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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE
DISCIPLINARY PROCEEDINGS AGAINST

MARK G. ANDERSON, R.Ph.,
RESPONDENT

FINAL DECISION AND ORDER
LS0001101PHM

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

Mark G. Anderson, R.Ph.
626 Thomas St.
Fond du Lac, WI 54935

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 Mark G. Anderson (dob 7/5/53) 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 9189, first granted 6/29/77.
2. Respondent was disciplined by the Board in 93 PHM 83 on 3/15/95. That case involved a substantial quantity of controlled substances missing from a pharmacy for which respondent was a managing pharmacist. At that time, respondent denied any unprescribed use of controlled substances, and presented an outpatient evaluation from a psychiatrist stating he was not impaired, although admitting to unprescribed use of small amounts of controlled substances and to abusing alcohol. At the time of the 3/15/95 order, respondent's license was permanently limited in multiple respects including a prohibition on ingesting alcohol or controlled substances without prescription, but through staff error, the limitations were removed on 11/18/96.
3. During the calendar year 1999, respondent was employed by a chain pharmacy in Fond du Lac, Wisconsin.
4. The pharmacy reported that, following inventory, it cannot account for approximately 600 Valium® 5mg, approximately 300 hydrocodone 5mg APAP, and approximately 80 oxycodone, all of which are missing in calendar year 1999. The pharmacy was the owner of such medications, and did not give consent to anyone to take them.
5. Respondent has admitted to pharmacy loss prevention staff and local police that he took the Valium and

hydrocodone described above, and consumed it. Such medications were the property of the pharmacy, and were taken without consent and with intent to permanently deprive the lawful owner of possession thereof, all during calendar year 1999.

6. Respondent then practiced pharmacy while some of these medications were still in his body.
7. Respondent did not have a prescription from an authorized prescriber for any of the medications described in ¶¶4-8, above.
8. Respondent has also admitted taking some \$1400 worth of general store merchandise without consent and with intent to permanently deprive the lawful owner of possession thereof, all during calendar year 1999. Such items were taken while or immediately before or after respondent was on-duty as a pharmacist in the same store for the same employer.
9. Respondent has also admitted taking a number of non-controlled prescription medications including antihistamines, antidepressants, NSAIDs, prescription vitamins, antibiotics, selegiline, and ranitidine, all while on duty as a pharmacist. Such medications were the property of the pharmacy, and were taken without consent and with intent to permanently deprive the lawful owner of possession thereof, all during calendar year 1999.
10. Respondent did not have a prescription from an authorized prescriber for such medications.
11. Respondent has now been evaluated on an inpatient basis, and been diagnosed as alcohol dependent in partial remission, probably benzodiazepine and opiate dependent, and as having significant psychological issues.
12. Respondent has now been evaluated on an inpatient basis, and been diagnosed as alcohol dependent in partial remission, probably benzodiazepine and opiate dependent, and as having significant psychological issues. He has entered treatment, and is complying with his current treating clinicians' recommendations.

CONCLUSIONS OF LAW

- A. 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 .
- B. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.
- C. The conduct set forth in ¶¶5-10, above, violated §§450.10(1)(a)2., 3., and 6., 943.20(1)(a), and 961.41(3g), Wis. Stats., §§ Phar 8.05(2) and 10.03(1), Wis. Adm. Code, and 21 USC §§1306.11 and 1306.21.
- D. The conduct set forth in ¶¶8-9, above, violated §§450.10(1)(a)2., and 943.20(1)(a), Wis. Stats.
- E. The conduct set forth in ¶¶9-10, above, violated §§450.10(1)(a)2., 3., and 6., 450.11(1) and (7)(a) and (h), and 943.20(1)(a), Wis. Stats, and § Phar 10.03(1), Wis. Adm. Code.
- F. The violations of the above-cited statutes and rules are unprofessional conduct.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

IT IS FURTHER ORDERED that effective on the date of this Order, the pharmacist license of respondent is SUSPENDED indefinitely.

1. STAY OF SUSPENSION. The suspension 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 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. "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. The applications for any extension under 1.a. and all required reports under 2.a-c. shall be due on the 1st business day of October, and each three months thereafter, for the period that this Order

remains in effect.

d. 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 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. 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 and of the Axis II issues identified in Dr. Charles Engel's report dated February 4, 2000. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall participate in the St. Agnes Hospital Drug and Alcohol Abuse Treatment and Relapse Prevention Program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), or another accredited drug and alcohol abuse/dependency treatment facility acceptable to the Board. 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 program 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 weekly therapy, 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, benzodiazepines, and synthetic opiates (oxycodone, hydromorphone, fentanyl, hydrocodone, and meperidine), 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.

(d) Following the fifth year, as determined by the Board in its discretion.

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 Suspension, 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 program 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 SAMHSA 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. If the initial analysis is positive for opiates, but confirmatory tests are negative for codeine and morphine, then a comprehensive opiate panel shall be conducted to determine whether synthetic opiates are present.

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.

(7) Inpatient Treatment. If respondent relapses or his response to therapy is considered unsatisfactory by his treating therapist, he may be required by his treating therapist or the Board's designee to enter inpatient treatment as a condition of stay of suspension. Respondent may request that the Board review any such recommendation, and may offer alternatives to inpatient treatment, but the decision of the Board shall be final and not subject to appeal or review in any such case.

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 one year (or 2000 hours of supervised practice, whichever comes first) after January 12, 2000, 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 (including the managing pharmacist of any pharmacy in which respondent practices) with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment. EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF RESPONDENT HAS BEEN CONVICTED OF ANY FELONY RELATING TO CONTROLLED SUBSTANCES, THE EMPLOYER MUST RECEIVE A WAIVER OF 21 CFR §1301.76 UNDER 21 CFR §1307.03 BEFORE EMPLOYING RESPONDENT.

(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 opiates and all benzodiazepines. 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 under §440.22, Wis. Stats. in the amount \$100, 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. Respondent shall further pay any and all charges related to his evaluation at Rogers Memorial Hospital, including professional fees of the individual evaluating professionals as well as the direct hospital costs.

4. PHARMACY OWNERSHIP PROHIBITED. Respondent shall not own in whole or in part any interest in a pharmacy.

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.

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

Board, except for provision 2.a., which is effective the date of signing by respondent.

PHARMACY EXAMINING BOARD

By: John Bohlman

August 9, 2000

A Member of the Board

Date