

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF THE
LICENSE OF

JOHN H. SAMUELSON, R.Ph.,
RESPONDENT.

REGULATION & LICENSING

FINAL DECISION AND ORDER
ADOPTING STIPULATION
89 PHM 5

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

John H. Samuelson, R.Ph.
24247 County Road M
Grantsburg, Wisconsin 54840

Pharmacy 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 a final decision in 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 H. Samuelson, R.Ph., Respondent herein, was at all times
relevant to this proceeding duly licensed under the provisions of Chapter 450,
Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin.
2. John H. Samuelson holds pharmacist license number 8478, first
granted May 24, 1973.
3. That the Respondent's date of birth is August 16, 1944 and current
address is 24247 County Road M, Grantsburg, WI 54840.
4. Respondent admits that he has obtained possession of and self
administered Schedule II, III and IV controlled substances as defined under
Chapter 161, Wis. Stats., without a valid prescription order of a
practitioner, and without any other proper permit, registration, or authority
granted by the Controlled Substances Board, the Drug Enforcement
Administration or under any applicable law.

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5. Respondent admits that he is dependent upon alcohol and controlled substances.

6. On or about March 2, 1990, Respondent entered inpatient treatment for chemical dependency at Hazelden Treatment Center, Center City, Minnesota, and was discharged on or about March 30, 1990. Following discharge from inpatient treatment, Respondent's rehabilitation program has included attendance at AA/NA meetings twice a week, after care group counselling meetings once a week, and urine screens twice a week. A report on Respondent's current rehabilitation status from Respondent's rehabilitation supervising physician/therapist is attached hereto as Exhibit A.

7. Respondent has been employed as a pharmacist at a retail pharmacy in Northwestern rural Wisconsin. Respondent's current managing pharmacist is knowledgeable of Respondent's chemical dependency as of March, 1990, and is supportive of Respondent's rehabilitation efforts. Respondent's employer represents that he has instituted a perpetual inventory system with spot checks of inventory to monitor controlled substances inventory. A report on Respondent's current employment status is attached hereto as Exhibit B.

8. Respondent, in consideration of this investigation and pursuant to the attached Stipulation, agrees to cooperate and abide by all requirements of the Pharmacy Examining Board concerning his chemical dependency. Respondent has agreed to continue in a chemical dependency rehabilitation program which shall be subject to approval by the Board, and abide by treatment and monitoring recommendations subject to the requirements of the Board, and agrees to practice limitations and monitoring as required by the Board.

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 Wis. Stats. sec. 450.10(1), and Wis. Adm. Code Ch. Phar 10.

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

3. Respondent's having been in possession of and used Schedule II, III and IV controlled substances without a valid prescription order of a practitioner in violation of sec. 161.41(3) and sec. 450.11(7)(h), Wis. Stats., Wis. Stats., are violations substantially related to the practice of pharmacy, and constitute unprofessional conduct under sec. 450.10(1)(a)2. and sec. Phar 10.03(1) and (3), Wis. Adm. Code, and subjects Respondent to discipline under sec. 450.10(1)(b), Wis. Stats.

4. Respondent practiced or attempted to practice pharmacy while his ability to competently perform the duties of a pharmacist were impaired by drug or alcohol abuse in violation of Wis. Adm. Code sec. 10.03(7) and Wis. Stats. sec. 450.10(1)(a)3. and is therefore subject to discipline under Wis. Stats. sec. 450.10(1)(b).

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 John H. Samuelson, Respondent, shall be SUSPENDED for a period of not less than five (5) 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 by Respondent that he has complied with all terms and conditions of this Order, and a demonstration by Respondent that he 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. The applications for extension under 1.a. and all required reports under 2.a-c. 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 supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the Respondent within 3 days of such prescribing.

b. Rehabilitation Program. Respondent shall remain in a rehabilitation program acceptable to the Board for the treatment of chemical abuse and dependency. Such a program shall consist of the following elements and requirements:

(1) Respondent shall continue in a chemical abuse and/or dependency treatment program under the care of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Pharmacy Examining Board approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total assessment and rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. If deemed appropriate by the Board Advisor to this case, the supervising physician or therapist shall be provided with copies of the Division of Enforcement's investigative materials regarding this matter for review in connection with rehabilitation and counselling. A full written report of the Respondent's chemical dependency evaluation and assessment shall be provided directly to the Board by the supervising physician or therapist within 30 days of the date of this order. The chemical dependency assessment report shall include:

- (a) An evaluation of Respondent's level of cooperation in the assessment and influence thereof on the assessment's conclusions,
- (b) Diagnosis of Respondent's condition,
- (c) Recommendations for treatment,
- (d) Recommended work restrictions if any, and
- (e) Prognosis for Respondent's success in rehabilitation.

