

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

MICHAEL A. GABERT, R.PH.
RESPONDENT

92 PHM 21

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

Michael A. Gabert, R.Ph.
809 Mequon Avenue
Fond du Lac, WI 54935

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 Michael A. Gabert (dob 11/9/48) 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 #8340, originally granted on 6/22/72.

2. The Respondent did, on or near January 14, 1986, consult with a subordinate concerning a prescription from a physician for Silver Nitrate 5%. Respondent knew that the physician intended this substance be instilled into the bladder of a patient as part of a surgical procedure scheduled for January 16. Respondent was unfamiliar with this use of silver nitrate solution, and unable to find the product in this concentration described in research materials related to the proposed use. Respondent advised his subordinate to call the Drug Information Center at the University of Wisconsin, and was told that there was no research literature supporting the proposed use of this product concentration. The physician was asked what support the physician had for use of this concentration, and the physician told respondent that he had a letter from the Mayo Clinic describing the successful use of this substance for his intended use. Respondent did not require his subordinate to ask to see the letter, or have a copy of it for the pharmacy's records, and then permitted his subordinate to dispense the solution as prescribed. It was instilled into the patient's bladder, and significant patient harm resulted.

3. In fact, the letter from the Mayo Clinic contained a reference to silver argyrol, not silver nitrate.

CONCLUSIONS OF LAW

4. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

5. The conduct described in paragraph 2, above, violated § Phar 10.03((5), Wis. Adm. Code (1986) [now 10.03(3)]. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes. Respondent, as managing pharmacist, is responsible for such conduct pursuant to §450.09(1), Wis. Stats.

ORDER

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

IT IS FURTHER ORDERED, that Michael A. Gabert, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$250, within 30 days of this order

Dated this 14 day of DECEMBER, 1993

WISCONSIN PHARMACY EXAMINING BOARD

by. Charles H. Dunkel, R.Ph.
a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

MICHAEL A. GABERT, R.PH.,
RESPONDENT.

STIPULATION
92 PHM 21

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, 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 agreement and without the issuance of a formal complaint.

2 Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; 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 respondent, the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4 Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. 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 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.

6 The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7 The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

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

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent

Michael G. Sabut

Respondent

12/3/93

Date

Arthur Heyton

Prosecuting Attorney
Division of Enforcement

12/10/93

Date

APPROVED:

John R. Teetaert
John R. Teetaert, Respondent's Attorney

12/3/93

Date

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 December 17, 1993.