

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE  
DISCIPLINARY PROCEEDINGS AGAINST

JOHN M. NELSON, R.PH.,  
RESPONDENT.

:  
:  
:  
:  
:

FINAL DECISION AND ORDER  
ADOPTING STIPULATION  
91 PHM 71

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

John M. Nelson, R.Ph.  
3751 S. 75th Street, Apt. 4  
Milwaukee, WI 53220

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. That John M. Nelson, Respondent herein, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin.
2. That John M. Nelson holds a license as a pharmacist, number 11250, granted March 23, 1989.
3. That the Respondent's date of birth is March 23, 1963 and current address is 3751 S. 75th Street, Apt. 4, Milwaukee, WI 53220.
4. On or about October 8, 1991, Respondent diverted from his place of practice as a pharmacist for his own use and ingested while on duty as a pharmacist, without any prescription from a practitioner or any other lawful authorization, morphine sulfate oral solution, a Schedule II controlled substance under sec. 161.16(2)(a)10., in violation of secs. 161.41(lm)(a), 450.11(1) and (7)(h), Wis. Stats.

5. From February 10, 1992 through February 13, 1992, Respondent has undergone an inpatient evaluation for chemical abuse and dependency at the McBride Center at Milwaukee Psychiatric Hospital, resulting in a diagnosis of chemical dependency and recommendation for inpatient rehabilitation treatment. From February 24 through March 8, 1992, Respondent completed a fourteen day inpatient rehabilitation treatment program at De Paul Rehabilitation Hospital, and has since participated in the Recovery Program for Professionals at De Paul Hospital. Respondent's rehabilitation program has included group therapy 3 times per week, random witnessed urine screens, AA meetings 3 times per week, contact with an AA sponsor and monthly case reviews.

6. Respondent in consideration of this investigation and pursuant to the attached Stipulation, is willing to cooperate and abide by all requirements of the Pharmacy Examining Board for resolution of this matter.

#### 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 Wis. Stats. sec. 450.10(1), and Wis. Adm. Code Ch. Phar 10.

2. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent's having diverted and ingested morphine sulfate solution at the pharmacy at which he was employed violated sec. 450.11(7)(h) and 161.41(lm)(a), Wis. Stats., which violations are substantially related to the practice of pharmacy and constitute unprofessional conduct under sec. 450.10(1)(a)2. and 3., Wis. Stats., and sec. Phar 10.03(1), Wis. Adm. Code, and subjects Respondent to discipline under sec. 450.10(1)(b), Wis. 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 John M. Nelson, Respondent, shall be **SUSPENDED** for a period of not less than five (5) 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. Stay of Suspension. 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 five 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-c. shall be due on the following dates:

Each and every January 1st, April 1st, July 1st, and October 1st for the period that this Order remains in effect, commencing January 1, 1993.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. 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 supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the Respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of chemical abuse, dysthymic disorder and recurrent depression. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Pharmacy Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order.

(2) Individual/Group Therapy. The rehabilitation program shall include and Respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the 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.

(3) AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Drug Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of all controlled substances, including in particular but not limited to Tetrahydrocannabinols, and alcohol in his blood and/or urine on a frequency of not less than:

- (a) Eight times per month for the first year following the date of this order.
- (b) Six times per month for the second year following the date of this order.
- (c) Four times per month for the third through fifth years following the date of this order.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen.

The random drug and alcohol screening program shall include weekends and holidays for collection of specimens. Failure of the drug and alcohol screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

The Respondent shall appear and provide a specimen not later than 5 hours following a request for a specimen, but in no event later than the same calendar date that the request is made.

If the physician or therapist supervising the Respondent's plan of care, Respondent's employer, the Pharmacy Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional blood or urine screens are warranted, Respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of Respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met.

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 random and 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, the supervising physician or therapist, 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 from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist 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.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in NA/AA meetings,

- (c) Respondent's participation in and results of his random witnessed urine and/or blood screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist to report immediately to the Board any conduct or condition of Respondent that may constitute a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of the Respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, notice of any positive blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. 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) Full Compliance with Order Required. Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

(2) No Managing Pharmacist. Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in secs. Phar 1.02(2), Wis. Adm. Code.

(3) No Pharmacist in Charge. Respondent shall not be employed as or work in the capacity of a "pharmacist in charge" as defined in sec. Phar 1.02(5), Wis. Adm. Code.

