

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

MEDI-KARE PRESCRIPTION PHARMACY,
ROBERT A. POLEWSKI, R.PH.,
HENRY E. BOGGESS, R.PH.,
RESPONDENTS.

:
:
:
FINAL DECISION
AND ORDER
ADOPTING STIPULATION
84 PHM 20
:

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

Medi-Kare Prescription Pharmacy
1200 East Oklahoma Avenue
Milwaukee, WI 53207

Robert A. Polewski, R.Ph.
6266 Parkview Road
Greendale, WI 53129

Henry E. Boggess, R.Ph.
312 Irving Street
Longview, TX 75605

Pharmacy Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

Henry E. Boggess, R.Ph., Respondent, and the Complainant, the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, agree to the terms and conditions of the attached Stipulation as the final disposition of all issues between them in 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. Medi-Kare Prescription Pharmacy 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, under license #4922, first issued on April 2, 1968.

2. Robert A. Polewski, R.Ph., date of birth 2/9/40, 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 under license #7250, first granted on April 10, 1963. *RTG 7/31/88 HEB*

3. Henry E. Boggess, R.Ph., date of birth ~~9/25/44~~ *9/25/44 HEB*, Respondent, 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, under license #5604, first granted on July 31, 1969. *RTG 9/25/44 HEB*

4. At all times relevant to this matter, Robert A. Polewski, R.Ph. was pharmacy manager of Medi-Kare Prescription Pharmacy and responsible for all professional operations of said pharmacy.

5. At all times relevant to this matter, Henry E. Boggess, R.Ph. was employed as a pharmacist at Medi-Kare Prescription Pharmacy. *RTG 1983 HEB*

6. From approximately May, 1978 through February, 1984, on a regular basis, Respondents dispensed Ionamine, a Schedule IV controlled substance under Chapter 161, Wis. Stats., Darvon Compound-65, a Schedule IV controlled substance under Chapter 161, Wis. Stats., and Lasix, a potent diuretic medication that requires careful supervision by a physician, to Patient A

7. Patient A had become drug dependent in part through use of the drugs obtained from Medi-Kare Prescription Pharmacy.

8. At issue and unresolved in this proceeding, and which Respondents deny, are whether Respondents knew or should have known that Patient A had become drug dependent in the time period in which Respondents dispensed the aforesaid drugs to her, whether such drugs were dispensed without any authorization of a practitioner, and whether the physician/patient relationship had ceased between the patient and the physician that had originally prescribed the aforesaid drugs. *RTG 1983 HEB*

9. That sometime prior to March 28, 1984, Robert A. Polewski, R.Ph. removed from Medi-Kare Pharmacy all pharmacy prescription and profile records for Patient A, and such records were not on file at Medi-Kare Prescription Pharmacy and available for inspection by and upon the request of a duly authorized agent of the Pharmacy Examining Board on and after March 28, 1984. *RTG 1983 HEB*

10. Henry E. Boggess, by letter received on July 29, 1991, represents that he has not practiced pharmacy for four years, and has tendered the voluntary surrender of his license to practice pharmacy in the state of Wisconsin, license # 5604, in response to the filing of the Complaint in this matter.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction to take action in this matter pursuant to Chapter 450, Wis. Stats.

2. The Pharmacy Examining Board has authority to resolve this matter by stipulation under sec. 227.44(5), Wis. Stats.

Therefore, it is hereby ORDERED:

1. The Stipulation of the parties, Henry E. Boggess, R.Ph., Respondent, and the Department of Regulation and Licensing, Division of Enforcement, Complainant, is hereby accepted.

2. Pursuant to the Stipulation of the parties herein adopted, Count I of the Complaint in this matter, as to Respondent Henry E. Boggess, R.Ph., is hereby dismissed.