The results of the evaluation and assessment shall be considered in establishing the elements and goals of Respondent's rehabilitation and treatment program, subject to the requirements of this order. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order.

(2) The rehabilitation program shall include and Respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the 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.

(3) Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than once weekly. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of all controlled substances and alcohol in his blood and/or urine on a frequency of not less than:

- (a) Eight times per month for the first year following the date of this order.
- (b) Six times per month for the second year following the date of this order.
- (c) Four times per month for the third through fifth years following the date of this order.

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

The random drug and alcohol screening program shall include weekends and holidays for collection of specimens. Failure of the drug and alcohol screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

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

If the physician or therapist supervising the Respondent's plan of care, Respondent's employer, the Pharmacy Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional blood or urine screens are warranted, Respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens as necessary to prevent ability of Respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met.

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 random and 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, the supervising physician or therapist, 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 from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.c. 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.

(5) Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in NA/AA meetings, and
- (c) Respondent's participation in and results of his random witnessed urine and/or blood screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.c. of this Order.

(6) Respondent shall arrange for agreement by his supervising physician or therapist to report immediately to the Board any conduct or condition of Respondent that may constitute

a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of the Respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, notice of any positive blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. 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) Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in secs. Phar 1.02(2), Wis. Adm. Code.

(3) Respondent shall not be employed as or work in the capacity of a "pharmacist in charge" as defined in sec. Phar 1.02(5), Wis. Stats., except upon the following terms and conditions:

(a) Respondent shall submit to not less than three random, witnessed urine screens per week.

(b) Respondent shall attend not less than two AA/NA meetings per week, in addition to the required individual/group therapy meeting per week.

(c) Respondent shall obtain and maintain an AA/NA sponsor who shall be available as support to Respondent, selection of whom shall be subject to approval of the Board.

(d) Respondent shall be supervised at his site of practice on a daily basis for not less than one hour per day by the managing pharmacist of the practice site, or the Respondent's employer who is a licensed pharmacist. Respondent's supervising pharmacist shall maintain a daily record of the supervision of Respondent by log entry of the date, time and signature of the person supervising Respondent. A copy of the supervision log shall be included in the quarterly report to the Board by the supervising pharmacist.

(e) Respondent's employer shall submit within 10 days to the Board a statement of Respondent's work schedule indicating the Respondent's hours of practice, location of practice, and managing pharmacist for each of the locations of Respondent's practice. Any change in the Respondent's schedule, location of practice or managing pharmacist shall be reported to the Board within 5 days of any such change.

(f) Respondent may petition the Board for modification of these conditions for practice as a pharmacist in charge after 90 days of supervised practice and compliance by Respondent with all terms and conditions of this Order. The Board in its discretion may at any time modify any of these terms and conditions for practice by Respondent as a pharmacist in charge, including removal of authorization under this order of Respondent to practice as a pharmacist in charge, as the Board deems appropriate in the circumstances. Grounds for modification of these terms and conditions, or removal of authorization to practice as a pharmacist in charge may include, but shall not be limited to, change in employer or residence address of Respondent. Modification of these terms and conditions, or removal of authorization under this order of Respondent to practice as a pharmacist in charge 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.

(4) Respondent shall not place nor be responsible for the placing of any orders for the purchase of any controlled substances, except as monitored and specifically approved, in writing, by his supervisor and Respondent shall not sign any invoices or receipts for controlled substances.

(5) 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.

(6) 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 subparagraphs (7) and (8) hereunder. Such reports shall be due on the dates specified in paragraph 1.c. of this Order.

(7) Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abusable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abusable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abusable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(8) In addition to the foregoing subparagraph (7), Respondent shall obtain from his supervising pharmacist agreement to conduct accountability audits of all schedule II controlled substances monthly for the first six months following the date

of this order and then every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

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

d. 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.

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

3. Respondent shall pay costs of this investigation under Wis. Stats. section 440.22 in the amount \$614.03 to the Department of Regulation and Licensing, which costs shall be paid upon adoption and issuance of this Order.

