

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

DOUGLAS K. STUCKY R.Ph.,
RESPONDENT.

88 PHM 22

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

Douglas K. Stucky, R.Ph.
16465 Palomino Drive
Springville, CA 93265

Wisconsin 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 the final decision 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. Respondent Douglas K. Stucky, is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license # 8989.

2. The Respondent did, on 4/20/89, admit to violations of the Michigan Public Health Code relating to the practice of pharmacy, as appears by the attached Complaint and Consent Order and Stipulation, and was disciplined by the Michigan Board of Pharmacy. Further, Respondent was convicted in Michigan of criminal misdemeanors in that on three

occasions, in his capacity as a pharmacist, he billed an insurance company for medications not actually dispensed to the patient, and was sentenced on July 28, 1988 to 2 years probation and 15 days in jail, and Respondent has served his sentence in full and paid all restitution and other obligations and been discharged. Further, Respondent is being proceeded against by the California licensing authorities for the same incidents which resulted in the Michigan discipline. Further, Respondent has at no time practiced pharmacy in the state of Wisconsin since July 28, 1988. Respondent is presently living in California and is a pharmacist with a retail chain there, and his employers have been informed of the conduct which resulted in the Michigan disciplinary actions. Respondent has not been convicted of any other offenses nor have any other charges been brought against him since July 28, 1988, relating to the practice of pharmacy in any way.

CONCLUSIONS OF LAW

3. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to sec. 450.10(1), Wis. Stats.

4. The Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

5. The conduct described in paragraph 2, above, violated secs. 450.10(1)(a)2. and (b)3., Wis. Stats., and secs. Phar 10.03(1),(2),and (21), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes. Respondent has not practiced pharmacy in Wisconsin during the period of his Michigan suspension, and his misconduct there has resulted in adequate discipline to protect the public and deter Respondent and others from similar conduct. A suspension or revocation of Respondent's Wisconsin license would add no substantial protection or deterrence to the Michigan board's discipline and the criminal penalties already imposed on Respondent.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that George K. Stucky, R.Ph., is reprimanded for his unprofessional conduct in this matter.

Final Order
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IT IS FURTHER ORDERED, that George K. Stucky, R.Ph., shall pay the costs of investigation of this matter, in the amount of \$200, within 45 days of this order.

Dated this 11 day of June, 1991.

WISCONSIN PHARMACY EXAMINING BOARD

by: Dan Reynolds RPh
a member of the Board

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

DOUGLAS K. STUCKY, R.PH.
Respondent. :

STIPULATION

88 PHM 22

It is hereby stipulated between the above Respondent, personally on his own behalf and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; 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. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.
4. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.
5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order requiring education.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In

Stipulation
Page 2

the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent understands that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation shall be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

11. Respondent assures the Board that at no time between July 28, 1988 and the date of his signing of this Stipulation has he engaged in the practice of pharmacy within the state of Wisconsin. Further, Respondent assures the Board that all statements in paragraph 2 of the proposed Final Order are true, to the best of his knowledge.

x Douglas Kent Stueben
Respondent

05/23/91
Date

[Signature]
Prosecuting Attorney
Division of Enforcement

5/14/91
Date

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF PHARMACY

In the Matter of

DOUGLAS K. STUCKY, R.PH.

CONSENT ORDER AND STIPULATION

CONSENT ORDER

WHEREAS, an administrative complaint was filed with this Board on December 16, 1988 charging Douglas K. Stucky, R.Ph., hereafter Respondent, with having violated sections 16221(1)(b)(vi) [Count I]; (b)(ix) [Count II]; (d)(iii) [Count III]; 16221(a) [Count IV]; (b)(i) [Count V]; (c)(iv) [Count VI]; and section 7311(1)(f) [Count VII] and (g) [Count VIII] of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq; and

WHEREAS, Respondent has admitted by stipulation submitted herewith that the facts alleged in the aforesaid complaint are true and constitute violation of sections 16221(1)(b)(vi) [Count I]; (b)(ix) [Count II]; (d)(iii) [Count III]; 16221(a) [Count IV]; (b)(i) [Count V] and section 7311(1)(f) [Count VII] and (g) [Count VIII] of the Public Health Code, supra, as set forth in said complaint; and

WHEREAS, the Board has reviewed said stipulation and, based upon the matters asserted therein, agrees that the public

interest is best served by resolution of the outstanding complaint; now, therefore,

IT IS HEREBY FOUND that the allegations of fact set forth in the aforesaid complaint are true and constitute violations of sections 16221(1)(b)(vi) [Count I]; (b)(ix) [Count II]; (d)(iii) [Count III]; 16221(a) [Count IV]; (b)(i) [Count V]; and section 7311(1)(f) [Count VII] and (g) [Count VIII] of the Public Health Code, supra, as set forth in said complaint.