3. The VOLUNTARY SURRENDER of the license to practice pharmacy in the State of Wisconsin of Henry E. Boggess, tendered by Mr. Boggess in response to the filing of the Complaint in this matter, is hereby accepted. The surrender of License by Mr. Boggess shall be deemed to be effective on the date of such tender, July 29, 1991. Henry E. Boggess shall not apply again for a license to practice pharmacy in the state of Wisconsin for a period of five (5) years from the date of this Order.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

PHARMACY EXAMINING BOARD

By: Thomas M. Gage RPh
A Member of the Board

Feb. 11, 1992
Date

I, Henry E. Boggess, R.Ph., have read and understand the foregoing Final Decision and Order Adopting Stipulation, and pursuant to the attached Stipulation, hereby freely consent to entry and issuance of the foregoing Final Decision and Order Adopting Stipulation.

Henry E. Boggess
Henry E. Boggess, R.Ph.,
Respondent

1/17/92
Date

ATY2-1398
01/08/92

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
MEDI-KARE PRESCRIPTION PHARMACY,	:	STIPULATION
ROBERT A. POLEWSKI, R.PH., and	:	84 PHM 20
HENRY E. BOGGESE, R.PH.,	:	
RESPONDENTS.	:	

It is hereby stipulated between Henry E. Boggess, R.Ph., Respondent, and the Complainant, the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary action concerning the licenses of the above named Respondents to operate as a pharmacy or to practice as a pharmacy, as applicable, in the State of Wisconsin. Henry E. Boggess, R.Ph., consents to the resolution of this investigation by Stipulation and without a hearing on the allegations of the Complaint.

2. Henry E. Boggess, R.Ph., understands that by the signing of the Stipulation, he voluntarily and knowingly waives his rights including: the right to a hearing on the allegations against him, at which the State has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance 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. Henry E. Boggess, R.Ph., denies the substance of the allegations of Count I of the Complaint in this matter, and agrees to the adoption of the attached Final Decision and Order Adopting Stipulation by the Pharmacy Examining Board. In consideration of the position taken by all Respondents in this proceeding, and their agreement to the settlement of this matter, Complainant agrees to the adoption of the attached Final Decision and Order Adopting Stipulation. Accordingly, Henry E. Boggess and Complainant hereby stipulate to dismissal of Count I of the Complaint as to Respondent Henry E. Boggess.

4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.

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

6. The Division of Enforcement joins Henry E. Boggess in recommending the Pharmacy Examining Board adopt this Stipulation and issue the attached Final Decision and Order Adopting Stipulation. All parties agree that the attorney for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor to this case may appear before the Pharmacy Examining Board in support of this Stipulation and attached Final Decision and Order Adopting Stipulation.

7. This Stipulation and Order in no way prejudices the Pharmacy Examining Board from any further action against any of the Respondents based on any conduct not stated in the attached Findings of Fact which might be violative of the Wisconsin Pharmacy Examining Board Statutes and Rules.

Henry E. Boggess
Henry E. Boggess, R.Ph.
Respondent

1/17/92
Date

Robert T. Ganch
Robert T. Ganch, Attorney
Division of Enforcement

January 29, 1992
Date

Pharmacy Examining Board by:

Thomas M. Grogan RPh.
A Member of the Board

Feb. 11, 1992
Date

ATY2-1398
01/08/92

RTG

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 February 13, 1992.

FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MEDI-KARE PRESCRIPTION PHARMACY,
ROBERT A. POLEWSKI, R.PH.,
HENRY E. BOGGESE, R.PH.,
RESPONDENTS.

FINAL DECISION
AND ORDER
ADOPTING STIPULATION
84 PHM 20

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

Medi-Kare Prescription Pharmacy
1200 East Oklahoma Avenue
Milwaukee, WI 53207

Robert A. Polewski, R.Ph.
6266 Parkview Road
Greendale, WI 53129

Henry E. Boggess, R.Ph.
312 Irving Street
Longview, TX 75605

Pharmacy Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

Medi-Kare Prescription Pharmacy and Robert A. Polewski, R.Ph.,
Respondents, personally and by their attorney, Eugene L. Kaluzny, and the
Complainant, the Department of Regulation and Licensing, Division of
Enforcement, by its attorney, Robert T. Ganch, agree to the terms and
conditions of the attached Stipulation as the final disposition of all issues
between them in 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. Medi-Kare Prescription Pharmacy 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, under license #4922, first
issued on April 2, 1968.

