESS

DLATumb.

-- MISDEMEANOR COMPLAINT --

FILED
CRIMINAL DIVISION

MAY 0 2 1991

GARY J. BARCZAK
CLERK OF COURTS

STATE OF WISCONSIN
Circuit Court, Milwaukee County } SS.

I, GARY J BARCZAK, Clerk of the Circuit Court, Director of Court Services, do hereby certify that I have compared the foregoing copy X with the original

JUDGMENT OF CONVICTION IN COURT CASE NO. 2-019647;

STATE OF WISCONSIN VS JOHN CZERNIEJEWSKI:

entered in the action therein entitled, that it is a correct transcript therefrom and of the whole thereof as the same remains of record in my office.

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, on January 20, 1997 (Month, Day, Year)

Gary J Barczak

Clerk of the Circuit Court
Criminal Division

2813 R5

EXHIBIT D

WISCONSIN CIRCUIT BRANCH # 38 Milwaukee COUNTY

State of Wisconsin, Plaintiff

-vs-

JOHN J. CZERNIEJEWSKI, Defendant

12-27-56
Defendant's Date of Birth

JUDGMENT OF CONVICTION

[ ] Sentence to Wisconsin State Prisons

[X] Sentence Withheld, Probation Ordered

[ ] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER 2-019647

The defendant entered plea(s) of: [X] Guilty [ ] Not Guilty [ ] No Contest

The [X] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
OBTAINING A PRESCRIPTION DRUG BY FRAUD	450.11(7)(a)	M		12-4-90

The defendant is convicted on 11th day of Mar 19 91.
The defendant is sentenced on 11th day of Mar 19 91.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

[ ] is sentenced to the Wisconsin House of Correction for _____.

[X] is placed on probation for One (1) Year.

[X] is to pay:

fine of ..... $ _____
attorney fees of ..... _____
court costs of 30.00
restitution of ..... _____
TOTAL $ _____

[X] is to pay mandatory victim/witness surcharge(s):

felony _____ counts ..... $ _____
misdemeanor 1 counts..... _____
TOTAL $ _____

[ ] is to be incarcerated in the County House of Correction for a period of ..... _____

[ ] is granted work/study release privileges.

[X] other: Deft to continue any drug & alcohol treatment deemed necessary.

FILED
CRIMINAL DIVISION
38 MAR 11 1991 38
GARY J. BAROZZARY
CLERK OF COURTS

IT IS ADJUDGED that none days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of Milwaukee, Wisconsin.

BY THE COURT:

Circuit Court Judge/Commissioner

3/11/91
Date Signed

NAME OF JUDGE
JEFFREY A. WAGNER

PLAINTIFF'S ATTORNEY
E. MICHAEL MC CANN (WH)

DEFENSE ATTORNEY
MICHAEL CHERNIN

STATE OF WISCONSIN

CIRCUIT COURT
CRIMINAL DIVISION

MILWAUKEE COUN

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Page

STATE OF WISCONSIN Plaintiff.

Czerniejewski, John Joseph 122756
3034 S. 15th Place
Milwaukee, Wisconsin

Defendant(s)

CRIMINAL COMPLAINT

CRIME(S) OR VIOLATION(S)
Obtaining a Prescription
Drug by Fraud

STATUTE(S) OR ORDINANCE(S) VIOLATED
450.11(7)(a)

COMPLAINING WITNESS
Gracyalny, Devan P.

CASE NUMBER
2019647

THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN SAYS THAT THE ABOVE NAMED DEFENDANT(S) IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN

On December 4, 1990 at 2400 S. 90th Street, in the City of West Allis, County of Milwaukee, State of Wisconsin, did obtain a prescription drug, to wit: Tussionex, by fraud, contrary to Wisconsin Statutes section 450.11(7)(a).

Upon conviction of this offense, the maximum possible penalty is a fine of not more than $500 or imprisonment for not more than 6 months, or both.

