

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

| | | |
|-----------------------------------|---|----------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION |
| | : | AND ORDER |
| MICHAEL E. WHEELER, R.Ph., | : | (83 PHM 43) |
| RESPONDENT. | : | |

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

Michael E. Wheeler, R.Ph.
1608 West South Street
Stoughton, WI 53589

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition 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. That Michael E. Wheeler, R.Ph., Respondent, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Stats., to practice as a registered pharmacist in the State of Wisconsin.
2. That the Respondent holds pharmacist license #7623, first issued on April 10, 1967.
3. That the Respondent's date of birth is May 25, 1941 and his current address is 1608 West South Street, Stoughton, Wisconsin 53589.
4. That the Respondent suffers from the disease of alcohol dependency, in remission.
5. That the Respondent has undergone an alcohol assessment at the Parkside Lodge of Wisconsin at Beloit. A copy of the assessment is attached as Exhibit A.
6. That the Respondent has been employed at Beloit Memorial Hospital since January, 1989 and has an excellent work record.

375-111100-1
100-111100-1

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to sec. 450.10(1), Stats. and Chapter Phar 10, Wis. Adm. Code.

2. That the Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED that effective on the date of this Order, the pharmacist license of Michael E. Wheeler, Respondent, shall be SUSPENDED for a period of not less than three (3) years. The Board in its discretion may restore Respondent's license to full, unlimited status only upon petition by Respondent after completion of the aforesaid suspension period, and a showing that Respondent has complied with all terms and conditions of this Order, and a demonstration that Respondent may practice pharmacy without condition or limitation.

1. The suspension shall be stayed for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. The Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that Respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Upon a showing by Respondent of successful compliance for a period of three years with the terms of paragraph 2., below, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a and 2.b shall be due on the following dates:

March 1, 1991, and each and every June 1,
September 1, December 1, and March 1 thereafter
that this Order is in effect.

2. CONDITIONS OF STAY AND LIMITATIONS.

a. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the Board all medications prescribed to the Respondent within 3 days of such prescribing.

(1) Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals at least two times per month. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(2) If the Respondent's employer, the Pharmacy Examining Board or the Department of Regulation and Licensing, Division of Enforcement deem that blood or urine screens are warranted, Respondent shall submit to such screens as requested or recommended.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen.

The random drug and alcohol screening program may include weekends and holidays for collection of specimens.

The Respondent shall appear and provide a specimen not later than 5 hours following a request for a specimen.

The Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility shall agree to provide witnessed gatherings of specimens for analysis for all controlled substances and alcohol. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry(hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility shall agree to immediately file a written report directly with the Pharmacy Examining Board, and the Respondent's supervising pharmacist upon any of the following occurrences: if the Respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if the Respondent refuses to give a specimen for analysis upon a request authorized under the terms of this

Order. Respondent shall arrange for quarterly reports during quarters in which any screen is performed from the monitoring facility directly to the Board providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a formal record of the chain of custody of all specimens collected and subjected to analysis. The facility shall further agree to preserve any specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board.

b. Practice of Pharmacy: Limitations and Conditions. Any practice of Pharmacy by Respondent during the pendency of this Order shall be subject to the following terms and conditions:

(1) Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation program as specified and approved under this Order.

(2) That the Respondent may practice only at a place of employment preapproved by the Board. The Respondent's current place of employment, Beloit Memorial Hospital Pharmacy, is acceptable to the Board. The Respondent may petition the Board for a change in place of employment. The Board may make the grant of a change of place of employment contingent upon the modification of terms or addition of other terms to this Order.

(3) Respondent shall provide his employer and any prospective employers with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment.

(4) Respondent shall arrange for his supervising pharmacist to provide directly to the Board quarterly written reports evaluating Respondent's work performance, which shall include reports or information required under subparagraph (5) hereunder. Such reports shall be due on the dates specified in paragraph 1.d. of this Order.

(5) Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abusable drugs. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(6) Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

c. Upon request of the Board, the Respondent shall provide the Board with current releases complying with state and federal laws,

authorizing release of counseling, treatment and monitoring records, and employment records.

d. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

4. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.

5. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. A denial of such a petition for modification shall not be deemed a denial of license under sec. 227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

6. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

7. The Board in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where Respondent is employed as a pharmacist.

8. Violation of any of the terms of this Order or of any law substantially relating to the practice of pharmacy may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

9. This Order shall become effective immediately upon issuance by the Pharmacy Examining Board, except for provision 2.a., which is effective the date of signing by Respondent.

