

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF INVESTIGATION
OF THE LICENSES OF:

LAKESIDE PHARMACY AND
ALBERT T. MAHINSKI, R.PH.,
RESPONDENTS.

FINAL DECISION AND ORDER
ADOPTING STIPULATION
89 PHM 53

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

Lakeside Pharmacy
335 West Lakeside Street
Madison, WI 53715

Albert T. Mahinski, R.Ph.
926 O'Sheridan Street
Madison, WI 53715

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Pharmacy Examining Board
1400 East Washington Avenue
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 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. Lakeside Pharmacy, Respondent, of 335 West Lakeside Street, Madison, Wisconsin, 53715, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450. Wis. Stats., to operate as a pharmacy in the State of Wisconsin, license #3882 first granted on September 4, 1958

2. Albert T. Mahinski, R.Ph., Respondent, of 926 O'Sheridan Street, Madison, Wisconsin, 53715, is and 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 #6389 first granted on July 12, 1954.

3. Albert T. Mahinski, R.Ph., was at all times relevant to this matter owner and managing pharmacist of Lakeside Pharmacy, and responsible for the professional operations of the pharmacy.

4. That from January, 1985 through March 1, 1992, Lakeside Pharmacy and Albert Mahinski, R.Ph. have dispensed over the counter and without prescription codeine cough syrups, Schedule V controlled substances, on a frequent repetitive basis to a number of the same individuals over lengthy periods of time in circumstances which indicate that such dispensing was not in good faith as medicine, in violation of sec. 161.23(1), Wis. Stats.

5. Lakeside Pharmacy and Albert Mahinski, R.Ph. have failed to maintain and have available for inspection Schedule V controlled substances non-prescription dispensing logs for a period of time in 1986, 87, and 88, as required under Sec. 161.23, Wis. Stats., and Ch. Phar. 8, Wis. Adm. Code.

6. Lakeside Pharmacy and Albert Mahinski, R.Ph. have failed to record all required information in the Schedule V controlled substances non-prescription dispensing logs as required under Sec. 161.23(4), Wis. Stats.

7. Lakeside Pharmacy and Albert Mahinski, R.Ph. have dispensed outdated drugs in violation of Sec. Phar. 10.03(6), Wis. Adm. Code.

8. Lakeside Pharmacy and Albert Mahinski, R.Ph. have dispensed Schedule III and IV controlled substances to a patient or patients in amounts that exceed the apparent dosage directions by the prescribing practitioner while concurrently dispensing similar drugs to the same patient pursuant to prescriptions from another practitioner, and where the former practitioner specifically cautioned Mahinski to avoid such excessive dispensing because of concern that the patient may be prone to drug abuse and dependency, all in violation of Secs. Phar. 7.01(1)(a) and 8.04(1), Wis. Adm. Code.

9. Lakeside Pharmacy and Albert Mahinski, R.Ph. dispensed controlled substances pursuant to prescription orders which appear to have been illegally altered or forged, and in such circumstances which should have prompted Albert Mahinski, R.Ph. to take appropriate steps to confirm the legitimacy of the questionable prescription orders, in violation of Sec. Phar. 8.04(1), Wis. Adm. Code.

10. Lakeside Pharmacy and Albert Mahinski, R.Ph. in numerous instances failed to comply with proper record keeping procedures and requirements for controlled substances dispensing in violation of various provisions of Chs. Phar 7 and 8, Wis. Adm. Code.

11. Lakeside Pharmacy and Albert Mahinski, R.Ph. engaged in billing practices to the Medical Assistance Program for dispensing controlled substances in violation of Sec. 49.49, Wis. Stats.

12. Lakeside Pharmacy and Albert Mahinski, R.Ph., failed to have available on the premises of the pharmacy and produce for inspection a biennial controlled substances inventory for 1991, in violation of sec. Phar 8.02(1) and (2), Wis. Adm. Code.

13. Lakeside Pharmacy and Albert T. Mahinski, R.Ph., have tendered surrender of their licenses to operate as a pharmacy and to practice pharmacy, respectively, in the State of Wisconsin, effective April 14, 1992.

CONCLUSIONS OF LAW

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

2. That by engaging in the conduct described in the Findings of Fact, Lakeside Pharmacy and Albert T. Mahinski, R.Ph., individually and as owner and managing pharmacist of Lakeside Pharmacy, in numerous instances violated statutes and rules substantially related to the practice of pharmacy, and such conduct constitutes unprofessional conduct under sec. 450.10(1)(a)2, Wis. Stats., and therefore subjects each of the Respondents to discipline pursuant to sec. 450.10(1)(b) and (2), Wis. Stats.

THEREFORE, IT IS HEREBY ORDERED:

1. The Stipulation of the parties is hereby accepted.

2. In lieu of other discipline, the voluntary surrender of license to operate as a pharmacy in the State of Wisconsin of Lakeside Pharmacy, license #3882, effective April 14, 1992, is hereby accepted.