Terms for Modification of Prohibition on Practice as Pharmacist In Charge. Respondent may petition the Board for modification of this prohibition against practice as a pharmacist in charge after 90 days of supervised practice and compliance by Respondent with all terms and conditions of this Order. Any such petition shall be accompanied by written request of the supervising pharmacist, which shall include a complete work schedule of all pharmacists employed in the pharmacy indicating the proposed work schedule and supervision pattern for Respondent. Such petition shall also include a written recommendation of the supervising physician or therapist and Respondent's psychiatrist specifically addressing the modification sought. The Board in its discretion may at any time modify any of the terms regarding practice by Respondent as a pharmacist in charge, including removal of authorization under this Order of Respondent to practice as a pharmacist in charge, as the Board deems appropriate in the circumstances. Grounds for modification or removal of the authorization to practice as a pharmacist in charge may include, but shall not be limited to, change in employer, managing pharmacist or residence address of the Respondent. Modification of these terms and conditions, or removal of authorization under this Order of Respondent to practice as a pharmacist in charge shall not be deemed

a class 1 or class 2 proceeding under sec. 227.01(3) or 227.42, Wis. Stats., or Ch. RL 1 or 2, Wis. Adm. Code, and shall not be subject to any right to a further hearing or appeal.

(4) Ordering Controlled Substances Prohibited. Respondent shall not place nor be responsible for the placing of any orders for the purchase of any controlled substances, except as monitored and specifically approved, in writing, by his supervisor and Respondent shall not sign any invoices or receipts for controlled substances.

(5) Provision of Copy of Order to Employers. 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.

(6) Quarterly Reports. 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 (7) and (8) hereunder. Such reports shall be due on the dates specified in paragraph 1.d. of this Order.

(7) Monitoring of Access to Drugs. Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abuseable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abuseable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abuseable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(8) Controlled Substances Audits. In addition to the foregoing subparagraph (7), Respondent shall obtain from his supervising pharmacist agreement to conduct accountability audits of all schedule II controlled substances every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(9) Immediate Reports. Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel current releases which comply with state and federal laws, authorizing release of all his medical and drug and alcohol counseling, treatment and monitoring records to the Pharmacy Examining



Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Pharmacy Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the Pharmacy Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding Respondent to the Pharmacy Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. 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.

3. Costs. Respondent shall pay costs of this investigation under Wis. Stats. section 440.22 in the amount \$50.00, to the Department of Regulation and Licensing, which costs shall be paid within 60 days following the date of this Order.

4. Pharmacy Ownership Prohibited. 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. Terms for Modification of Order. 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. Any such petition shall be accompanied by a written recommendation of the Respondent's supervising physician or therapist expressly supporting the specific modifications sought. 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 Responsible for Costs and Expenses of Compliance. 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. Board/Department Inspections. The Board or the Department 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. Violations of Order. 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. Effective Date. This Order shall become effective immediately upon issuance by the Pharmacy Examining Board, except for provisions 2.a., which is effective the date of signing by Respondent.

Dated this 19<sup>th</sup> day of October, 1992

PHARMACY EXAMINING BOARD

By: Thomas McGregor, R.Ph.  
A Member of the Board *DRK*

I, John M. Nelson, have read and understood all parts of this Order and attached Stipulation, and pursuant to the attached Stipulation, hereby consent to the entry of the foregoing Final Decision and Order by the Wisconsin Pharmacy Examining Board.

Dated this 15 day of October, 1992.

*John M. Nelson*  
John M. Nelson, Respondent

RTG:skv  
ATY2-2571

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
JOHN M. NELSON. R.PH.,	:	91 PHM 71.
RESPONDENT	:	
	:	

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The parties in this matter, John M. Nelson, R.Ph., Respondent, personally 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. John M. Nelson, R.Ph., consents to the resolution of this matter by stipulation and without formal disciplinary proceedings.

2. The 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. The Respondent admits the allegations and statements of the Findings of Fact and Conclusions of Law in the attached Final Decision and Order Adopting Stipulation and accepts the terms of discipline of the attached Order.

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.

October 16, 1992  
Date

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

10-15-92  
Date

John M. Nelson R.Ph  
John M. Nelson, R.Ph., Respondent

Pharmacy Examining Board, by:

10-19-92  
Date

Thomas McGregor, R.Ph.  
A Member of the Board  
DRR

RTG  
ATY2-2573

## **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** October 19, 1992.