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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
RICHARD S. NISSENBAUM, : FINAL DECISION
 : AND ORDER
RESPONDENT. :

The parties to this proceeding for the purposes of Wis. Stats.
sec. 227.16 are:

Richard S. Nissenbaum
2320 West Greenwood Road
Glendale, Wisconsin 53209

Pharmacy Examining Board
1400 East Washington Avenue, Room 178
P.O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P.O. Box 8936
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter on June 9, 1983 at 1400 East Washington Avenue, Madison, Wisconsin. The respondent, Richard S. Nissenbaum, appeared personally and by his attorney, Stephen M. Glynn, Shellow, Shellow & Glynn, S.C., 222 East Mason Street, Milwaukee, Wisconsin 53202. The complainant was represented by an attorney, Michael J. Berndt, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8936, Madison, Wisconsin.

Prior to the hearing the parties filed a Stipulation containing mutually agreed upon Findings of Fact and Conclusions of Law. A proposed decision was filed by the examiner, Donald Rittel, on August 15, 1983.

The State of Wisconsin Pharmacy Examining Board, having considered the above-entitled matter and having reviewed the record including the "Complainant's Objections to Proposed Decision" and "Respondent's Response to Complainant's Objections to Proposed Decision", makes the following Findings of Fact, Conclusions of Law, Order and Explanation of Variance.

FINDINGS OF FACT

1. Richard S. Nissenbaum, hereinafter called the Respondent, was at all times material to this complaint duly licensed under the provisions of

chapter 450 of the Wisconsin Statutes to practice as a registered pharmacist in the State of Wisconsin.

2. The Respondent's pharmacist license is number 7908. The license was granted on July 31, 1969.

3. The Respondent's address is 2320 West Greenwood Road, Glendale, Wisconsin 53209.

4. At all times relevant to the complaint the Respondent worked at Prentice Pharmacy at 2306 South Kinnickinnic Avenue, Milwaukee, Wisconsin and was the pharmacist-in-charge of said pharmacy.

5. The Respondent was convicted of two violations of section 450.07(4), Wis. Stats., upon pleas of no contest on September 9, 1981, in Branch 35 of the Circuit Court for Milwaukee County, Judge Lee E. Wells presiding.

6. The criminal complaint in said matter charged that on December 27, 1979, at 2306 South Kinnickinnic Avenue, in the City and County of Milwaukee, the Respondent did deliver a prescription drug, 12 Darvon N-100 pills in a container which failed to disclose the date on which the prescriptions was filled, the name of the practitioner who prescribed the drug and the directions for use. Instead, the Respondent placed the pills into a vial which was dated May 11, 1979, contrary to section 450.07(4), Wis. Stats. On January 8, 1980, at 2306 South Kinnickinnic Avenue in the City and County of Milwaukee, the Respondent did deliver a prescription drug, 8 Darvon N-100 pills in a container which failed to disclose the date on which the prescription was filled, the name of the practitioner who prescribed the drug, and the directions for use of the drug, contrary to section 450.07(4), Wis. Stats.

7. The circumstances of said convictions substantially relate to the circumstances of the practice of pharmacy.

8. The Schedule V exempt narcotic sales record for Prentice Pharmacy was examined for the period December 21, 1980 through January 27, 1981, and said record indicated the following:

- (a) That on December 28, 1980, pharmacist Marcus A. Mattioli dispensed and sold four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance to C. Beaudin and that later in the day on December 28, 1980, the Respondent dispensed and sold another four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance to C. Beaudin.
- (b) That on January 17, 1981, the Respondent dispensed and sold four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance, to C. Beaudin and on January 18, 1981, the Respondent dispensed and sold four ounces of Cheracol, a Schedule V controlled substance, to C. Beaudin.

- (c) That on both January 26 and 27, 1981, the Respondent dispensed and sold four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance to C. Beaudin.
- (d) That on January 11, 1981, pharmacist Marcus Mattioli dispensed and sold four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance, to Leon Beaudin and that later in the day on January 11, 1981, the Respondent dispensed and sold four ounces of Terpin Hydrate with Codeine Elixir, a Schedule V controlled substance to Leon Beaudin.

9. All of the sales described in paragraph 8 were made without the authorization of a physician, dentist or veterinarian.

10. As to Findings of Fact 8 and 9, the Respondent asserts that improper sales did not occur, but that improper record keeping did occur.

11. On March 28 and 29, 1980, a State of Wisconsin Pharmacy Inspector inspected the Prentice Pharmacy.

12. Said inspections revealed that said pharmacy was not maintained by the Respondent in a clean and orderly manner as required by section 450.02(10), Wis. Stats., and that the prescription counter space was not clear for the compounding of prescriptions or other pharmaceutical manufacturing and activities incident thereto, contrary to Wis. Adm. Code sec. Phar 1.04(2).

13. Subsequent to said inspection, the interior of the pharmacy was revamped in an effort to alleviate messy conditions.

14. On March 28 and 29, 1980, a controlled substances audit was performed by a State of Wisconsin Pharmacy Inspector for the period from May 2, 1979 to March 29, 1980.

15. Said controlled substances audited were Dilaudid 1 mg., 2 mg., 3 mg., and 4 mg.; Quaalude 300 mg.; Ritalin 5 mg., 10 mg., and 20 mg.; Percodan; Percocet; Pantopon tablets; Pantopon ampuls 1/3 gr./ml.; evo-Dromoran tablets 2 mg.; and Cocaine HCL Flakes.