3. In lieu of other discipline, the voluntary surrender of license to practice pharmacy in the State of Wisconsin of Albert T. Mahinski, R.Ph., license #6389, effective April 14, 1992, is hereby accepted.

4. Neither Albert T. Mahinski nor Lakeside Pharmacy shall apply again for licensure as a pharmacist or pharmacy prior to three years following the date of this Order. In addition to any other requirements for application for relicensure required by law or imposed by the Board within its discretion, upon any application for relicensure, Mr. Mahinski and/or Lakeside Pharmacy shall demonstrate to the satisfaction of the Board that the following conditions have been fulfilled:

a. Albert T. Mahinski shall not own any interest, in whole or part, directly or indirectly, in any pharmacy.

b. Albert T. Mahinski shall have enrolled in and successfully completed the substantial equivalent of the last year of pharmacy school

curriculum at the University of Wisconsin-Madison, which curriculum shall include a course on pharmacy practice jurisprudence.

- b. Albert T. Mahinski shall have enrolled in and successfully completed the substantial equivalent of not less than 9 months of pharmacy practice internship through the Wisconsin Pharmacy Internship Board.
- c. Albert T. Mahinski shall take and achieve a passing grade on the following examinations:
 - (1) The Federal Drug Law Exam.
 - (2) The NAPLEX (National Association of Boards of Pharmacy Licensure Examination).
 - (3) Wisconsin State Jurisprudence Exam.
 - (4) Wisconsin General Practice of Pharmacy Examination.
 - (5) Wisconsin Pharmacy Examining Board Wet Lab/Patient Consultation Exam.

5. Lakeside Pharmacy and Albert T. Mahinski, R.Ph., jointly and severally, are hereby assessed costs pursuant to sec. 440.22, Wis. Stats. in the amount of \$5485.50, which costs shall be paid to the Department of Regulation and Licensing in monthly installments of not less than \$750.00 due on the 14th day of every month until paid in full, commencing May 14, 1992, with the total amount to be paid in full not later than December 14, 1992.

Wisconsin Pharmacy Examining Board

April 14, 1992
Date

by: Thomas M. Grogan
Member of the Pharmacy Examining Board

I, Albert T. Mahinski R.Ph., personally and as owner and agent of Lakeside Pharmacy, 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.

4-13-92
Date

AT Mahinski
Albert T. Mahinski, R.Ph., personally
and as owner and agent of Lakeside
Pharmacy.

4/13/92
Date

Nicholas J. Loniello
Nicholas J. Loniello, Attorney for
Respondents

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE INVESTIGATION :
OF THE LICENSES OF: :

LAKESIDE PHARMACY AND :
ALBERT T. MAHINSKI, R.PH., :
RESPONDENTS. :

STIPULATION
89 PHM 53

The parties in this matter, Lakeside Pharmacy and Albert T. Mahinski, R.Ph., Respondents, personally and by their attorney, Nicholas J. Loniello, and the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, agree and stipulate as follows:

1. Lakeside Pharmacy and Albert T. Mahinski, R.Ph., each consents to the resolution of this investigation by stipulation and without a hearing.

2. The Respondents understand and agree by signing this Stipulation that they voluntarily and knowingly waive their rights in this matter, including the right to a hearing on the allegations against them, 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 them, the right to call witnesses on their own behalf and to compel their attendance by subpoena, the right to testify in their 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. In response to this investigation and in order to settle this matter without further proceedings, Lakeside Pharmacy, by its owner and agent, Albert T. Mahinski, R.Ph., hereby tenders its license to operate as a pharmacy in the State of Wisconsin, license #3882, effective at 5:00 p.m. on April 14, 1992, and Albert T. Mahinski, R.Ph., hereby tenders his license to practice pharmacy in the State of Wisconsin, license #6389, effective at 5:00 p.m. on April 14, 1992. Each of Albert T. Mahinski and Lakeside Pharmacy agree not to apply again for a pharmacist or pharmacy license in the State of Wisconsin except upon the terms stated in the attached Final Decision and Order Adopting Stipulation.

4. The Respondents choose not to contest the allegations and statements of the Findings of Fact and Conclusions of Law in the attached Final Decision and Order Adopting Stipulation and accept the terms of discipline and agree to pay the costs of the investigation stated in the attached Order.

5. The Respondents 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.

6. 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 investigation and proceedings.

7. The attached Findings of Fact, Conclusions of Law, Final Decision and Order Adopting Stipulation may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.

8. All parties agree that 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 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 has been prejudiced or biased in any manner by its consideration of this proposed Stipulation and Final Decision and Order Adopting Stipulation.

9. 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.

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

April 14, 1992
Date

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

4-13-92
Date

AT Mahinski
Lakeside Pharmacy and Albert T.
Mahinski, R.Ph., Respondents

Nicholas J. Ioniello
Nicholas J. Ioniello
Attorney for Respondents

Pharmacy Examining Board, by:

April 14, 1992
Date

Thomas M. Bryant
A Member of the Board

RTG
ATY2-1761

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 April 15, 1992.