

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 :

GLENN J. NABEDIAN, R.Ph., :
RESPONDENT. :

FINAL DECISION AND ORDER

96 PHM 15

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

Glenn J. Nabedian, R.Ph.
4214 S. Kingan
St. Francis, WI 53235

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 Glenn J. Nabedian (dob 8/3/47) was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, under license number 8427, first granted on 1/11/73. Respondent is a hospital pharmacist.

2. Respondent had a brain tumor which was removed surgically in 1982. Since that time, respondent has practice hospital pharmacy. Approximately 4 years ago, respondent began to make occasional practice errors, which were brought to his attention. Notwithstanding respondent's attempts to improve his practice, his practice error rate has increased to the point where he is unable to practice with skill and safety. In 1996, respondent has made errors resulting in IV solutions containing incorrect strengths of ingredients, incorrect ingredients, and omitting a prescribed ingredient. An order for a perishable item was prepared too soon, several transcription errors regarding dosage instructions were made, incorrect patient names were entered, and a patient allergy to a medication was not caught. Respondent has been evaluated by medical and psychological experts, and is undergoing treatment to deal with the condition which has caused respondent's abilities to diminish, which is believed to be related to his tumor and the treatment related to it.

CONCLUSIONS OF LAW

3. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to §450.10(1), Wis. Stats. and ch. Phar 10, Wis. Adm. Code .

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

5. The facts set forth in ¶2, above, constitute unprofessional conduct pursuant to §450.10(1)(a)3. and 6., Wis. Stats., notwithstanding respondent's lack of intent and the fact that these errors are related to a medical condition for which respondent is not at fault.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the STIPULATION of the parties, attached hereto, is ACCEPTED.

IT IS FURTHER ORDERED that solely for the purpose of protecting the public, effective on the date of this Order the pharmacist license of respondent is SUSPENDED indefinitely. This suspension may be stayed as provided below. The Board in its discretion may restore respondent's license to full, unlimited status upon petition by respondent after completion of five years of practice of pharmacy in compliance with all terms and conditions of this Order, and a demonstration that respondent may practice pharmacy without condition or limitation with skill and safety to patient and public.

1. STAY OF SUSPENSION. The suspension may be STAYED for periods of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for an initial and then for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period, and upon recommendation of his supervising physician or therapist satisfactory to the Board. "Three months" means until the third regular Board meeting after the meeting at which any stay of suspension is granted.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing.

c. Upon a showing by respondent of successful compliance for a period of five years with the terms of paragraph 2., below, and compliance with all other terms of this Order and the recommendations of respondent's health care providers or other experts, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on the first business day of the third month following the granting of the initial stay, and each three months thereafter, for the period that this Order remains in effect.

e. Respondent shall forthwith surrender all indicia of licensure to the Department by mail or in person. Respondent shall also surrender all indicia of licensure to any agent of the Department who requests them. Appropriate credentials shall be issued upon the granting of a stay of suspension.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. Respondent shall remain free of alcohol, prescription drugs, and controlled substances, not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of his condition. Such program shall consist of the following elements and requirements: respondent shall remain continuously under the care of a psychiatrist or neuropsychologist (the "supervising physician or therapist") acceptable to the Board or its designee, and shall follow all recommendations of the treating provider for therapy and monitoring of his condition. When the first stay of suspension is requested, a treatment plan shall be submitted, signed by the supervising physician or therapist.

(1) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting a summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment and changes in the treatment plan. Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(2) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist, and his employer, to report immediately to the Board any conduct or condition of respondent that may constitute a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist.

(3) Evaluations. Respondent shall submit to evaluation at any time by an expert designated by the Board or Department Monitor, and shall cooperate fully and promptly with any such evaluation including by releasing all records and completing in good faith all physical and psychological tests or other evaluation procedures, including body fluid and tissue sampling, reasonably required by the evaluator.

c. Practice of Pharmacy: Limitations and Conditions. Any practice of Pharmacy by respondent during the pendency of this Order shall be subject to the following terms and conditions:

(1) Full Compliance with Order Required. Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

(2) No Managing Pharmacist. Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in § Phar 1.02(6), Wis. Adm. Code.

(3) No Pharmacist in Charge. Respondent shall not be employed as or work in the capacity of a "pharmacist in charge" as defined in § Phar 1.02(9), Wis. Adm. Code.