Complainant states that he is a detective for the City of West Allis Police Department and that he makes this complaint upon the following:

Upon a statement of Richard Kozlosky, an adult citizen, Kozlosky stated that he is a pharmacist employed by Richard's Pharmacy which is located at 2400 S. 90th Street, in the City of West Allis, Wisconsin. Kozlosky stated that on Tuesday, December 4, 1990, he received a call requesting a refill for a prescription for a patient named Sneto Radsenovich. Kozlosky stated that Radsenovich was a long time customer at his pharmacy and that the prescription requested was for Tussionex Pennkinetic Extended Release Suspension, which is Schedule II Narcotic medication containing Hydrocodone controlled by section 161.16(2)(a)(7) of the Wisconsin Statutes. Kozlosky stated that said statutes require a prescription prior to dispensing said medication. Kozlosky stated that a short time later a man, whom he has subsequently identified as the defendant, came into the pharmacy and picked up this prescription. Kozlosky stated that he later spoke to members of the Radsenovich family who told him that they had not authorized the defendant to obtain this medication.

Complainant further bases this complaint upon a statement of Donna Radsenovich. Radsenovich stated that she is Sneto Radsenovich's daughter and that she knows the defendant to be a respiratory therapist who delivers oxygen to her father's home and who had expressed interest and curiosity in her father's medication during several visits to the home. Donna Radsenovich further stated that on several occasions the defendant had gone so far as to write down the names of the medication taken by her father. Donna Radsenovich stated that her father never received the medications

STATE OF WISCONSIN

CIRCUIT COURT
CRIMINAL DIVISION

MILWAUKEE COUNT

STATE OF WISCONSIN, Plaintiff.

Czerniejewski, John Joseph 122756
3034 S. 15th Place
Milwaukee, Wisconsin

Defendant(s)

CRIMINAL COMPLAINT

CRIME(S) OR VIOLATION(S)
Obtaining a Prescription Drug by Fraud

STATUTE(S) OR ORDINANCE(S) VIOLATED
450.11(7)(a)

COMPLAINING WITNESS
Gracyalny, Devan P.

CASE NUMBER

that were procured by the defendant nor did she or anyone else from the Radsenovich family authorize the defendant to obtain this medication or represent himself to be authorized to do so.

**** END OF COMPLAINT ****

SUBSCRIBED AND SWORN TO BEFORE ME
AND APPROVED FOR FILING December 22, 1990

DEPUTY/ASST. DISTRICT ATTORNEY — COMPLAINING WITNESS
CKRAFT

-- MISDEMEANOR COMPLAINT --

166m-12229005

FILED
CRIMINAL DIVISION
DEC 2 2 1990
GARY J. BARCZAK
CLERK OF COURTS

7831 R2

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JOHN J. CZERNIEJEWSKI, RESPONDENT	: : : : :	STIPULATION 96 MED 401

It is hereby stipulated between John J. Czerniejewski, personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Mr. Czerniejewski's licensure by the Division of Enforcement (96 MED 401). Mr. Czerniejewski consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Mr. Czerniejewski 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 Americans with Disabilities Act of 1990, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Mr. Czerniejewski is aware of his right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this stipulation.

4. Mr. Czerniejewski agrees 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.

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, 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. Attached to this Stipulation is the certificate and current licensure card of John J. Czerniejewski. If the Board accepts the Stipulation, Mr. Czerniejewski's license shall be reissued only in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the credentials of Mr. Czerniejewski shall be returned to his with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this stipulation agree that member of the Board assigned to this case as an advisor and the attorney for the Division of Enforcement may appear before the final decision maker in these proceedings for the purposes of speaking in support of this agreement and answering questions that the final decision maker may have in connection with his or her deliberations on the stipulation.

8. The Division of Enforcement joins Mr. Czerniejewski in recommending the Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

John Czerniejewski
John J. Czerniejewski

4/1/97
Date

Steven M. Gloe
Steven M. Gloe, Attorney
Division of Enforcement

4/3/97
Date

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

In the Matter of the Disciplinary Proceedings Against

John J. Czerniejewski,

Respondent.

AFFIDAVIT OF MAILING

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 April 24, 1997, I served the Final Decision and Order dated April 23, 1997 upon the Respondent John J. Czerniejewski by enclosing a true and accurate copy of the above-described document 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 P 201 374 182.

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:

John J. Czerniejewski
Oak Hill Correctional Institution
P.O. Box 238
Oregon WI 53575-0238

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 24th day of April, 1997.

John Schweitzer

Notary Public, State of Wisconsin
My commission is permanent.

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.

Serve Petition for Rehearing or Judicial Review on:

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

The Date of Mailing this Decision is:

April 24, 1997

1. 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 sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

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

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision 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.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

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.

227.53 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, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank 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 5.

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.

5. The savings bank 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 bank 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, the savings and loan review board and the savings bank 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.