PHARMACY EXAMINING BOARD

By: Thomas M. C. Sneyd, R.Ph. 11/13/90
A Member of the Board Date

I, Michael E. Wheeler, have read and understood all parts of this Order and attached Stipulation, and pursuant to the attached Stipulation, hereby freely consent to the entry of the foregoing Final Decision and Order Adopting Stipulation by the Wisconsin Pharmacy Examining Board.

Michael E. Wheeler, R.Ph. OCTOBER 25, 1990
Michael E. Wheeler, R.Ph., Respondent Date

MJB:kcb
ATY-1277



PARKSIDE LODGE OF WISCONSIN AT BELOIT

2185 Shopiere Road
Beloit, WI 53511
608/365-2709

July 24, 1990

Pharmacy Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Re: Michael E. Wheeler, R. Ph.

Dear Sirs:

Mr. Michael E. Wheeler underwent an alcohol/drug assessment on February 5, 1990 at Parkside Lodge of Wisconsin/Beloit. The assessment included a Dependency Screening Questionnaire, treatment and family histories, substance abuse history and mental status screening. Collateral information was obtained from his employer representative and his spouse. His spouse's information took over five months to obtain; this was due to initial resistance by the client and then resistance by his spouse. She agreed to contact which made the overall assessment possible.

Mr. Wheeler did exhibit signs and symptoms of alcohol dependence, yet based on his and the collateral reporting he has been drinking one to two beers per month for the past seven years without exhibiting any signs/symptoms of dependence. This indicates full remission by utilizing the DSM III-R criteria.

Based on information provided, the recommendation included total abstinence and consistent involvement in a 12-step recovery program. Although treatment was not deemed appropriate at this time, urine drug screens may be beneficial for monitoring compliance.

If you desire more information, please contact Mr. Wheeler to arrange for the appropriate consent.

Sincerely,

Dan Twardowski

Dan Twardowski, MS (CADC II)
Counselor

DT:mm

Exhibit A



We believe in Human Ecology, the understanding and care of human beings as whole persons in light of their relationships to God, themselves, their families, and the society in which they live.

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

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90 NOV -2 PM 3:24
REGULATION & LICENSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL E. WHEELER, R.Ph.,
RESPONDENT.

STIPULATION
(83 PHM 43)

It is hereby stipulated between the parties as follows:

1. That this Stipulation is entered into as a result of a pending investigation by the Division of Enforcement, 83 PHM 43. Wheeler consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. That Wheeler understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by clear and convincing evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, 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.
3. That Wheeler neither admits nor denies the allegations in this matter, but agrees to the adoption of the attached Final Decision and Order by the Pharmacy Examining Board.
4. That if the terms of this Stipulation are not acceptable to the Board, then 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.
5. That if the Board accepts the terms of this Stipulation, then the parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.
6. That this agreement in no way prejudices the Pharmacy Examining Board from any further action against Wheeler based on any conduct not stated in the present Findings of Fact which might violate any statutes or rules which would constitute a basis for disciplinary action by the Pharmacy Examining Board.
7. That the Division of Enforcement joins Wheeler in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

RECEIVED

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Dept. of Regulation & Licensing

8. That the attorney for the Complainant and the Board Advisor may address the Board in either open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in favor of this agreement or answering any questions the Board may have.

9. That if this Stipulation is adopted by the Wisconsin Pharmacy Examining Board, then the attached order shall become effective as stated in the Order.

Date: 10/3/90

Michael J. Berndt
Michael J. Berndt, Attorney
Division of Enforcement

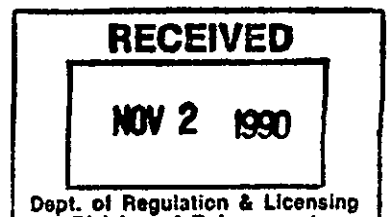
Date: 10-29-90

Michael E. Wheeler
Michael E. Wheeler, R.Ph.
Respondent

Date: 11/13/90

Thomas McLaughlin
A Member of the Board

MJB:kcb
ATY-1276



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 Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final 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 Pharmacy Examining Board.

The date of mailing of this decision is November 14, 1990.

WLD:dms
886-490

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 as 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) 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. 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 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. 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) Copies 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 all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(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.