16. That shortages were discovered in said audit as follows:

- (a) Dilaudid 2 mg. tablets were found to be 60 tablets short.
- (b) Dilaudid 4 mg. tablets were found to be 288 tablets short.
- (c) Quaalude 300 mg. tablets were found to be 56 tablets short.
- (d) Ritalin 10 mg. tablets were found to be 66 tablets short.
- (e) Ritalin 20 mg. tablets were found to be 327 tablets short.

17. On January 27, 1981, the State Pharmacy Inspector discovered an incomplete controlled substances order form. The Respondent had failed to record the number of packages received and the date of receipt.

18. On January 27, 1981, the State Pharmacy Inspector discovered incomplete records regarding dispensing transactions for the following information:

- (a) Addresses and registration numbers of practitioners.
- (b) Addresses of patients.
- (c) Occasional failures to note the names or initials of the individual dispensing the prescription.

19. On January 27, 1981 the State Pharmacy Inspector discovered incomplete required prescription profiles due to misfilings.

CONCLUSIONS OF LAW

1. As to Findings of Fact 5 through 7, the Respondent has been guilty of a violation of chapter 450, Wis. Stats., and has been convicted of a crime substantially related to the practice of pharmacy, contrary to Wis. Adm. Code sec. Phar 5.03(2).

2. As to Findings of Fact 8, 9 and 10, the Respondent has failed to maintain accurate records of each substance dispensed or disposed of in any manner, contrary to Wis. Adm. Code sec. Phar 6.02(1).

3. As to Findings of Fact 11, 12 and 13, the Respondent has failed to maintain a pharmacy in a clean and orderly manner as required by sec. 450.02(10), Wis. Stats., and has failed to keep the prescription counter space clear for the compounding of prescriptions or other pharmaceutical manufacturing and activities incident thereto, contrary to Wis. Adm. Code sec. Phar 1.04(2).

4. As to Findings of Fact 14, 15 and 16, the Respondent has failed to maintain complete and accurate records as required by Wis. Adm. Code sec. Phar 6.02(1).

5. As to Finding of Fact 17, the Respondent has violated Wis. Adm. Code sec. Phar 6.02(3)(c).

6. As to Finding of Fact 18, the Respondent has violated Wis. Adm. Code sec. Phar 6.02(3)(d).

7. As to Finding of Fact 19, the Respondent has violated Wis. Adm. Code sec. Phar 6.02(4).

8. The Pharmacy Examining Board has jurisdiction to take disciplinary action against the Respondent for the violations set forth in Conclusions of Law 1 through 7, pursuant to sec. 450.02(7), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Richard S. Nissenbaum to practice as a pharmacist in the State of Wisconsin shall be and hereby is limited for a period of two (2) years as follows:

1. Nissenbaum shall, at his expense, permit Theodore N. Tousman, or another pharmacist acceptable to the Pharmacy Examining Board, to monitor his practice of pharmacy, as follows:

- a. Nissenbaum shall meet with Tousman no less than every three months to discuss proper dispensing procedures as set forth by law.
- b. Nissenbaum shall permit Tousman to review his prescription and patient profile records to ascertain that his record keeping is consistent with the law.
- c. Nissenbaum shall permit Tousman to observe his filling of prescriptions in order to verify that such practice is consistent with the law.
- d. Nissenbaum shall permit Tousman to randomly audit his stock of controlled substances.
- e. Nissenbaum shall permit Tousman to file written reports with the Pharmacy Examining Board which contain Tousman's observations regarding Nissenbaum's record keeping, dispensing, and pharmacy practice. The written reports shall be filed with the board every four months, the first report being due on November 1, 1983. It shall be the responsibility of Nissenbaum to ensure that these reports are submitted on a timely basis.
- f. Nissenbaum shall implement any and all reasonable suggestions made by Tousman regarding the conduct of Nissenbaum's practice of pharmacy. In the event Nissenbaum refuses or otherwise fails to implement a pharmacy practice suggested by Tousman, Nissenbaum shall notify the Pharmacy Examining Board of such refusal in writing and set forth the reasons for failing or refusing to implement the suggestion.

2. Nissenbaum shall not dispense any Schedule V controlled substance except upon the prescription of a practitioner.

3. The violation by Nissenbaum of any of the above-enumerated limitations, after hearing and sufficient proof thereof, shall constitute grounds for disciplinary action against his license to practice pharmacy. Wis. Adm. Code sec. Phar 10.03(22).

IT IS FURTHER ORDERED that the license as a registered pharmacist number 7908 held by respondent Richard S. Nissenbaum shall be and hereby is suspended for a period of 15 days.

IT IS FURTHER ORDERED that the period of suspension and limitation in this order shall take effect on the 31st day after the date this decision is signed.

EXPLANATION OF VARIANCE

This final decision of the Pharmacy Examining Board incorporates the Findings of Fact, Conclusions of Law and Order proposed by the examiner. In addition to the limitation on license recommended by the examiner, the board orders a 15 day suspension.

The suspension is ordered to effectively express the board's disapproval of the respondent's conduct. This suspension is necessary notice to respondent and all Wisconsin pharmacists that violations of statutes and rules regulating the practice of pharmacy will not be tolerated. Although respondent has made significant efforts to assure his compliance with pharmacy regulations, because of the number and variety of violations recited in the findings and conclusions a suspension is needed to deter other licensees from engaging in similar conduct.

REHEARING AND JUDICIAL REVIEW

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Richard S. Nissenbaum.

A party aggrieved by this decision who is a resident of this state may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Pharmacy Examining Board.

Dated at Madison, Wisconsin this 27th day of September, 1983.

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

By: Robert Maile

Robert Maile
Chairman

RM:WD:kcb
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