

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

MICHAEL J. MALANEY, R.PH.
RESPONDENT.

90 PHM 72

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

Michael J. Malaney, R.Ph.
307 East McArthur Street
Appleton, WI 54911

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 J. Malaney (dob 10/15/49) 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 #9464.
2. The Respondent did, on and between April 2, 1989, and January 9, 1991, commit 9 separate dispensing errors involving either an incorrect medication or an incorrect medication strength, involving 9 separate patients.

CONCLUSIONS OF LAW

3. 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.
4. The conduct described in paragraph 2, above, violated §450.10(1)(a)6., Wis. Stats., and § Phar 7.01(1), Wis. Adm. Code. 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 the license to practice pharmacy of Michael J. Malaney, R.Ph., is hereby LIMITED in the following manner:

(a) Respondent shall not be a managing pharmacist, nor shall he practice pharmacy in any business entity in which he has an ownership interest.

(b) Respondent shall practice on a setting and under a protocol which requires that all prescriptions dispensed by respondent, or pursuant to transcribed prescriptions of respondent, are checked for accuracy before being transferred to the patient or institution. Respondent shall meet with his supervisor monthly to review any practice errors and determine methods to prevent such errors.

(c) Respondent shall cause his immediate supervisor to file quarterly reports with the Board, commencing on the first day of the third month following the date of this order. These reports shall state the number of dispensing or other practice errors committed by respondent, the circumstances surrounding each and the response to the error, the general progress of respondent in reducing such errors, and any other information regarding respondent's ability to practice pharmacy with safety to patient and public. Respondent shall furnish the Board with releases for his entire personnel file at each of his employers.

(d) Respondent shall furnish each of his employers with a copy of this order, and shall report any changes in his employer, address, and telephone number to the Board within 5 days of such change.

(e) Respondent may petition the Board for an order terminating this limitation on his license and restoring his unlimited license after two years of active practice under these limitations. It shall be totally within the discretion of the board to grant or deny such a petition, and a denial of such a petition in whole or in part shall not be deemed a denial of license and shall not entitle respondent to a hearing on such a denial.

(f) Failure to comply with the conditions and limitations set forth herein may subject respondent to summary suspension and to other and independent discipline.

IT IS FURTHER ORDERED, that respondent shall pay costs in this matter in the amount of \$400, within 30 days of this order

Dated this 10 day of August, 1993.

WISCONSIN PHARMACY EXAMINING BOARD

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

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST :

MICHAEL J. MALANEY, R.PH.,
RESPONDENT.

STIPULATION
90 PHM 72

It is hereby stipulated between the above Respondent 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 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.

Stipulation
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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 Maloney July 14, 1993
Respondent Date

Arthur Huxton 7/20/93
Prosecuting Attorney Date
Division of Enforcement

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 August 11, 1993.