

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

SANFORD J. LARSON, M.D.

LS9609261MED

Respondent

ORDER DENYING PETITION FOR REHEARING

TO: Michael P. Malone
Attorney at Law
100 E. Wisconsin Ave., Suite 2600
Milwaukee, WI 53202
P.O. Box 5159
Appleton, WI 54913-5159

Arthur Thexton
Attorney at Law
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

On November 29, 1997, the Medical Examining Board issued its Final Decision and Order in the above-captioned matter. The decision found that Dr. Larson had issued undated prescriptions for controlled substances to a particular patient for an unspecified period ending in 1990, in violation of 21 CFR section 1306.05, and that he had therefore violated sec. Med 10.02(2)(p), Code. The board ordered that Dr. Larson be reprimanded, and that he be assessed one-half the costs of the disciplinary proceeding.

On or about December 23, 1997, Michael P. Malone, attorney for Dr. Larson, filed respondent's *Petition for Rehearing*. Complainant's State's *Response to Petition for Rehearing* was received on or about December 30, 1997. The Medical Examining Board considered the petition at its meeting of January 22, 1998.

Based upon the petition and other information of record herein, the Medical Examining Board rules as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that respondent's Petition for Rehearing in the Matter of Disciplinary Proceedings Against Sanford L. Larson, M.D., be, and hereby is, denied.

DISCUSSION

Under sec. 227.49(2), Stats., a rehearing may be granted only on the basis of some material error of law, some material error of fact, or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. Respondent's Petition for Rehearing alleges three material errors of law.

First, respondent states at page 2:

In its written decision, the MEB relied substantially on § Phar 8.05(4), Wis. Admin. Code. In relying on a regulation applicable solely to pharmacists, the MEB made a material error of law under § 227.49(3)(a), Wis. Stats., warranting a rehearing of this matter.

The board did not substantially rely on sec. Phar 8.05(4) in making its findings. That section was discussed exclusively in the context of explaining the board's variance from the recommendation of the Administrative Law Judge that Dr. Larson be required to complete continuing education. The board did not find that Dr. Larson had violated the section in question and indicated that it would be improper to have done so.

Possible violations of procedural prescribing requirements by Dr. Larson arising from the procedure utilized by him after 1990 were not alleged in the Complaint in this matter and were therefore quite properly not set forth as a violation in the Conclusions of Law recommended by the ALJ. But even assuming that the procedure utilized may nonetheless be considered as an aggravating factor in this case, considerations of rehabilitation and deterrence do not in the opinion of the board justify a requirement that Dr. Larson submit to a 44 hour mini-residency in the proper prescribing of controlled substances (Final Decision and Order, p. 4).

Finally, had the Complaint alleged that Dr. Larson post-dated prescriptions in violation of sec. Phar 8.05(4), Code (or, perhaps more properly, sec. 8.05(1), Code), and had that allegation been proven, then the fact that the provision in question is found in the rules of the Pharmacy Examining Board relating to controlled substances is irrelevant. Sec. 961.31, Stats., states:

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

Those authorized rules are found at ch. Phar 8, Code, and sec. Phar 8.01, Code, explains the scope of those rules:

Phar 8.01 Scope. Procedures governing the manufacture, distribution and dispensing of controlled substances pursuant to ch. 161, Stats., are set forth generally by that chapter and specifically by sections of this chapter and chs. Phar 12 and 13.

Respondent's closely related second claim of substantial legal error states,

. . . the imposition of discipline by the MEB was based upon conduct which was not alleged as a violation in the complaint and was not, therefore, an issue before the MEB. This conduct consisted of Dr. Larson's issuance of prescriptions postdated for the convenience of the same infirm patient. Disciplining Dr. Larson for this purported violation of law not alleged in the complaint also constitutes a material error of law compelling rehearing in this matter.

The hearing examiner recommended that discipline in this case include a requirement that Dr. Larson complete continuing education in the area of prescribing controlled substances. The ALJ's reasoning was stated in his opinion as follows:

The [recommended] discipline in this case is strongly affected by the fact that Dr. Larson continues to violate [21 CFR 1306.05]. When he was informed of the problem with undated prescriptions in 1990, Dr. Larson immediately changed his practice and began sending Ms. A. prescriptions which were dated, but dated in the future, on the approximate date when Ms. A would take the prescription to be filled by a pharmacist. . . . This was not relevant to the proof of the allegation regarding undated prescriptions, but it is highly relevant to the choice of appropriate discipline. (Proposed Decision, p. 8)

The board specifically rejected that suggestion, and deleted the recommended requirement that Dr. Larson be required to complete continuing education in the area of prescribing controlled substances.

Respondent's last claim is that Dr. Larson was not afforded the opportunity to personally appear before the board, because the board failed to request such an appearance. Respondent does not specifically denote this failure as a material error of law -- nor could he. There is no requirement that the board permit the parties to a disciplinary proceeding to appear for oral argument. Sec. 227.46(2), Stats., states,

227.46 Hearing examiners; examination of evidence by agency.

* * * *

(2) Except as provided in sub. (2m) and s. 227.47 (2), in any contested case which is a class 2 or class 3 proceeding, where a majority of the officials of

the agency who are to render the final decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the agency on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the officials who are to participate in the decision. The agency may direct whether such argument shall be written or oral. If an agency's decision varies in any respect from the decision of the hearing examiner, the agency's decision shall include an explanation of the basis for each variance.

Had respondent wished to present oral argument before the board in support of his objections, he should have filed such a request with the board. Had he done so, the request would have been routinely granted.

Finally, respondent argues that the discipline imposed is unduly harsh given the minor nature of the violations. The board deems the requirements relating to prescribing and dispensing controlled substances to be vital to the health, safety and welfare of the public. Respondent's good intentions in violating these requirements is certainly a mitigating factor, and may be deemed to be the basis for imposition of the lowest form of discipline. To excuse his conduct entirely, however, would be incompatible with the disciplinary objectives of rehabilitation and deterrence of others from engaging in the same or similar conduct.

The board's Final Decision and Order in this matter contains no material errors of law, and respondent's petition for rehearing must therefore be denied.

Dated this 28th day of January, 1998.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Wanda Roever
Wanda Roever
Board Secretary