

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 |
| ROBERT N. EVENSEN, R.Ph., | : | |
| RESPONDENT. | : | |

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

Robert N. Evensen, R.Ph.
Rt. 2, Thomas St.
Ripon, WI 54971

Wisconsin 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. Robert N. Evensen, R.Ph., Respondent, date of birth September 25, 1930, is a pharmacist duly licensed to practice pharmacy in the State of Wisconsin, pursuant to license number 6679, which was granted August 26, 1957. That Respondent's last address reported to the Wisconsin Department of Regulation and Licensing is Route 2, Thomas Street, Ripon, WI 54971.

2. That at all times relevant to this matter, Respondent was the managing pharmacist, required by sec. 450.09(1), Stats., of the Ripon Drug Store, located in Ripon, Wisconsin. As the managing pharmacist, Respondent was responsible for the professional operations of the pharmacy.

3. In January of 1988, the Ripon Drug Store had an opening for a delivery person/stockperson. Respondent interviewed applicants for the position.

4. On January 13, 1988, at the time that the pharmacy was closing for the evening, Respondent interviewed a young man for that position. In addition to questions regarding the young man's background and experience, the interview process included a mathematics test because the position required the handling of money.

DATE : 17/11/2011

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5. The delivery person/stockperson position also required lifting of heavy objects and a previous holder of that position had experienced difficulties with an inguinal hernia while employed at the pharmacy. Respondent performed a physical examination on the young man on January 13, 1988, by palpating the area to determine whether the young man suffered from an abdominal or inguinal hernia.

6. The Respondent had received training and had experience in fitting truss devices for abdominal and inguinal hernias and felt that he was competent to determine whether the job applicant had such a hernia.

7. That the "practice of pharmacy", as defined by sec. 450.01(16), Stats., does not include performing a physical examination to diagnose the existence of an abdominal or inguinal hernia.

8. The "practice of medicine and surgery", as defined by sec. 448.01(9) includes: examining into the fact, condition or cause of human health or disease; treating, operating, prescribing or advising for the same by any means or instrumentality; or applying principles or techniques of medical sciences in the diagnosis or prevention of any such conditions. Sec. 448.03, Stats., requires that a person have a license issued under sec. 448.02, Stats., in order to practice medicine and surgery.

9. Respondent is not licensed to practice medicine and surgery.

10. That performing a physical examination to determine whether an abdominal or inguinal hernia exists, as part of a pre-employment physical, is practicing beyond the scope of a pharmacist's license.

CONCLUSIONS OF LAW

1. That the Wisconsin Pharmacy Examining Board has jurisdiction over this matter pursuant to sec. 450.10, Stats.

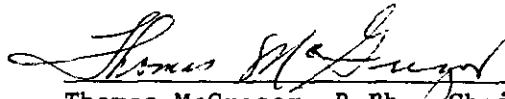
2. That the Wisconsin Pharmacy Examining Board has authority to enter into this stipulated resolution of this matter pursuant to sec. 227.44(5), Stats.

3. That by practicing beyond the scope of his pharmacy license, Respondent has violated sec. 450.10, Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Robert N. Evensen, R.Ph., be and hereby is REPRIMANDED for practicing beyond the scope of his pharmacist's license.

Dated at Madison, Wisconsin, this 22nd day of March, 1990



Thomas McGregor, R.Ph., Chair
Wisconsin Pharmacy Examining Board

JRZ:vec
DOEATTY-382

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

| | | |
|---------------------------------|---|-------------|
| IN THE MATTER OF THE LICENSE TO | : | |
| PRACTICE OF | : | |
| | : | STIPULATION |
| ROBERT N. EVENSEN, R.Ph., | : | |
| RESPONDENT. | : | |

It is hereby stipulated and agreed by and between Robert N. Evensen, R.Ph., Respondent; Paul J. Kilgore, attorney for Respondent; John R. Zwieg, attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Pharmacy Examining Board, as follows:

1. That Robert N. Evensen, R.Ph., date of birth September 25, 1930, is a pharmacist duly licensed to practice pharmacy in the State of Wisconsin pursuant to license number 6679, which was granted August 26, 1957.

2. That an investigation, 88 PHM 5, involving allegations of unprofessional conduct is currently pending against Respondent with the Wisconsin Department of Regulation and Licensing, Division of Enforcement.

3. That Respondent is aware of and understands each of his rights, including the right to have a disciplinary complaint issued against him; the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by clear, satisfactory and convincing 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 file objections to any proposed decisions and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for a rehearing; the right to appeal a final decision to the Wisconsin court system; and all other rights afforded him under the United States Constitution, the Wisconsin Constitution and the Wisconsin Statutes and Wisconsin Administrative Code.

4. That Respondent freely, voluntarily, and knowingly waives each and every one of the rights set forth in paragraph 3 above.

5. That Respondent agrees that the Wisconsin Pharmacy Examining Board may make and enter the attached Final Decision and Order.

6. That in consideration of the agreements contained in this Stipulation, and upon the making and entering of the attached Final Decision and Order, the Wisconsin Department of Regulation and Licensing, Division of Enforcement, investigation 88 PHM 5 shall be administratively closed.

7. That the Respondent, his attorney, the attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, and the Board Advisor may appear before the Wisconsin Pharmacy Examining Board to argue in favor of acceptance of this Stipulation and the issuance of the attached Final Decision and Order.

8. That in the event that any portion of this Stipulation or proposed Findings of Fact, Conclusions of Law, Order of Final Decision is not accepted by the Wisconsin Pharmacy Examining Board that the entire Stipulation and proposed Findings of Fact, Conclusions of Law, Order and Final Decision shall be void and have no effect. In the event that this resolution is not accepted by the Board, the parties agreed not to contend that the Board has been biased in any manner as a result of these documents being presented to the Board in this attempted resolution.

Dated this 23rd day of February, 1990.

Robert N. Evensen
Robert N. Evensen, R.Ph.
Licensee/Respondent

Dated this 23rd day of February, 1990.

Paul J. Kilgore
Paul J. Kilgore
Attorney For Licensee/Respondent

Dated this 14th day of February, 1990.

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

Dated this 22nd day of March, 1990.

Thomas McGregor R.Ph.
Thomas McGregor, R.Ph., Chair
Wisconsin Pharmacy Examining Board

JRZ:vec
DOEATTY-371

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 March 23, 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 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 employee 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 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. 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.