2. Robert A. Polewski, R.Ph., date of birth 2/9/40, 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 under license #7250, first granted on April 10, 1963.

3. Henry E. Boggess, R.Ph., date of birth 9/25/44, Respondent, 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, under license #5604, first granted on July 31, 1969.

4. At all times relevant to this matter, Robert A. Polewski, R.Ph. was pharmacy manager of Medi-Kare Prescription Pharmacy and responsible for all professional operations of said pharmacy.

5. At all times relevant to this matter, Henry E. Boggess, R.Ph. was employed as a pharmacist at Medi-Kare Prescription Pharmacy.

6. From approximately May, 1978 through February, ^{1983 R16} ~~1984~~, on a regular basis, Respondents dispensed Ionamine, a Schedule IV controlled substance under Chapter 161, Wis. Stats., Darvon Compound-65, a Schedule IV controlled substance under Chapter 161, Wis. Stats., and Lasix, a potent diuretic medication that requires careful supervision by a physician, to Patient A

7. Patient A had become drug dependent in part through use of the drugs obtained from Medi-Kare Prescription Pharmacy.

8. At issue and unresolved in this proceeding, and which Respondents deny, are whether Respondents knew or should have known that Patient A had become drug dependent in the time period in which Respondents dispensed the aforesaid drugs to her, whether such drugs were dispensed without any authorization of a practitioner, and whether the physician/patient relationship had ceased between the patient and the physician that had originally prescribed the aforesaid drugs.

9. That sometime prior to ^{R16 certain} March 28, 1984, Robert A. Polewski, R.Ph. removed from Medi-Kare Pharmacy ~~the~~ pharmacy prescription and profile records for Patient A, and such records were not on file at Medi-Kare Prescription Pharmacy and available for inspection by and upon the request of a duly authorized agent of the Pharmacy Examining Board on and after March 28, 1984.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction to take action in this matter pursuant to Chapter 450, Wis. Stats.

2. As to Count II of the Complaint, Robert A. Polewski, R.Ph., and Medi-Kare Prescription Pharmacy each violated sec. Phar 8.03(1) and sec. Phar 7.05(1), Wis. Adm. Code by failing to maintain in the pharmacy and available for inspection the prescription dispensing and profile records of Patient A.

3. That based upon the foregoing, the Pharmacy Examining Board is authorized to take disciplinary action against each of the Respondents pursuant to sec. 450.02(7), Wis. Stats, and sec. Phar 10.03(3), Wis. Adm. Code.

Therefore, it is hereby ORDERED:

1. The Stipulation of the parties, Medi-Kare Prescription Pharmacy, Robert A. Polewski, R.Ph., Respondents, and the Department of Regulation and Licensing, Division of Enforcement, Complainant, is hereby accepted.

2. The VOLUNTARY SURRENDER of the pharmacy license of Medi-Kare Prescription Pharmacy, license # 4922, tendered in response to this proceeding, effective 30 days following the date of this Order, is hereby accepted in lieu of other discipline. The original certificate and all renewal certificates of the pharmacy license of Medi-Kare Prescription Pharmacy shall be received by the Pharmacy Examining Board not later than 30 days following the date of this Order.

3. The license to practice pharmacy of Robert A. Polewski, R.Ph., license # 7250, is hereby SUSPENDED for a period of not less than six (6) months, effective 30 days following the date of this Order. During the period of suspension of his license to practice pharmacy, and prior to reinstatement, Robert A. Polewski shall not own in whole or part any interest in a pharmacy. Following completion of the six month period of suspension, Robert A. Polewski may petition the Board in writing for reinstatement of his license to practice pharmacy. As a condition of reinstatement, Robert A. Polewski shall have taken and achieved a passing grade of 75 on the Wisconsin state pharmacy jurisprudence examination.