Accordingly,

IT IS HEREBY ORDERED that for each of the aforesaid violations of the Public Health Code, supra, Respondent's pharmacist and controlled substance licenses shall be and hereby are SUSPENDED for a period of one (1) year commencing on the effective date of this order. Said periods of suspension shall run concurrently.

IT IS FURTHER ORDERED that Count VI of the aforesaid complaint shall be and hereby is DISMISSED.

IT IS FURTHER ORDERED that, in the event Respondent applies for reinstatement of the aforesaid license, application for reinstatement shall be in accordance with 1980 AACR, R 338.986. Further, Respondent shall supply to the Board, pursuant to section 16247 of the Public Health Code, supra, evidence that Respondent is of good moral character, is mentally and physically

able to practice the profession with reasonable skill and safety, and that it is in the public interest for Respondent to resume practice.

IT IS FURTHER ORDERED that this order shall be effective thirty (30) days from the date signed as set forth below.

Signed this 21st day of June, 1984.

MICHIGAN BOARD OF PHARMACY

By Robert A. Hyman

I hereby approve the above order as to form and substance.

Douglas K. Stucky R.Ph.
Douglas K. Stucky, R.Ph.
Respondent

TRUE COPY
INVESTIGATION DIVISION
BUREAU OF HEALTH SERVICES
DEPT OF LICENSING & REGULATION

State of Michigan) ss
County of Ingham)

I hereby certify that the foregoing is a true copy of the original made in said cause on file in the office of Michigan Department of Licensing and Regulation, Bureau of Health Services

M. A. Fells
Signature

Date 8/7/89

STIPULATION

NOW COME the respective parties to stipulate and agree as follows:

1. The allegations of fact contained in the aforesaid complaint are true and constitute violation of sections 16221(1)(b)(vi) [Count I]; (b)(ix) [Count II]; (d)(iii) [Count III]; 16221(a) [Count IV]; (b)(i) [Count V] and section

7311(1)(f) [Count VII] and (g) [Count VIII] of the Public Health Code, supra.

2. Respondent understands and intends that by signing this stipulation Respondent is waiving the right pursuant to the Public Health Code, supra, the rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq, to require the People to prove the charges set forth in the administrative complaint by presentation of evidence and legal authority, and to appear with an attorney and such witnesses as Respondent may desire to present a defense to said charges before the Board or its authorized representative.

3. Count VI of the aforesaid administrative complaint shall be dismissed by order of the Board.

4. In mitigation of the aforesaid violations, Respondent has been licensed to practice in the State of Michigan since October 1980, and no prior disciplinary action has been taken against Respondent by the Board. Further, the 41st Circuit Court for Menominee County has upheld Respondent's May 12, 1988 conviction of three counts of obtaining money by false pretenses from a third party payor, as set forth in paragraph 3 of the the administrative complaint. By letter dated December 7, 1988, the United States Department of Health & Human Services has indicated its intention of excluding

Respondent from participation in the Medicare/Medicaid Program for a minimum period of five (5) years. Respondent has no ownership interest in any pharmacy, and for the last six (6) months has been practicing as a pharmacist on a part-time basis in the state of California.

5. Respondent is currently subject to criminal process arising out of the same facts as contained in the aforesaid administrative complaint.

6. The Board's conferee, George J. Menoutes, R.Ph., is free to discuss this matter with the Board and consents to and recommends acceptance of the resolution set forth in the foregoing consent order.

7. The foregoing consent order is approved by the respective parties and may be entered as the final order of the Board in said cause.

8. The foregoing proposal is conditioned upon its acceptance by the Board, the parties expressly reserving the right to further proceedings without prejudice should the consent order be rejected.

AGREED TO BY:

Michael J. Moquin
Michael J. Moquin (P-27304)
Assistant Attorney General
Attorney for the People
Dated:

AGREED TO BY:

Douglas K. Stucky R.Ph.
Douglas K. Stucky, R.Ph.
Respondent
Dated: 04/20/89

State of California)
County of Tulare) ss

On the 20th day of April, 1989, before me, a Notary Public in and for said county, appeared Douglas K. Stucky, R.Ph., who, upon oath, stated that he has read the foregoing consent order and stipulation by him subscribed, that he knows the contents thereof to be true, and that the signing of said consent order and stipulation is his free act and deed.



Janice M. Norris
Notary Public, Tulare County
State of California
My Commission expires May 19, 1989

This is the last and final page of a consent order and stipulation in the matter of Douglas E. Stucky, R.Ph., before the Michigan Board of Pharmacy and consisting of six (6) pages, this page included.

