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STATE OF WISCONSIN

BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :

PROCEEDINGS AGAINST: FINAL DECISION AND ORDER

THOMAS K. ROSE, R.Ph., [Case No. LS-9711181-PHM]

RESPONDENT.

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Thomas K. Rose, R.Ph.

1504 Kilbourne Avenue

Tomah, WI 54660

State of Wisconsin

Pharmacy Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

State of Wisconsin

Department of Regulation and Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A hearing in this matter was conducted on June 11, 12 and 15, 1998. The respondent, Thomas K. Rose, R.Ph., appeared personally and by his attorney, William T. Curran, Curran, Hollenbeck & Orton, S.C., 111 Oak Street, P.O. Box 140, Mauston, Wisconsin 53948-0140. The complainant appeared by attorney, Arthur Thexton, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. The hearing was recorded, and a transcript of the hearing was prepared and delivered on July 6, 1998. On November 3, 1998 the parties stipulated to an additional fact that was not available or presented at the time of hearing.

The administrative law judge filed his Proposed Decision on November 24, 1998. Both the complainant and respondent filed written objections to the Proposed Decision, as well as subsequent written responses to the opposing party's objections. The written objections and responses were received by December 22, 1998.

Based on the entire record, the Pharmacy Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The respondent, Thomas K. Rose, is licensed to practice pharmacy in the state of Wisconsin, under license number 10301.

2. Mr. Rose worked as a pharmacist at Mercy Hospital in Janesville from February of 1983 until June of 1993.

3. While working at Mercy Hospital, Mr. Rose diverted and self-administered controlled substances.

4. Mr. Rose participated in five years of treatment under the Impaired Professionals Procedure administered on behalf of the Pharmacy Examining Board, completing the program in January of 1996.

5. Mr. Rose was director of pharmacy at North Big Horn Hospital in Lovell, Wyoming from June of 1993 until April of 1996.

6. In March and early April of 1996, while working at North Big Horn Hospital, Mr. Rose diverted and self-administered Demerol® (meperedine hydrochloride), using 100-200 mg/day over a period of approximately two weeks [transcript, p. 352].

7. Around April 4, 1996 Mr. Rose disclosed his diversion of Demerol® to co-workers and voluntarily gave them his keys so that he wouldn't have access to controlled substances. When the facts came out later in the investigation of an unrelated loss of fentanyl in the hospital, he admitted his actions to other hospital officials, to officers of the local police department, and to investigators of the Drug Enforcement Agency.

8. Mr. Rose was charged with a federal crime by the U.S. Attorney, and he signed a plea agreement on April 2, 1997 whereby he agreed to plead guilty to one misdemeanor count of Simple Possession of a Controlled Substance (Demerol). As part of his negotiated plea agreement with federal authorities, Mr. Rose voluntarily surrendered his Wyoming Pharmacists license on May 30, 1997 [exhibit 28]. Sentence was imposed on January 30, 1998, consisting of three years probation with conditions and a fine of $3,000 [exhibit 29].

9. Mr. Rose returned to Wisconsin in April of 1996 and on Monday, June 17, 1996, started working at Unity Pharmacy in La Crosse (now known as Franciscan-Skemp Pharmacy), which serves a population in nursing homes and hospices and carries a relatively large inventory of schedule II controlled substances, including meperedine. Mr. Rose spent most of his first day in an orientation to the job, with approximately two hours spent shadowing another pharmacist.

10. While Mr. Rose worked at Unity Pharmacy, no complaints were lodged against him. Two instances were reported by an IV technician when she found Dilaudid bottles in the compounding area unattended, but Mr. Rose was not questioned about these [transcript, pp. 60-61].

11. Some losses of controlled substances, notably morphine, occurred at Unity Pharmacy while Mr. Rose worked there, but it is not possible from the pharmacy's records to tell whether the losses were greater during that period than during other periods.

12. The only entry on Unity Pharmacy's log for Demerol® between the dates of 4/11/96 and 9/24/96 was initialed by Mr. Rose. The entry was dated 6/17/96, and it reported the removal of five units of Demerol® 100 mg/ml Carpuject (tubexes) from an inventory of 20. No prescription number was recorded, and the patient named did not have a prescription for Demerol®. The figure for the remaining inventory is unreadable and is either 15 or 10.