4. Robert A. Polewski shall pay COSTS of this proceeding pursuant to sec. 440.22, Wis. Stats., in the amount of \$1480.80 to the Department of Regulation and Licensing not later than 30 days following the date of this Order.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

PHARMACY EXAMINING BOARD

By: Thomas M. Geyer R.R.
A Member of the Board

Feb. 11, 1992
Date

I, Robert A. Polewski, R.Ph., individually and as authorized agent of Medi-Kare Prescription Pharmacy, have read and understand the foregoing Final

Decision and Order, and pursuant to the attached Stipulation, hereby consent to entry and issuance of the foregoing Final Decision and Order.

Robert A. Polewski

Robert A. Polewski, R.Ph.,
Individually as Respondent and as
Authorized Agent of Medi-Kare Prescription Pharmacy,
Respondent

Jan. 16, 1992

Date

Eugene Kaluzny

Eugene Kaluzny
Attorney for Robert A. Polewski, R.Ph.
and Medi-Kare Prescription Pharmacy, Respondents

January 16, 1992

Date

ATY2-1298
01/07/92

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
MEDI-KARE PRESCRIPTION PHARMACY,	:	STIPULATION
ROBERT A. POLEWSKI, R.Ph., and	:	84 PHM 20
HENRY E. BOGGESE, R.Ph.,	:	
RESPONDENTS.	:	

It is hereby stipulated between Medi-Kare Prescription Pharmacy, by its owner and agent Robert A. Polewski, R.Ph., and its attorney, Eugene Kaluzny, Robert A. Polewski, R.Ph. personally and by his attorney, Eugene Kaluzny, Respondents, and the Complainant, the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary action concerning the licenses of the above named Respondents to operate as a pharmacy or to practice as a pharmacy, as applicable, in the State of Wisconsin. Medi-Kare Prescription Pharmacy and Robert A Polewski, R.Ph., each consents to the resolution of this investigation by Stipulation and without a hearing on the allegations of the Complaint.

2. Medi-Kare Prescription Pharmacy and Robert A. Polewski, R.Ph., each understands that by the signing of the Stipulation, he voluntarily and knowingly waives his rights including: the right to a hearing on the allegations against him, at which the State has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance 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. Medikare Prescription Pharmacy and Robert A. Polewski, R.Ph., each agree to the adoption of the attached Final Decision and Order by the Pharmacy Examining Board.

4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.

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

6. The Division of Enforcement joins Medi-Kare Prescription Pharmacy and Robert A. Polewski, R.Ph., in recommending the Pharmacy Examining Board adopt this Stipulation and issue the attached Final Decision and Order. All parties agree that the attorney for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor to this case may appear before the Pharmacy Examining Board in support of this Stipulation and attached Final Decision and Order.

7. This Stipulation and Order in no way prejudices the Pharmacy Examining Board from any further action against any of the Respondents based on any conduct not stated in the attached Findings of Fact which might be violative of the Wisconsin Pharmacy Examining Board Statutes and Rules.

Medikare Prescription Pharmacy, by:

Robert A. Polewski
Robert A. Polewski, R.Ph.
Owner and Agent

Jan. 16, 1992
Date

Robert A. Polewski
Robert A. Polewski, R.Ph.

Jan. 16, 1992
Date

Attorney Eugene Kaluzny
Attorney Eugene Kaluzny
Attorney For Respondents
Medikare Prescription Pharmacy and
Robert A. Polewski, R.Ph.

January 16, 1992
Date

Robert T. Ganch
Robert T. Ganch, Attorney
Division of Enforcement

January 29, 1992
Date

Pharmacy Examining Board by:

Thomas M. Grogan RPh
A Member of the Board

Feb 11, 1992
Date

ATY2-1299

01/07/92

RTG

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 February 13, 1992.