

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

BLAIN E. NYBERG, R.PH.  
RESPONDENT.

91 PHM 50

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

Blain E. Nyberg, R.Ph.  
826 S. Nash Street  
Hortonville, WI 54944

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 Blain E. Nyberg (dob 1/27/55) 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 #9584, originally granted on 6/13/79.

2. On and between November 12, 1990 and at least July 24, 1991, respondent participated in inducing patient Thomas J, a personal friend who has been diagnosed with multiple sclerosis, to engage in a series of purchases of substances represented by respondent to be vitamins and other nutritional products. Respondent represented to the patient that these products would mitigate the multiple sclerosis disease, or its symptoms, and that this or a very similar therapy had cured 10,000 cases of cancer which had been thought to be incurable and terminal. The patient gave respondent checks totalling at least \$21,535 for these products: these substances had a reasonable retail value of less than 10% of the amount charged. Respondent states that he did not profit from these transactions, and transferred all monies to another person, who supplied the vitamins. These products have no generally accepted value in the treatment of multiple sclerosis or cancer, and in many cases were not labeled with their ingredients.

### 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)4., 5., 6., and 7., Wis. Stats., and § Phar 10.03(1), (2), (11), and (13), 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 Blain E. Nyberg is SUSPENDED for three months and continuing until respondent has made full and complete restitution of all monies paid to or through him by the patient in this matter, paid all costs imposed herein, and taken and passed the Wisconsin Pharmacy Jurisprudence and Federal Drug Law examinations with scores of 82 or better. Respondent may not take either exam more than twice without permission of the Board. The suspension is effective at midnight on the date of this order. During all periods of suspension, respondent shall not be in the professional area of any pharmacy. When respondent has complied with all conditions of this paragraph, the staff of the Board shall issue a limited license to respondent in accordance with the other provisions of this Order, without further action of the Board.

IT IS FURTHER ORDERED, that respondent's license to practice pharmacy is LIMITED in that he shall not be a managing pharmacist unless and until the following conditions are met:

- a Respondent shall take and pass the three credit course in over-the-counter medications offered by the University of Wisconsin School of Pharmacy (or an equivalent course at another accredited school of pharmacy, which course shall have been approved in advance by the Board or its designee).
- b. Respondent shall take and pass a course of not less than three semester hours in human nutrition, including the role and biochemistry of vitamins, minerals, and similar substances in the treatment of disease, which course shall have been approved in advance by the Board or its designee.

IT IS FURTHER ORDERED, that respondent shall take all steps necessary to remove the limitations on his license, and shall have satisfactorily completed both courses no later than June 30, 1995. Failure to do so constitutes a violation of this Order. When respondent has completed the courses and complied in all other respects with this order, the staff of the Board shall then reissue respondent's unlimited license without further action by the Board.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

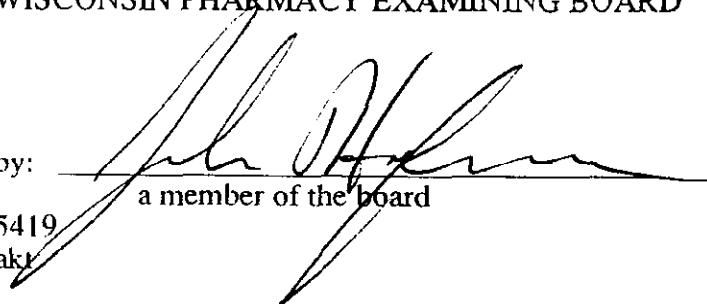
IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$2300, within 60 days of this order

Dated this 10 day of MAY, 1994.

WISCONSIN PHARMACY EXAMINING BOARD

by:

5419  
akt

  
a member of the board

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :

BLAIN E. NYBERG, R.PH., :  
RESPONDENT. :

STIPULATION  
91 PHM 50

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 a hearing on the formal complaint which has been issued in this matter.
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 obtained legal advice before signing this Stipulation.
4. Respondent does not admit the facts, but 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.

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.

Respondent Blain E. Hyberg 4-18-94 Date

Earl J. Luaders  
Earl J. Luaders, Attorney for Respondent Date

Arthur Thompson 4/22/94 Date  
Prosecuting Attorney  
Division of Enforcement

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN PHARMACY EXAMINING BOARD.

1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

MAY 12, 1994.

### 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)