

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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DOE
1981

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DENNIS M. BREIDENBACH,
RESPONDENT.

FINAL DECISION
AND ORDER

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

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board. Let a copy of this order be served on the respondent by certified mail.

Dated this 19th day of March, 1981.

Louisa Van Oort Smith

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Dept. of Regulation & Licensing
Div. of Consumer Complaints

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : PROPOSED DECISION
DENNIS M. BREIDENBACH, :
RESPONDENT. :

A Complaint was filed in the above-captioned matter on January 14, 1981. An Answer was filed on February 3, 1981 in which respondent admitted all of the allegations contained within the Complaint.

On February 23, 1981 a hearing was held in Room 291 at 1400 East Washington Avenue, Madison, Wisconsin. The purpose of the hearing was to provide respondent with an opportunity to present testimony and other evidence in mitigation of the allegations within the Complaint. The parties presented a stipulation to the Hearing Examiner containing the terms of a proposed disposition of this case. The stipulation was received into the record as Exhibit #1. At the conclusion of the hearing, the parties agreed that the suspension agreed upon could commence the date following the decision rendered by the Pharmacy Examining Board.

Based upon the pleadings and stipulation on file herein, and the evidence heard and received at the hearing, the Hearing Examiner recommends that the Pharmacy Examining Board adopt as its final decision in this case the following Findings of Fact, Conclusions of Law, and Order which are the terms agreed upon by the parties.

FINDINGS OF FACT

1. Dennis M. Breidenbach (Breidenbach) was, at all times material to this proceeding duly licensed under the provisions of Chapter 450 of the Wisconsin Statutes, to practice as a registered pharmacist in the State of Wisconsin.
2. Breidenbach's pharmacy license number is R-8484 and was granted on June 21, 1973.
3. Breidenbach's address is Route 4, Switzke Road, Watertown, Wisconsin 53094.
4. Breidenbach was convicted of a felony violation of Section 49.49(1)(a) of the Wisconsin Statutes (Medicaid Fraud) upon a plea of guilty on December 8, 1980, in Branch 12, of the Circuit Court for Dane County, Judge Mark A. Frankel presiding.
5. The criminal complaint in said matter charged that Breidenbach, from on or about October 1, 1978, through on or about December 31, 1979, at Jefferson County, State of Wisconsin, as a pattern of continuous conduct, did knowingly and willfully make or cause to be made false statements or representations of material fact in application for payment in connection

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with the Medical Assistance Program, to wit: Breidenbach claimed and received monies from the Wisconsin Medical Assistance Program for prescriptions representing that they were validly prescribed by a licensed physician, podiatrist or dentist, and that the drugs so prescribed were provided by him to the named patients, when in truth and in fact, as Breidenbach well knew, he had, himself, created fake prescriptions and never provided the drugs purported to be prescribed to the patients named in such fake prescriptions, all contrary to Section 49.49(1)(a)1. of the Wisconsin Statutes.

6. Breidenbach committed the acts as charged in said criminal complaint.

7. The maximum penalty for conviction for said felony is a fine of not more than \$25,000 or imprisonment for not more than five years or both.

8. Following conviction for said felony on December 8, 1980, the sentencing of Breidenbach on said charge was withheld and deferred and Breidenbach was placed on probation for a period of two years with a condition of probation being that restitution in the amount of \$7,000 be made to the Medical Assistance Program.

9. Breidenbach's wife, Nanette M. Breidenbach, owns all of the stock of Wisconsin Medical Care, Inc., doing business as Omro Pharmacy in Omro, Wisconsin, and that said stock owned by Breidenbach's wife was previously owned by Breidenbach.

10. Breidenbach is not now in charge of the operation of said pharmacy, is not employed by said pharmacy and is not a corporate officer of Wisconsin Medical Care, Inc.

11. Suspension or revocation of Breidenbach's license would seriously impair, if not negate, his financial ability to fulfill the terms of his probation, as set forth in paragraph 8 above.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction to take disciplinary action in this proceeding pursuant to sec. 227.07(5), Wis. Stats., and sec. 450.02(7)(a), Wis. Stats.

2. The circumstances of a felony conviction for Medicaid Fraud under sec. 49.49(1)(a)1., Wis. Stats., are substantially related to the practice of pharmacy.

3. The felony conviction of Breidenbach for Medicaid Fraud under sec. 49.49(1)(a)1., Wis. Stats., is grounds for disciplinary action pursuant to sec. 450.02(7)(a), Wis. Stats.

ORDER

NOW THEREFORE, it is ordered that the license of Dennis M. Breidenbach, shall be and hereby is suspended, effective the day following the date of the Final Decision and Order rendered by the board, for a period of two

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years, said suspension being stayed on the condition that Breidenbach successfully complete his probation imposed in Circuit Court, Branch 12, Dane County, Wisconsin.

IT IS FURTHER ORDERED that should Breidenbach be found to be in violation of the terms of said probation, the two-year suspension becomes effective on the date his probation is revoked and said suspension will run for two years from said date.

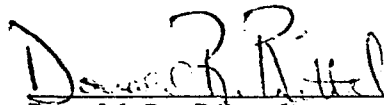
IT IS FURTHER ORDERED that should Breidenbach be convicted of a violation of Chapter 450 of the Wisconsin Statutes, Wisconsin Administrative Code Chapters Phar, or any statute or rule substantially related to the practice of pharmacy arising during the effective period of this Order, the two-year suspension becomes effective on the date of conviction and said suspension will run for two years from said date.

IT IS FURTHER ORDERED that the license of Breidenbach is limited as follows:

1. For two years from the effective date of this Order, Breidenbach may not own or be a part owner of a pharmacy unless permission is granted by the Pharmacy Examining Board;
2. For one year from the effective date of this Order, Breidenbach may not be a pharmacist-in-charge of a pharmacy unless permission is granted by the Pharmacy Examining Board; and
3. For one year from the effective date of this Order, Breidenbach may not work at, or in any way participate in the billings of the sales of the pharmacy owned by, Wisconsin Medical Care, Inc., doing business as Omro Pharmacy in Omro, Wisconsin, unless permission is granted by the Pharmacy Examining Board.

Dated at Madison, Wisconsin this 24th day of February, 1981.

Respectfully submitted,



Donald R. Rittel
Hearing Examiner

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Dept. of Regulation & Licensing
Div. of Consumer Protection