When managing pharmacist Cheryl Burley performed an inventory on 9/22/96, she reported finding ten Demerol® 100 mg/ml Carpujects. She removed these from inventory on 9/24/96 and eventually sent them to the DEA for analysis.

13. On August 25th or 26th of 1996, Mr. Rose gave notice to Unity that he would be leaving to take a job at Horizon Pharmacy in Tomah. There was a going-away party for him on Thursday night, September 19th, and on Friday, he inventoried some drugs as part of his implementation of a modified record-keeping form which he developed, and he reported to the managing pharmacist, Cheryl Burley, that some morphine and some hydromorphone were missing [transcript, p. 374]. Other pharmacists had also expressed concern to Ms. Burley over what appeared to be losses of morphine and meperedine [transcript, pp. 79-80]. Over the weekend, Ms. Burley went in to the pharmacy to investigate the inventory of controlled substances. She found serious and obvious tampering with containers of Demerol® brand meperedine hydrochloride, other meperedine hydrochloride, and Dilaudid® (hydromorphone hydrochloride). The tamper tabs had been removed from the protective plastic packaging of ten tubexes of Demerol® brand meperedine hydrochloride and nine other tubexes of meperedine hydrochloride [exhibits 2 and 11]. Sixteen 20 ml bottles of Dilaudid® (hydromorphone hydrochloride) and eight bottles of 50 mg/ml meperedine hydrochloride had been obviously tampered with. With the exception of one of the bottles of Dilaudid®, plastic tabs on all of the bottles had been removed, all of the rubber stoppers had one or more injection holes, and the bottles contained differing amounts of fluid [exhibits 8, 9 and 10].

14. Mr. Rose's last scheduled day of work was Monday, September 23, 1996. Shortly after arriving at the

pharmacy on that day, Ms. Burley asked Mr. Rose to take a urine test. Mr. Rose refused, left Unity Pharmacy, and began work that day at Horizon Pharmacy.

15. A forensic chemist for the DEA analyzed the tubexes and bottles sent by Ms. Burley and found the following:

- Of the nineteen syringes of meperedine hydrochloride, all but five showed evidence of tampering, with volumes from 10% to 60 % low, and/or dilution of the meperedine with morphine;

- The septums of all of the bottles of meperedine hydrochloride had been punctured more than once, and the meperedine in all the vials was diluted, some with morphine.

- The septums of all but one of the bottles of Dilaudid® (hydromorphone hydrochloride) had been punctured, from one to 24 times, their volumes varied from 3.2 ml less than stated to 3 ml more, and some contained morphine, either mixed with hydromorphone or alone.

16. At Unity, Mr. Rose had keys to the controlled substance drawers, as did all of the pharmacists. He was often alone with drugs in the "hood" (the compounding area). Mr. Rose took frequent unscheduled breaks, and on one occasion his mental processes and memory seemed to be impaired, having to ask repeatedly for the same information.

17. Sometime between June 17, 1996 and September 22, 1996, Mr. Rose diverted Demerol® from Unity Pharmacy, and he tampered with and adulterated other drugs to cover up his thefts.

18. Since September 23, 1996, and even before that date when he went in to familiarize himself with the computer system, Mr. Rose has been working as a pharmacist at Horizon Pharmacy in Tomah.

19. At the time he was hired at Horizon Pharmacy, Mr. Rose told the managing pharmacist, Dennis Koranda, that he had had problems in Wyoming and that he was being investigated, but he did not tell him the specifics.

20. On December 12, 1996, Mr. Rose spoke to Steven Rohland, an investigator employed by the Division of Enforcement and acting on behalf of the Pharmacy Examining Board. During that interview, he denied diverting any drugs from Unity Pharmacy or tampering with any drugs there, and he denied diverting any drugs from North Big Horn Hospital in Wyoming.

CONCLUSIONS OF LAW

I. The Pharmacy Examining Board has personal jurisdiction over the respondent, Thomas K. Rose, based on his holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats.

II. The Pharmacy Examining Board is the legal authority responsible for issuing and controlling credentials for pharmacists, under ch. 450, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 450.10, Stats., and chs. Phar 10 and 11, Wis. Admin. Code.

