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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
THE LICENSE OF

SCOTT ALLEN HOFTIEZER, M.D.

Licensee

ORDER SUSPENDING THE LICENSE

TO: Scott Allen Hoftiezer, M.D.
8258 Cascade Court
Franklin, WI 53232

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

On March 29, 1985, the Medical Examining Board (board) granted to Dr. Hoftiezer a limited license to practice medicine and surgery in Wisconsin. By the terms of the Order, Dr. Hoftiezer was permitted to practice only within the residency training program at Medical College of Wisconsin, was required to continue to participate in the impaired professional program at Milwaukee Psychiatric Hospital, was required to submit to weekly urine screens, and was prohibited from holding a DEA registration number.

Following a number of modifications to the limited license requested by Dr. Hoftiezer and granted by the board on March 5, 1986, Dr. Hoftiezer notified the board on January 1, 1987, that he had suffered a relapse in his illness of chemical dependency, and he did not apply for renewal of his license at the time of its expiration. Subsequently, however, by letter dated September 10, 1987, Dr. Hoftiezer petitioned for reinstatement of his license to permit him to practice medicine as an employee of Family Health Plan, Milwaukee, Wisconsin. That petition was granted by the board by its Order dated October 20, 1987. By the terms of the board's Order, Dr. Hoftiezer is permitted to practice only at Family Health Plan, and is required to comply with essentially the same treatment and monitoring conditions contained in the original Order dated

March 29, 1985. The board's Order also specifies that upon a finding of probable cause to believe that Dr. Hoftiezer has violated the terms of the Order, the board may order summary suspension of the license.

On November 28, 1990, the board was notified by Milwaukee Psychiatric Hospital that Dr. Hoftiezer had suffered a relapse and had entered the McBride inpatient unit on June 20, 1990. He remained as an inpatient through July 17, 1990, and was thereafter transferred to McBride's Recovery House where he remained until November 16, 1990.

At its meeting of February 21, 1991, the board formally found probable cause to believe that Dr. Hoftiezer had violated the terms of the board's October 20, 1987 *Order Granting a Limited License* and authorized the filing of a formal Complaint against him. The board at that time also decided that pursuant to the terms of the October 20, 1987 Order, Dr. Hoftiezer's license should be summarily suspended. Accordingly,

NOW, THEREFORE, IT IS ORDERED that the license of Scott Allen Hoftiezer, M.D. to practice medicine and surgery in Wisconsin be, and hereby is, summarily and indefinitely suspended.

DISCUSSION

Including an incident in August, 1989, involving abuse by Dr. Hoftiezer of dextromethorphan, This is his third known relapse since initial grant of a limited license in March, 1985. Such repeated relapses over that period of time represent a pattern of conduct which nothing in this record establishes has now been broken. At such time that Dr. Hoftiezer is able to demonstrate a successful and ongoing recovery, this board will be pleased to consider Dr. Hoftiezer's application for reinstatement. Until that time, however, the board considers protection of the public health, safety and welfare to require suspension of the license.

NOTICE OF RIGHT TO REQUEST HEARING

PLEASE TAKE NOTICE that pursuant to Wis. Stats. sec. 227.42, you may have a right to a hearing on the suspension of your license. You may request such hearing if your request is received in the office of the Medical Examining Board within thirty days of the date hereof. The request must include your name and address, the reasons why you have requested a hearing, the facts which you intend to prove at hearing, and an explanation of the mistake you believe was made, if you claim that the action by the board is based on a mistake in fact or law. Within 20 days of receipt of a request for hearing, the board shall grant or deny the request, but the request will be granted if the

foregoing requirements are met. If the request for hearing is granted, you will be notified of the time, place and nature of the hearing. If the request for a hearing is denied, you will be notified in writing of the reason for denial.

Dated this 5 day of March, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Michael P. Mehr
Michael P. Mehr, M.D.
Secretary

WRA:BDLS2:108

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 Medical 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 Medical 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 Medical Examining Board.

The date of mailing of this decision is March 12, 1991.

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.