

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

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

:
:
:
:
:

ORDER DENYING REQUEST
FOR REHEARING

DE0000000014

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

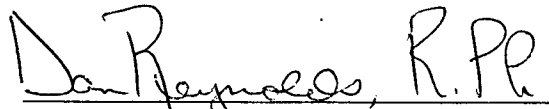
The entire substance of respondent's request in his April 15, 1991 letter is set forth above. He has not stated any basis for requesting a rehearing. A rehearing may only be granted upon a showing that the Order contained a material error of fact or law, or that newly discovered evidence requires a reversal 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

DRL

BDLS2-385