

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

EDWARD L. KOSTLEVY, R.PH.
RESPONDENT.

90 PHM 59

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

Edward L. Kostlevy, R.Ph.
107 South First Street
Colby, WI 54421

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 Edward L. Kostlevy (dob 7/16/49) 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 # 8497.
2. The Respondent, on or about April 21, 1990, dispensed 30 amoxicillin 500 mg to Kelli Lam without a prescription or other authority from an authorized practitioner, and then created what purported to be a telephoned prescription for the medication from a Dr. P. Respondent later changed the name of the prescriber to Dr. M. Neither physician had any knowledge of the matter.
3. On or about April 21, 1990, respondent dispensed 20 Tavist D to Kelli Lam without a prescription or other authority from an authorized practitioner, and then created what purported to be a telephoned prescription for the medication from a Dr. P. Respondent later changed the name of the prescriber to Dr. M. Neither physician had any knowledge of the matter.
4. On or about April 2, 1990, respondent dispensed 20 trimethoprim-sulfamethoxazole DS to Kelli Lam without a prescription or other authority from an authorized practitioner, and then created what purported to be a telephoned prescription for the medication from Dr. M., who had no knowledge of the matter.

5. On or about April 7, 1990, respondent dispensed 20 Cipro 500 mg to Kelli Lam without a prescription or other authority from an authorized practitioner, and then created what purported to be a telephoned prescription for the medication from Dr. M., who had no knowledge of the matter.

6. On or about April 7, 1990, respondent dispensed 12 Pyridium 100 mg to Kelli Lam without a prescription or other authority from an authorized practitioner, and then created what purported to be a telephoned prescription for the medication from Dr. M., who had no knowledge of the matter.

7. On November 11, 1992, respondent was interviewed by Investigator Walter Neverman, who was acting on behalf of the Pharmacy Examining Board. Respondent stated to Inv. Neverman that Dr. M.'s office had contacted respondent on February 21, April 2, and April 7, 1990, and authorized the prescriptions described in ¶¶ 2-6, above. This statement was false, was known by respondent to be false when made, and was made with the intent to mislead and obstruct the board in its investigation of this matter.

8. On dates unknown, but in 1990, respondent delivered Valium (a schedule IV controlled substance) and Tylenol #3 (a Schedule III controlled substance) to Kelli Lam, without a prescription or other authority from an authorized practitioner.

CONCLUSIONS OF LAW

9. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats.

10. The Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

11. The conduct described in paragraphs 2-8, above, violated one or more of the following: §§ 161.41(1)(b) and (i), 450.11(1) and (7)(c) and (e), Wis. Stats., and §§ Phar 10.03(8), Wis. Adm. Code (1990) and 10.03(8), Wis. Adm. Code (1992). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that Edward L. Kostlevy, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that the license of Edward L. Kostlevy, R.Ph., to practice pharmacy is hereby SUSPENDED for 60 days and until respondent takes and passes the Wisconsin Pharmacy Jurisprudence Examination. This suspension is STAYED until July 1, 1993 (respondent may elect an earlier starting date by notifying the Department before the elected date and surrendering all indicia of licensure). The examination may, at respondent's option, be taken through the PLATO professional development center. Respondent shall not take the examination more than twice without express permission of the board, which shall determine in its discretion under what terms and conditions the respondent may attempt an exam after two attempts. After 60 days and upon proof of passing the examinations, respondent's license shall be forthwith reissued and restored by the staff of the department, with no further action by the board.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$4,000, to be paid within 60 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter, in the amount of \$750, within 30 days of this order.

Dated this 11 day of MARCH, 1993.

WISCONSIN PHARMACY EXAMINING BOARD

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

ATY2-3288
akt

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

EDWARD L. KOSTLEVY, R.PH., :
RESPONDENT. :

STIPULATION
90 PHM 59

It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

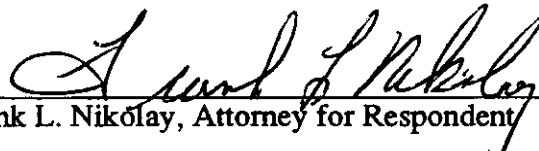
1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without a hearing on the formal complaint which has been issued in this matter.
2. Respondent is aware of and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; 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 him; the right to call witnesses on his 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 under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. By entering into this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.
4. Respondent is aware of his right to seek legal representation and has obtained legal advice before signing this Stipulation.
5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.
6. 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 either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.
7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

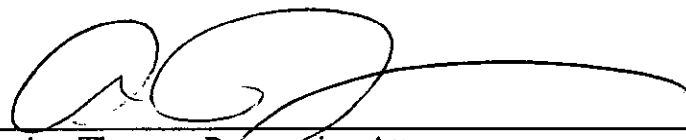
8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

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

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.


Respondent 2.23.93
Date


Frank L. Nikolay, Attorney for Respondent 2.23.93
Date


Arthur Thexton, Prosecuting Attorney
Division of Enforcement 2.25.93
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 March 16, 1993.