III. By having diverted and self-administered Demerol® (meperedine hydrochloride), using 100-200 mg/day over a period of approximately two weeks in March and early April of 1996 while working at North Big Horn Hospital in Wyoming, Mr. Rose violated

- § Phar 10.03(1), Wis. Admin. Code, administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law;

- 21 USC § 844(a), unauthorized possession of a controlled substance;

- § 961.41(3g), Stats., unauthorized possession of a controlled substance; and

- § 450.10(1)(a)2, Stats., violating any federal or state statute or rule which substantially relates to the practice of pharmacy.

Discipline is appropriate for these offenses, under § 450.10, Stats.

His actions did not constitute "dispensing" and therefore are not violations of

- § Phar 8.05(2), Wis. Admin. Code, dispensing a controlled substance without a prescription; or

- 21 CFR § 1306.11(a), dispensing a controlled substance without a prescription.

The evidence is insufficient to prove that by his actions Mr. Rose violated

- § 450.10(1)(a)3, Stats., practicing pharmacy while impaired; or

- § Phar 10.03(2), Wis. Admin. Code, engaging in any pharmacy practice which constitutes a danger to the health, welfare or safety of patient or public.

IV. Mr. Rose's surrender of his Wyoming pharmacist license by agreement with the federal authorities was not a disciplinary action taken against his license and therefore not a violation of § Phar 10.03(17), Wis. Admin. Code, having a pharmacist license revoked or suspended in another state or having been subject to other disciplinary action.

V. Mr. Rose's lying to Investigator Rohland is a violation of § Phar 10.03(8), Wis. Admin. Code, providing false information to the board or its agent. Discipline is appropriate for this offense, under § 450.10, Stats.

VI. By diverting Demerol® from Unity Pharmacy between June 17, 1996 and September 22, 1996, Mr. Rose violated

- § Phar 10.03(1), Wis. Admin. Code, administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law;

- 21 USC § 844(a), unauthorized possession of a controlled substance;

- § 450.10(1)(a)2, Stats., violating any federal or state statute or rule which substantially relates to the practice of pharmacy;

His actions did not constitute "dispensing" and therefore are not violations of

- § Phar 8.05(2), Wis. Admin. Code, dispensing a controlled substance without a prescription; and

- 21 CFR § 1306.11(a), dispensing a controlled substance without a prescription.

The evidence is insufficient to prove that by his actions Mr. Rose violated

- § 450.10(1)(a)3, Stats., practicing pharmacy while impaired.

By adulterating other drugs at Unity Pharmacy to cover up his thefts, Mr. Rose violated

- § Phar 10.03(2), Wis. Admin. Code, engaging in any pharmacy practice which constitutes a danger to the health, welfare or safety of patient or public.

Discipline is appropriate for these offenses, under § 450.10, Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED: that effective on the date of this Order, the pharmacist license of respondent is REVOKED.

1. STAY OF REVOCATION. The revocation is STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for consecutive three (3) month extensions of the stay of revocation, 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. "Three months" means until the third regular Board meeting after the meeting at which any stay of revocation 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 upon a showing that respondent has made satisfactory restitution for any losses caused by the conduct described above and compliance with all other terms of this Order, 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 each and every May 1st, and 1st day of 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, and the Department shall then issue limited licensure credentials to respondent. Respondent shall also surrender all indicia of licensure to any agent of the Department who requests them.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of revocation 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. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with respondent's treatment and rehabilitation.

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 chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Pharmacy Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order.

(2) Individual/Group Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed revocation upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed revocation, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the 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.

(3) AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Drug Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of the following substances and their metabolites: tetrahydrocannabinols, alcohol, amphetamines, cocaine, opiates, and benzodiazepines, and on a frequency of not less than:

(a) Eight times per month for the first year following the date respondent resumes practicing pharmacy, or once per week if not practicing pharmacy.

(b) Six times per month for the second year following respondent's resumption of practice.

(c) Four times per month for the third through fifth years following resumption of practice.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen, and shall be conducted by a NIDA-certified facility.

The random drug and alcohol screening program shall include all hours of the day and evenings, and include weekends and holidays, for collection of specimens. Failure of the drug and alcohol screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Revocation, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

Respondent shall appear and provide a specimen not later than 5 hours following a request for a specimen.