Terms for Modification of Prohibition on Practice as Pharmacist In Charge.

Respondent may petition the Board for modification of this prohibition against practice as a pharmacist in charge after 90 days or 550 hours of supervised practice and compliance by respondent with all terms and conditions of this Order. Any such petition shall be accompanied by written request of the supervising pharmacist, which shall include a complete work schedule of all pharmacists employed in the pharmacy indicating the proposed work schedule and supervision pattern for respondent. Such petition shall also include a written recommendation of the supervising physician or therapist specifically addressing the modification sought. The Board in its discretion may at any time modify any of the terms regarding practice by respondent as a pharmacist in charge, including removal of authorization under this Order of respondent to practice as a pharmacist in charge, as the Board deems appropriate in the circumstances. Grounds for modification or removal of the authorization to practice as a pharmacist in charge may include, but shall not be limited to, change in employer, managing pharmacist or residence address of the respondent. Modification of these terms and conditions, or removal of authorization under this Order of respondent to practice as a pharmacist in charge shall not be deemed a class 1 or class 2 proceeding under §§227.01(3) or 227.42, Wis. Stats., or Ch. RL 1 or 2, Wis. Adm. Code, and shall not be subject to any right to a further hearing or appeal.

(4) Provision of Copy of Order to Employers. Respondent shall provide his employer and any prospective employers with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment.

(5) Quarterly Reports. Respondent shall arrange for his supervising pharmacist to provide directly to the Board quarterly written reports evaluating Respondent's work performance, which shall include reports or information required under subparagraph (6) and (7) hereunder. Such reports shall be due on the dates specified in paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel current releases which comply with state and federal laws, authorizing release of all his medical and mental health, drug and alcohol counseling, treatment and monitoring records to the Pharmacy Examining Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Pharmacy Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the

Pharmacy Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding Respondent to the Pharmacy Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. COSTS. Respondent shall not be required to pay COSTS of this investigation under §440.22, Wis. Stats.

4. PHARMACY OWNERSHIP PROHIBITED. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect, other than as a stockholder in a publicly held corporation.

5. TERMS FOR MODIFICATION OF ORDER. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under §§227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

6. RESPONDENT RESPONSIBLE FOR COSTS AND EXPENSES OF COMPLIANCE. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

7. BOARD/DEPARTMENT INSPECTIONS. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where respondent is employed as a pharmacist.

8. VIOLATIONS OF ORDER. Violation of any of the terms of this Order or of any law substantially relating to the practice of pharmacy may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

Dated this OCTOBER 8th, 1996.

PHARMACY EXAMINING BOARD

By: George J. Christman RPH
A Member of the Board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

GLENN J. NABEDIAN, R. Ph. :
RESPONDENT. :

STIPULATION
96 PHM 15

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, and in particular to abide by paragraph 2(a) of the Order as of the date respondent signs this Stipulation. 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 *Report of Decisions* 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.

Elson Niebeck 9/25/96
Respondent Date

Arthur Hupst 9/27/96
Prosecuting Attorney Date
Division of Enforcement

BEFORE THE STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

GLENN J. NABEDIAN, R.P.H., :
RESPONDENT. :

AFFIDAVIT OF SERVICE

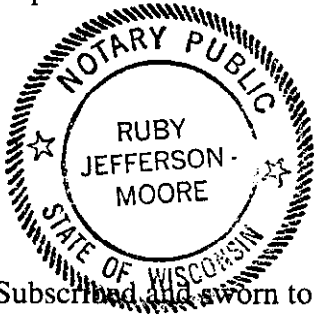
Katie Rotenberg, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on October 9, 1996, she served the following upon the respondent:

Final Decision and Order dated October 8, 1996

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail with a return receipt requested in an envelope properly addressed to the above-named respondent at:

4214 S. Kingan
St. Francis, WI 53235
Certified P 213 148 626

an address which appears in the files and records of the Pharmacy Examining Board as the respondent's last known address.



Katie Rotenberg
Katie Rotenberg
Department of Regulation and Licensing

Subscribed and sworn to before me

this 9th day of October, 1996.

Ruby Jefferson-Moore
Notary Public
Dane County, Wisconsin
My Commission is Permanent

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

October 9, 1996

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.)