22/STUCCOS1

State of Michigan) ss
County of Ingham)
I hereby certify that the foregoing is a true copy
of the original made in said cause on file in the
office of Michigan Department of Licensing and
Regulation Bureau of Health Services
M. D. Lellis
Signature
Date 8/7/89

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATION

BOARD OF PHARMACY

In the Matter of

DOUGLAS K. STUCKY, R.PH.
Complaint Nos. 53-86-1010-00
and 53-88-0451-00

ADMINISTRATIVE COMPLAINT

NOW COME the People of the State of Michigan, by Frank J. Kelley, Attorney General for the State of Michigan, by Assistant Attorney General Michael J. Moquin, and hereby file the within complaint against Douglas K. Stucky, R.Ph., hereafter Respondent, alleging upon information and belief as follows:

1. The Board of Pharmacy, hereafter Board, an administrative agency established by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq, is empowered to discipline licensees thereunder.

2. Respondent is currently licensed to practice pharmacy and holds a controlled substance license issued pursuant to the Public Health Code, supra.

3. On September 12, 1986, the Health Care Fraud Division of the Department of Attorney General filed in the 95A

District Court (County of Menominee) an eighteen (18) count complaint alleging twelve (12) felony claims of Medicaid fraud and six (6) misdemeanor counts alleging intent to defraud or cheat by false premises a third party payor of personal protection insurance benefits under the Michigan Insurance Code. Counts 13 through 18, alleging the six false pretenses claims, were tried in district court, and on May 12, 1988, the jury found Respondent guilty of three (3) counts of obtaining money by false pretenses from a third party payor. Respondent was sentenced on July 28, 1988 (attachment 1).

4. From approximately April, 1981 to June 1, 1987, Respondent was the one hundred percent (100%) owner and pharmacist in charge of Cross Drug Store, Menominee, Michigan. An audit of schedule 2 controlled substances was conducted for the period May 9, 1985 through June 1, 1987 (date of Respondent's sale of Cross Drug Store), using DEA 222 forms for the transfer of schedule 2 controlled substance, wholesaler invoices and prescriptions on file. With respect to the schedule 2 prescriptions, there are numerous duplicate emergency phone-in prescriptions which are identical, including prescription number, date, physician, patient, and drug. For audit purposes the "duplicate" prescription dosages dispensed were counted as being dispensed twice. The emergency phone-in procedure at Cross Drug Store was that the ordering physician would call in the prescription for the drug which would be written on a prescription blank, a dupli-

cate prescription would then be written or typed out with the same prescription number on both, with the duplicate then being sent to the prescribing physician. After the physician signed the duplicate and returned it to the pharmacy, the prescription was matched with the duplicate and filed together with the duplicate in the schedule 2 file. The audit report for the period in question disclosed the following shortages:

| <u>Drug</u> | <u>Total Accountability</u> | <u>Total Accounted For</u> | <u>Difference</u> |
|-----------------|---------------------------------|--------------------------------|-------------------|
| Demerol 100 mg | 720 | 620 | - 100 (-13.8%) |
| Dexedrine 10 mg | 748 | 599 | - 149 (-19.9%) |
| Dexedrine 15 mg | 1910 | 808 | -1102 (-57.6%) |
| Ritalin 5 mg | 5767 | 5497 | - 270 (-04.6%) |
| Percocet | 8274 | 7493 | - 781 (-09.4%) |

COUNT I

Respondent's misdemeanor convictions demonstrate lack of good moral character, contrary to section 16221(1)(b)(vi) of the Public Health Code, supra.

COUNT II

Respondent's misdemeanor convictions involve fraud in obtaining or attempting to obtain fees related to the practice of a health profession, contrary to section 16221(1)(b)(ix) of the Public Health Code, supra.

COUNT III

Respondent's misdemeanor convictions demonstrate fraud or deceit in attempting to obtain third party reimbursement, contrary to section 16221(1)(d)(iii) of the Public Health Code, supra.

COUNT IV

The substantial shortages of controlled substances noted in paragraph 4 above indicate that Respondent was negligent or failed to exercise due care in the practice of pharmacy at Cross Drug Store, contrary to section 16221(a) [now cited as section 16221(1)(a)] of the Public Health Code, supra.

COUNT V

The substantial shortages of controlled substances noted in paragraph 4 above constitute a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice of pharmacy, demonstrating that Respondent as pharmacist/owner of Cross Drug Store violated section 16221(b)(i) [now cited as section 16221(1)(b)(i)] of the Public Health Code, supra.

COUNT VI

The substantial shortages of controlled substances noted in paragraph 4 above demonstrate that Respondent sold or gave

away controlled substances for other than lawful diagnostic or therapeutic purposes, contrary to section 16221(c)(iv) [now cited as section 16221(1)(c)(iv)] of the Public Health Code, supra.

COUNT VII

The substantial shortages of schedule 2 controlled substances noted in paragraph 4 above indicate that Respondent did not maintain effective controls against the diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses, in violation of section 7311(1)(f) [now cited as section 7311(1)(e)] of the Public Health Code, supra.