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. Any such petition shall be accompanied by a written recommendation of the Respondent's supervising physician or therapist expressly supporting the specific modifications sought. 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. Gryn 11/13/90
A Member of the Board Date

I, John H. Samuelson, have read and understand 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.

John H. Samuelson 11-7-90
John H. Samuelson, R.Ph., Respondent Date

RTG:bmg
DOEATTY-895



NORTHERN PINES UNIFIED SERVICES CENTER

CUMBERLAND, WISCONSIN 54829
715-822-4747

SERVING BARRON, POLK, BURNETT, WASHBURN & RUSK COUNTIES WISCONSIN

PLEASE REPLY TO:

September 7, 1990

Northern Pines Unified Services Center
Burnett County Government Center
7410 County Road K, #117
Siren, WI 54872
(715) 349-2154

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

RE: John H. Samuelson, R.Ph.

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

To the Board:

In response to the Order Adopting Stipulation 89 PHM 5. I have known Mr. Samuelson since April 10, 1990, when he came in requesting aftercare treatment. Mr. Samuelson informed me that he had recently completed treatment at Hazelden and also explained the events leading up to his treatment. Mr. Samuelson signed a release of information with Hazelden for me and I have their reports. Mr. Samuelson has his drug screen results sent to our office.

To respond specifically to the Order, section 2.b. (1)

- a. I feel Mr. Samuelson is accepting of the assessment of "chemically dependent to alcohol, barbiturates, opiates, amphetamines, and other psychostimulants" I also feel Mr. Samuelson accepts that any mood altering chemical would bring about relapse for him.
- b. Diagnosis of Respondents condition at this time would be chemically dependent in remission. Prognosis good with continued participation in support groups such as AA/NA.
- c. Treatment recommendations would be to continue with his aftercare group, continue with AA/NA weekly, maintain contact with sponsor and 1 on 1 counseling.
- d. I feel Mr. Samuelson and his employer have reached a satisfactory work arrangement.

Ex. A.

Page 2

RE: John H. Samuelson R.Ph.

- e. At this time Mr. Samuelson's prognosis is good. His attendance and participation in his aftercare group indicate to me a willingness and desire for continued sobriety.

To summarize, I feel Mr. Samuelson's desire for sobriety is sincere, his contribution in group, his attendance at AA/NA and his responsibility to himself and others show me that he is doing everything that is asked of him without hesitation. He also appears to be very comfortable with his sobriety.

If I may be of further assistance to the Board at any time, please contact me at (715) 349-2154.

Sincerely,

Jan B. Miles, C.C.D.P.

Jan B. Miles, C.C.D.P.
Certified Chemical Dependency Practitioner

JBM:ce

Olsen and Son, Inc.

DRUGS

Frederic, Wi 54837 Ph. 715-327-4228

Luck, Wi 54853 Ph. 715-472-2122

Siren, Wi 54872 Ph. 715-349-2221

September 7, 1990

Robert E. Coen R. Ph.
Olsen & Son, Inc.
101 E. Oak St.
Frederic, Wisc. 54837

Mr. Robert Ganch
Wisconsin Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisc. 53708

Dear Sir,

To comply with the proposed Stipulation and Order concerning John H. Samuelson R. Ph. I am responding as his supervising Pharmacist and Employer to the Practice of Pharmacy; Limitations and Conditions section. No. 2, John is working as a staff Pharmacist not as Pharmacist in charge. No. 6, John's work performance has been excellent and I would truly dislike having to loose him as an employee. No. 7, John works at our Siren and Frederic Stores. In both Pharmacies we have taken the following steps to control our inventory of C-II, C-III, C-IV and C-V schedule pharmaceuticals. In April we completed an inventory of all of the Classes and are running a daily inventory utilizing a daily controlled substances log print out from our computer of all scheduled Prescriptions filled during the day and subtracting the amounts dispensed from the existing inventory. Each item is listed on a single sheet for this running inventory. Purchases of reordered schedule Pharmaceuticals are added to the inventory upon their arrival. Our wholesaler supplies us with a monthly record of schedule drug purchases which we use as a second check for the inventory. I have been randomly checking the inventory of both stores controlled substances since we have instituted this program and have detected no loss, diversion, tampering, or discrepancy relating to controlled substances or other abusable Prescription drugs. As a working Pharmacist John does have access to all of the controlled substances we carry in our inventory. No. 8, John has agreed and I will conduct accountability audits of all schedule II controlled substances monthly for the first six months following the date of the order and then every six months for the duration of this order.

