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STATE OF WISCONSIN

BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE

DISCIPLINARY PROCEEDINGS AGAINST

MICHAEL J. O'KRAY, R.Ph.,

RESPONDENT.

FINAL DECISION AND ORDER

99 PHM 21

LS0007112PHM

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

*Michael J. O'Kray, R.Ph.
N49-W17057 Fox Ridge Dr.
Menomonee Falls, WI 53051*

*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 Michael J. O'Kray (dob 2/17/52) 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 9415, originally granted 6/9/78.
2. Between February 1998 and February, 1999, respondent was employed by Harwood Serv-U Pharmacy of Wauwatosa, a community pharmacy where respondent was the managing pharmacist and the only full-time pharmacist. During this period, the pharmacy experienced unexplained losses of approximately 2000 acetaminophen with codeine #4, a controlled substance, and some 15,263 oxycodone tablets, a Schedule II controlled substance.
3. An audit of the records revealed that additional controlled substances were dispensed pursuant to purported prescriptions to patients "Joseph Schreiner" and "Susan Schreiner" at a local address. In fact, no such patients existed, the local address listed for them did not exist, and the physician listed as the prescribing physician did not have any records for these patients. Respondent was listed in the pharmacy's computer records as the dispensing pharmacist for these patients.
4. Additional controlled substances were listed in pharmacy records as having been dispensed to respondent on

the prescription of his physician. In fact, his physician's records did not contain any such authorization, and the physician denied prescribing controlled substances to respondent.

5. Respondent took all of the controlled substances from Harwood Serv-U Pharmacy described above, without paying for the, without consent of the owner and with intent to permanently deprive the owner of possession thereof. Respondent did consume substantially all of the controlled substances described above, without authorization. Respondent did create and falsify the records of the purported patients Joseph and Susan Schreiner.

6. On three occasions between August and October, 1999, respondent was interviewed by Wauwatosa Police Department Det. William Gehragn, who was investigating the losses from the pharmacy. On each occasion, respondent specifically denied improperly taking or consuming any controlled substances from Harwood Serv-U Pharmacy

7. Respondent has been examined in April, 2000, by a competent addictionologist at the Board's request, and has been diagnosed with opiate dependence. He is presently compliant with treatment, and has been evaluated as able to return to work.

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 facts set forth in ¶2-7, above, constitute unprofessional conduct pursuant to one or more of the following: §§450.10(1)(a)2. and 3., 450.11(1) and (7)(a), (c), (e), and (h), 943.20(1)(a), 946.41(1), 961.38(1r) and (3), and 961.41(3g), Wis. Stats., §§ Phar 8.02(1), 8.05(2), and 10.03(1) and (5), Wis. Adm. Code.

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 for a period of not less than five (5) years. The Board in its discretion may restore respondent's license to full, unlimited status only 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 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. 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 September 1st, 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, 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. 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 suspension 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 suspension, 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, 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.

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 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. 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 self-report, and 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 one year or 2000 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 (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.

(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 in all schedules. 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.

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 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.

Dated this July 11, 2000.

PHARMACY EXAMINING BOARD

By: John Bohlman_

A Member of the Board