

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE LICENSE
TO PRACTICE PHARMACY OF:

DALE M. PAPKE, R.Ph.,
RESPONDENT.

FINAL DECISION AND ORDER
ADOPTING STIPULATION
87 PHM 2

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

Dale M. Papke, R.Ph.
615 A Walden Court
Altoona, WI 54720

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 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. Dale M. Papke, R.Ph., Respondent herein, date of birth August 13, 1937, of 615 A Walden Court, Altoona, WI 54720, was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license number 7071, first granted April 7, 1961.

2. Dale M. Papke, R.Ph. was at all times relevant to this matter owner and managing pharmacist of the Medicine Chest Pharmacy located in Shell Lake, Wisconsin, and responsible for all professional operations of said pharmacy.

3. From 1969 through early 1983, while Respondent was managing pharmacist of the Medicine Chest Pharmacy, said pharmacy dispensed Schedule II controlled substances, including oxycodone, on a regular and continuing basis, to patients without a valid, contemporaneously signed written prescription order from a practitioner, in non-emergency circumstances. Respondent dispensed prescriptions to patients pursuant to an unlawful procedure established by Respondent and a physician wherein the physician periodically pre-signed a number of blank prescription forms furnished by Respondent, and

Respondent completed the prescription form and dispensed Schedule II drugs upon request of the patient. Respondent represents that he obtained oral authorization by telephone from the physician before each such dispensing.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction pursuant to Chapter 450, Wis. Stats. to take disciplinary action against the Respondent.

2. The conduct of Respondent in having dispensed Schedule II controlled substances without a contemporaneously written and signed prescription order of a practitioner, not in emergency circumstances, violated sec. 161.38(1), Wis. Stats., and sec. Phar 8.05(4), Wis. Adm. Code, which conduct constitutes unprofessional conduct under sec. 450.02(7), Wis. Stats. (1983-84), and sec. Phar 10.03(3) and (4), Wis. Adm. Code (1983), and as such subjects Respondent to discipline against his license under sec. 450.02(7)(a), Wis. Stats.

ORDER

THEREFORE, IT IS HEREBY ORDERED:

1. The Stipulation of the parties is hereby accepted.
2. Dale M. Papke, R.Ph., shall be and hereby is REPRIMANDED.
3. The license to practice pharmacy of Dale M. Papke, R.Ph., license number 7071, is hereby SUSPENDED for a period of six months, effective 90 days following the date of this Order. The suspension of Mr. Papke's license is hereby STAYED conditioned upon the following terms:
 - a. Not later than 90 days following the date of this Order, Dale M. Papke, R.Ph., shall have taken and achieved a passing grade on the Wisconsin Pharmacy Jurisprudence Exam and his grade shall have been reported to the Board not later than 90 days following the date of this Order. The Wisconsin Pharmacy Jurisprudence Examination may be taken through the PLATO professional development center at Respondent's option.
 - b. Mr. Papke shall have complied with and continue to comply with all terms and conditions of this Order.
 - c. If The Board has not received notification of a passing grade for Mr. Papke on the Wisconsin Pharmacy Jurisprudence Examination within 90 days of the date of this Order, or Mr. Papke has otherwise failed to comply with the terms and conditions of this Order, the Board may rescind the stay of suspension and notify Respondent of such fact in writing. If the Board rescinds the stay of suspension, Respondent shall be afforded 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.

4. Dale M. Papke, R.Ph., is hereby assessed a FORFEITURE in the amount of \$3000.00, which forfeiture shall be paid to the Department of Regulation and Licensing in not less than twelve (12) monthly installments of \$250.00, due on the 10th day of each and every month, commencing December 10th, 1992, the full amount of \$3000.00 to be paid to and received by the Department not later than December 10, 1993.

5. Dale M. Papke, R.Ph., is hereby assessed costs pursuant to sec. 440.22, Wis. Stats. in the amount of \$436.50, which costs shall be paid to the Department of Regulation and Licensing upon adoption of this Stipulation and Order by the Pharmacy Examining Board.

Dated this 10th day of November, 1992.

Wisconsin Pharmacy Examining Board

by: Thomas M. Gungor
A Member of the Board

I, Dale M. Papke, R.Ph., have read and understand the terms of the foregoing Order, and pursuant to the attached Stipulation hereby freely consent to the issuance of the foregoing Final Decision and Order Adopting Stipulation by the Wisconsin Pharmacy Examining Board.

10/30/92
Date

Dale M. Papke
Dale M. Papke, R.Ph.

ATY2-2697

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE LICENSE
TO PRACTICE PHARMACY OF:

DALE M. PAPKE, R.PH.,
RESPONDENT

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STIPULATION
87 PHM 2

The parties in this matter, Dale M. Papke, R.Ph., Respondent, personally and on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch agree and stipulate as follows:

1. An investigation is pending regarding the Respondent involving allegations of unprofessional conduct, file number 87 PHM 2. The Respondent wishes to resolve this matter by stipulation, without the filing of a formal disciplinary complaint or institution of disciplinary proceedings.
2. 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. Respondent admits the allegations and statements of Findings of Fact and Conclusions of Law and accepts the terms of discipline in the attached Final Decision and Order Adopting Stipulation.
4. The Respondent and the Division of Enforcement recommend that the Pharmacy Examining Board adopt this Stipulation and the attached Final Decision and Order Adopting Stipulation in this matter.
5. 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 the terms, and this matter shall be returned to the Division of Enforcement for further proceedings.
6. The attached Findings of Fact, Conclusions of Law, Final Decision and Order may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.
7. All parties agree that the attorney 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. The parties further agree that the Division's attorney and the Board Advisor may further respond to any questions of the Board during its deliberation on this matter in closed session. The parties further agree that each waives any objection that the Pharmacy Examining Board may be considered biased or prejudiced in any manner by the Board's consideration of this proposed Stipulation and Final Decision and Order Adopting Stipulation.

8. This agreement in no way prejudices the Pharmacy Examining Board from any further action against Respondent based on any acts not stated in the present Findings of Fact which might be violative of the Wisconsin Pharmacy Examining Board Statutes and Rules.

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

November 4, 1992
Date

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

10/30/92
Date

Dale M. Papke
Dale M. Papke, R.Ph., Respondent

Pharmacy Examining Board, by:

11/10/92
Date

Thomas M. Grogan
A Member of the Board

RTG
ATY2-2427

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 11, 1992.