COUNT VIII

Respondent's failure to make, keep and furnish adequate records regarding the receipt and dispensing of schedule 2 controlled substances, as revealed by the shortages noted in paragraph 4 above, is contrary to section 7311(1)(g) [now cited as 7311(1)(f)] of the Public Health Code, supra.

In the event the Board suspends or revokes the pharmacist license held by Respondent, said Board may, as a result of that action and pursuant to section 7311(1)(d) of the Public Health Code, supra, suspend or revoke the controlled substance license held by Respondent.

WHEREFORE, the People request that the within complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the respective licenses. If compliance is not shown, the People further request that formal proceedings be commenced pursuant to the Public Health Code, supra, rules promulgated pursuant thereto, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq.

FRANK J. KELLEY
Attorney General

Michael J. Moquin

Michael J. Moquin (P-27304)
Assistant Attorney General
Health Professionals Division
620 Law Building
525 West Ottawa Street
Lansing, Michigan 48913

DATED: December 16, 1988

Telephone: (517) 373-1146

19/STUCAC-1

TRUE COPY
INVESTIGATION DIVISION
BUREAU OF HEALTH SERVICES
DEPT. OF LICENSING & REGULATION

State of Michigan) ss
County of Ingham)
I hereby certify that the foregoing is a true copy
of the original made in said cause on file in the
office of Michigan Department of Licensing and
Regulation, Bureau of Health Services
M. A. Fallis
Signature 8/7/89
Date

Approved SCAO

STATE OF MICHIGAN
95A JUDICIAL DISTRICT
JUDICIAL CIRCUITJUDGMENT OF SENTENCE
☒ COMMITMENT TO JAIL

CASE NO.

11625 11625

ORI MI- Court address

Thermonium Truck

Court telephone no.

863-9408

THE PEOPLE OF ☒ The State of Michigan

Defendant's name, address, and telephone no.

Douglas K. Stucky

CTN

SID

DOB

1. THE COURT FINDS that defendant was found guilty on 7-28-88 of the crime(s) as stated below:

| Count | CONVICTED BY | CRIME | CHARGE CODE(S) MCL citation/PACC Code |
|-------|--------------|--------------------------------|--|
| Plea* | Court | Jury | |
| 3 | G | Obtain money - false pretenses | |
| | | Under #100 - 3 Counts | |
| | | | |
| | | | |

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere; use "MI" for guilty but mentally ill.

2. Defendant ☒ was represented by an attorney: Scott Mandell *not present at court*
☐ was advised of the right to counsel and/or appointed counsel and knowingly, intelligently, and voluntarily waived that right.3. IT IS ORDERED that defendant: on each count - To run Concurrent☒ a. Spend 15 days in jail, beginning . Credit is given for 0 days previously served.☒ Defendant shall be released on day parole for the purpose checked during the times specified:☐ seeking work☒ working at regular employment☐ attendance at educational institution☐ medical treatment☐ other: (per count)Times: 1005050☒ b. Pay: \$ 100 Fine, \$ 50 Costs, \$ 170.66 Restitution, \$ 60.00 Total: \$ 680.66☐ c. Be confined to jail (in addition to any other jail term imposed) until fine and costs are paid, but not to exceed days.☐ d. Return to this court to pay the above fine and costs on or before or spend daysin jail, beginning ☒ e. Be placed on probation for 12 months and abide by the terms of probation. (See separate order.)☐ f. Complete the following rehabilitative services:☐ Alcohol Highway Safety Education, ☐ Treatment: (☐ outpatient, ☐ inpatient, ☐ residential, ☐ mental health.)Specify: ☒ g. Other: Def to notify court as to appeal - Payment schedule to the get up w/P.O.

Date

7/28/88

(SEAL)

Judge

Bar no

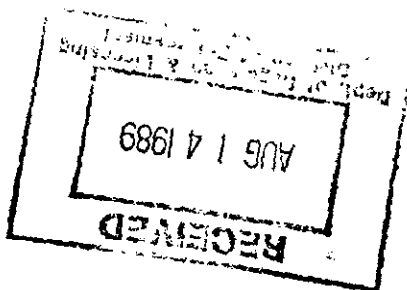
Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

MC 219 (3/88) JUDGMENT OF SENTENCE/COMMITMENT TO JAIL

JAIL

ATTACHMENT 1

OVER



State of Michigan) ss
County of Ingham)
I hereby certify that the foregoing is a true copy
of the original made in said cause on file in the
office of Michigan Department of Licensing and
Regulation Bureau of Health Services

Signature

Date

M. A. Lellis

8/17/89

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 June 12, 1991.

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) 1. 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. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. 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.

3. 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) A copy 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 each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(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.