In a previous letter I stated and would again like to reiterate the problem that as an employer section C no. 3 would impose



PHARMACIES

Ex. B.

Olsen and Son, Inc.

DRUGS

Frederic, Wi 54837 Ph. 715-327-4228

Luck, Wi 54853 Ph. 715-472-2122

Siren, Wi 54872 Ph. 715-349-2221

The villages where John works both have populations of approximately 1,000 people. The stores are relatively small Community Pharmacies of 3,000 square feet each. We do not have the Prescription volume which would necessitate two Pharmacists working simultaneously at anytime. Monetarily I could not afford to have John employed under these circumstances. We are and have been experiencing a manpower shortage of Pharmacists in this area. The last time I had a Pharmacist leave our employ it took eight months to replace him. In effect the limitation of being under continuous, direct, on site supervision of another Pharmacist in the area in which we live could be likened to removal of his license in that he would be unemployable. John did voluntarily enter a chemical dependency unit and has been working extremely hard to rectify his problem. He is willing to submit to what ever decision is made but it is my feeling that he is a responsible Pharmacist and it is my hope that the decision will be to allow him to continue his present employment.

Sincerely,

Robert E. Coen RPh

Robert E. Coen R. Ph.



PHARMACIES

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE
LICENSE OF

JOHN H. SAMUELSON, R.Ph.,
RESPONDENT

:
:
:
:
:

STIPULATION
89 PHM 5

The parties in this matter, John H. Samuelson, R.Ph., and the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, agree and stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Department of Regulation and Licensing, Division of Enforcement on behalf of the Pharmacy Examining Board of the licensure of John H. Samuelson, R.Ph. to practice pharmacy in the State of Wisconsin (case file 89 PHM 5), concerning allegations of chemical abuse and dependency, among other matters. John H. Samuelson, R.Ph. consents to the resolution of the issue concerning chemical abuse and dependency by stipulation and without the issuance of a formal disciplinary complaint and hearing.

2. As to the allegations concerning chemical abuse and dependency, the Respondent 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 preponderance of the 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. The parties hereto understand and agree that notwithstanding this Stipulation and Order concerning chemical abuse and dependency, the Division of Enforcement may continue the investigation into other allegations of violations by John H. Samuelson, R.Ph. of statutes and rules governing the practice of pharmacy, and that upon completion of the investigation, the Division of Enforcement may pursue further action, and the Pharmacy Examining Board may take additional or other disciplinary action as deemed appropriate in the circumstances.

4. The Respondent admits the allegations and statements found in the attached Final Decision and Order Adopting Stipulation.

5. The Respondent and the Complainant recommend that the Pharmacy Examining Board adopt this Stipulation and the attached Final Decision and Order Adopting Stipulation in this matter.

6. If the terms of this Stipulation and attached Final Decision and Order Adopting Stipulation are not acceptable to the Board, then none of the parties shall be bound by any of its terms.

7. The attached Findings of Fact, Conclusions of Law, Final Decision and Order Adopting Stipulation may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.

8. All parties agree that counsel for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor appointed in this matter may appear before the Wisconsin Pharmacy Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Findings of Fact, Conclusions of Law, Final Decision and Order Adopting Stipulation. The parties further agree that Complainant's attorney and the Board Advisor may further respond to any questions of the Board during its deliberation on this matter in closed session.

9. This agreement in no way prejudices the Pharmacy Examining Board from any further action against Respondent based on any conduct not stated in the present Findings of Fact which might violate any statutes or rules substantially related to or governing the practice of Pharmacy in the State of Wisconsin.

10. If this Stipulation is adopted by the Wisconsin Pharmacy Examining Board, the attached Order shall become effective as stated in the order.

November 9, 1990
Date

11-7-90
Date

Robert T. Ganch
Robert T. Ganch, Attorney
Department of Regulation and Licensing
Division of Enforcement

John H. Samuelson
John H. Samuelson, R.Ph., Respondent

Pharmacy Examining Board, by:

11/13/90
Date

Thomas McGee RPh
A Member of the Board

RTG:bmg
DOEATTY-896

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.

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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) (c). 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.