

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	ORDER DENYING EXTENSION
	:	OF STAY OF SUSPENSION
MICHAEL E. WHEELER, R.Ph.,	:	AND REINSTATING SUSPENSION
RESPONDENT.	:	

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The parties to this proceeding 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  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

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

At its meeting on March 27, 1991, the State of Wisconsin Pharmacy Examining Board reviewed information received which indicates that Michael E. Wheeler, R.Ph., respondent, has violated the condition contained in the Final Decision and Order dated November 13, 1990 that he remain free of alcohol and all prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes.

Based upon the Board's review, it hereby adopts the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Michael E. Wheeler, R.Ph., respondent herein, 1608 West South Street, Stoughton, Wisconsin 53589, holds license #7623 to practice pharmacy in the State of Wisconsin. This license was first issued on April 10, 1967.

2. By a Final Decision and Order dated November 13, 1990, the Pharmacy Examining Board ordered that conditions and limitations be placed upon the respondent's license. The decision further imposed a suspension of not less than three years of respondent's license, but initially stayed the suspension and provided for successive three month stays of the suspension upon petition by respondent and compliance with the conditions and limitations. A copy of the Final Decision and Order is attached hereto as Exhibit A, and is incorporated herein as though fully set forth.

3. Respondent is currently licensed to practice pharmacy pursuant to the initial stay of suspension granted within the Final Decision and Order.

4. Pursuant to paragraph 2.a. within the order of the Final Decision and Order, one of the conditions placed upon respondent's license was that he:

"...shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes."

5. Paragraph 8 within the Final Decision and Order provides that respondent's violation of any term within the order may result in, among other things, the denial of an extension of the stay of suspension.

6. At its meeting of March 27, 1991, the board reviewed information it had received indicating the respondent had violated the above-quoted condition within the Final Decision and Order. The information reviewed included the following:

A. A letter from respondent's employer and monitoring facility, Beloit Memorial Hospital, under date of March 18, 1991, indicating that it had obtained a positive urine screen for Morphine, Codeine and Ethanol. A copy of this letter and the included positive laboratory report is attached as Exhibit B.

B. A letter from Parkside Lodge of Wisconsin at Janesville, a hospital based alcohol and drug treatment center, under date of March 22, 1991, indicating that respondent had been admitted to that facility on March 12, 1991 for an evaluation and inpatient treatment.

8. Respondent has violated the terms of the order contained within the Final Decision and Order dated November 13, 1990.

#### CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this proceeding pursuant to Chapter 450, Wis. Stats., and the provisions within the order of the Final Decision and Order dated November 13, 1990.

2. Respondent has violated the terms of the order contained within the Final Decision and Order dated November 13, 1990.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That respondent's stay of suspension initially granted within the Final Decision and Order dated November 13, 1990 shall not be extended.

2. That the three year suspension of respondent's license provided in the Final Decision and Order dated November 13, 1990 is reinstated effective April 3, 1991.

3. That respondent shall cease and desist from the practice of pharmacy by no later than 12:01 a.m., April 3, 1991.

4. That respondent shall be afforded an opportunity for hearing, upon respondent's petition, which shall be held under the procedures specified in Ch. RL 1, Wis. Adm. Code.

Dated: March 28, 1991.

STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

Dan Reynolds, R.Ph.  
Dan Reynolds, R.Ph.  
Chairman

DKR

BDLS2-218

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

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

FINAL DECISION  
AND ORDER  
(83 PHM 43)

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.

EXHIBIT A

### 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. Lutz, 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

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	ORDER DENYING REQUEST
	:	FOR REHEARING
MICHAEL E. WHEELER, R.Ph.,	:	
RESPONDENT.	:	

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

Robert T. Ganch  
Attorney at Law  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

On March 28, 1991, the Pharmacy Examining Board ("board") issued an Order Denying Extension of Stay of Suspension and Reinstating Suspension ("Order") in the above-captioned matter. The Order was based upon a finding that respondent, Michael E. Wheeler, had violated the terms of the Final Decision and Order dated November 13, 1990 by failing to remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. The Order further directed that respondent cease and desist from the practice of pharmacy by no later than April 3, 1991.

Correspondence to the board from respondent, dated April 15, 1991, stated as follows:

"I request a rehearing of your decision to suspend my license to practice pharmacy as provided in section 227.49 of the Wisconsin Statutes."

Complainant's attorney, Robert T. Ganch, filed a letter with the board dated May 10, 1991 in which he set forth his opposition to respondent's request and basis therefor.

On May 14, 1991, the board reviewed the record in this matter. Based upon that review and discussion had,

IT IS HEREBY ORDERED that the request of respondent, Michael E. Wheeler, for a rehearing upon the board's Order dated March 28, 1991, is DENIED.

MEMORANDUM

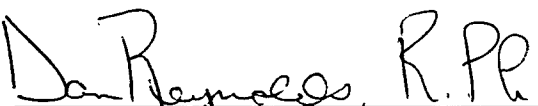
The entire substance of respondent's request in his April 15, 1991 letter is set forth above. He has not stated any basis for requesting a rehearing. A rehearing may only be granted upon a showing that the Order contained a material error of fact or law, or that newly discovered evidence requires a reversal or modification. See, Wis. Stats. sec. 227.49(1)(a)-(c). Respondent has not submitted any material, or statement, which questions the finding in the board's Order that he had violated its previous disciplinary order. Accordingly, his request for a rehearing must be denied.

Furthermore, even were respondent's request construed as one for a Class 1 hearing under Ch. RL 1, Wis. Adm. Code, such requests must be accompanied by, among other things, a description of the mistake which the respondent believes the board made in rendering its Order. There is no such required statement in respondent's letter and, therefore, no basis upon which to order a Class 1 hearing or to assume that respondent takes the position that he did not violate the board's prohibition against his consumption of alcohol, prescription drugs or controlled substances.

It must be assumed that respondent believes his ability to practice pharmacy should be reinstated, despite his relapse. He may request the board to reinstate his license by written petition. In order for the board to informatively consider respondent's fitness to return to practice, such petition should to be accompanied by supportive written recommendations from respondent's counselor and employer.

Dated: May 24, 1991.

STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

  
\_\_\_\_\_  
Dan Reynolds, R.Ph.  
Chairman

DRR

BDLS2-385

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

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

NOTICE OF ACTION BY THE  
PHARMACY EXAMINING BOARD

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

W. A. Bolgrien  
Bolgrien, Rentz, Mineau & Koepke, S.C.  
Attorneys at Law  
542 East Grand Avenue  
Beloit, WI 53511

Michael J. Berndt  
Attorney at Law  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

PLEASE TAKE NOTICE that at a meeting on March 27, 1991, the State of Wisconsin Pharmacy Examining Board reviewed information received which indicates that Michael E. Wheeler, R.Ph., respondent in the above-captioned matter, has violated the condition contained in the Final Decision and Order dated November 13, 1990 that he remain free of alcohol and all prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes.

Based on its review and consideration of the information and of the record in this matter, the Board acted to deny an extension of respondent's stay of suspension and to reinstate the three year suspension of respondent's license, effective April 3, 1991. The Board's order embodying its decision is annexed hereto.

Dated: March 28, 1991.

STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

Dan Reynolds, R.Ph.  
Dan Reynolds, R.Ph. DRR  
Chairman