If the physician or therapist supervising the Respondent's plan of care, Respondent's employer, the Pharmacy Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional blood or urine screens are warranted, respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met.

Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility and supervising physician and therapist shall agree to provide random and gatherings of specimens for analysis for the specified substances and alcohol under NIDA collection guidelines. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry (hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility and supervising physician and therapist shall agree to immediately file a written report directly with the Pharmacy Examining Board, the supervising physician or therapist, and the respondent's supervising pharmacist upon any of the following occurrences: if the respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a record of the custody of all specimens collected and subjected to analysis. The facility shall further agree to preserve any specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board (not to exceed one year).

Respondent understands and agrees that the accuracy of the monitoring facility obtained is respondent's responsibility. For purposes of further board action under this order, it is rebuttably presumed that all confirmed positive reports are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in testing or fault in the chain of custody regarding a positive monitoring report.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

(a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,

(b) Respondent's attendance in NA/AA meetings,

(c) Respondent's participation in and results of his random witnessed urine and/or blood screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) 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, including any indications of consumption of alcohol or unauthorized use of any controlled substances, failure to appear for a urine or blood screening, notice of any positive blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

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) Monitoring of Access to Drugs. Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abuseable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abuseable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abuseable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(7) Controlled Substances Audits. In addition to the foregoing subparagraph (6), Respondent shall obtain from his supervising pharmacist agreement to conduct a full and exact (not estimated) count of the following controlled substances in inventory immediately, and accountability audits of the following controlled substances every six months for the duration of this Order: all opioids, including synthetics. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(8) 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 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 AND RESTITUTION. Respondent shall pay COSTS of this investigation and prosecution of this matter under §440.22, Wis. Stats., to the Department of Regulation and Licensing, and shall make restitution for any losses caused by the conduct described in this order, within 60 days of this Order.

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.

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 revocation, for modification of the conditions or limitations for stay of revocation. 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 revocation, or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

9. EFFECTIVE DATE. This Order shall become effective immediately upon issuance by the Pharmacy Examining Board.

EXPLANATION OF VARIANCE

The Pharmacy Examining Board has accepted the Findings of Fact and Conclusions of Law of the Administrative Law Judge in their entirety. The board has also accepted that portion of the proposed order imposing a revocation and staying the revocation for a period of three months.

However, the board has not accepted the various terms and conditions recommended in order for the respondent to receive quarterly stays of the revocation. Rather, it chooses to adopt the recommendations advanced by complainant’s attorney, as such conditions and limitations are consistent with past practice and policy of the board in handling similar matters involving the diversion and self-administration of drugs.

The primary differences between the conditions required under this order and those recommended by the ALJ are as follows:

1. The proposed decision recommended that the limitations be in place for two years, after which the respondent could apply for full, unrestricted pharmacy practice. The board’s order provides for a five-year limitation. The board does not believe that compliance with the treatment and reporting requirements for only two years is sufficient to assure that a health care provider with the problems of respondent is capable of practicing under an unrestricted license in the best interests of the public health, welfare and safety. A five year program is consistent with past determinations by the board in past similar cases.

2. The proposed decision recommended that respondent attend therapy sessions and obtain drug screens upon a schedule determined by his therapist. The board’s order requires weekly sessions with the therapist for at least one year, weekly AA/NA meetings and sets forth a specific number of drug screens to which respondent must submit each month. These provisions assure the board’s ability to set a minimally acceptable treatment program which is again based on past decisions. Specifying the number of monthly drug screens to be obtained is of special importance in that the results and reporting of the screens is the primary objective evidence available to the board respecting whether or not respondent has complied with the requirement to remain free of drugs.

3. The board’s order prohibits respondent from being an owner of a pharmacy, a managing pharmacist or pharmacist in charge until further order of the board. Perhaps these conditions may be implied from the recommendation in the proposed decision respecting various requirements of respondent’s "employer". However, they should be set forth in specificity to prevent any doubt or confusion.

Dated: February 25th, ,1999.

STATE OF WISCONSIN

PHARMACY EXAMINING BOARD

Daniel F. Luce, R.Ph.

Chairman