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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

HANI S. AMER, R.Ph.,

FINAL DECISION AND ORDER

RESPONDENT

LS0104231PHM

The State of Wisconsin, Pharmacy Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Pharmacy Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 13th day of November, 2001.

John Bohlman

Chairperson

Pharmacy Examining Board

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

HANI S. AMER, R.Ph.

PROPOSED DECISION

Respondent

LS0104231PHM

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

Hani S. Amer, R.Ph.

1218 Winn Trail

Madison, WI 53704

State of Wisconsin

Pharmacy Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class II hearing was held in the above-captioned matter on July 26, 2001, at 1400 East Washington Avenue, Madison, Wisconsin. The Department of Regulation & Licensing, Division of Enforcement, appeared by Attorney Arthur Thexton. The respondent did not appear, nor did anyone appear to represent him.

Based upon the entire record in this case, the administrative law judge recommends that the Pharmacy Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Hani Shakker Amer (respondent) was at all times relevant to the findings set forth herein a pharmacist licensed in the State of Wisconsin pursuant to license #13198, first granted on February 4, 2000. His address of record is 1218 Winn Trail, Madison, WI 53704.
2. On September 27, 2000, respondent was employed at an Osco pharmacy in Janesville, Wisconsin. On that day, he filled a prescription order purportedly written by a local physician at a pain clinic for a patient identified as Elizabeth Sautheimer, for an unspecified amount of OxyContin[®], a Schedule II Controlled Substance. On September 28, 2000, he filled a second prescription order purportedly written by the same pain clinic physician for a patient identified as Jonathon Shilton, again for an unspecified amount of OxyContin[®].
3. The prescriptions were clearly not valid. The prescription form itself was a photocopy, the prescriptions, though purportedly written by the same physician on the same date; were in different handwriting, including the signatures; the physician's DEA number is printed on the prescription, but his name is not; there is no space on the prescription form for refills; and the quantity of OxyContin[®] was added to both prescriptions in respondent's handwriting. Moreover, the directions for use was to take one or two 80 milligram tablets every four to six hours for breakthrough pain. Oxycontin is a sustained release product which should never be prescribed for breakthrough pain. The prescription orders were forgeries, and the patient names and addresses were fictitious.
4. Respondent admitted he did not know either patient, nor was either patient in the pharmacy's database. Nonetheless respondent admitted failing to investigate the prescription orders by calling the ostensible prescriber, and admitted as well to filling in the quantities on the prescriptions.
5. On September 28, 2000, respondent was observed by the pharmacy assistant to be handling a large quantity of currency at the cash register adjacent to the pharmacy's drive-up window, at a time when there was nobody at the window. Respondent's subsequent explanation to Osco management was that the patients paid for the prescriptions referenced above with \$850 in currency; and that he, respondent, did not place all of this money into the cash register at the time, but instead took \$550 home with him that night. The following day, when he returned to the pharmacy, he placed the currency in the cash register.
6. Upon questioning by the management of Osco on September 28, 2000, respondent failed to satisfactorily explain his actions, and he was terminated at that time.
7. There is insufficient evidence in this record to find that respondent created these forgeries or conspired with

others to create them, for the purpose of obtaining the drugs for himself or a co-conspirator. There is clear evidence, however, that respondent knew or should have known that the prescription orders were forgeries.

8. There is satisfactory evidence that respondent practiced pharmacy while unprescribed controlled substances were in his body.

9. On December 8, 2000, respondent was employed at a community pharmacy in New Berlin, Wisconsin. On that day, he transferred a prescription to patient K.M., and received payment from K.M. via credit card. Respondent failed to return the credit card to K.M. following the transaction, and kept it for his own use.

10. On that and subsequent days, respondent used K.M.'s credit card to purchase approximately \$5,000 worth of items at local electronics and department stores, a restaurant, and a grocery store, all without K.M.'s consent and with intent to avoid paying for the items.

11. Also while on duty at the same community pharmacy on December 8, 2000, respondent transferred a prescription to patient P.O., and received payment from P.O. by credit card. Respondent again failed to return the credit card to P.O. following the transaction, and kept it for his own use.

12. On that and subsequent days, respondent used P.O.'s credit card to purchase items at stores, all without P.O.'s consent and with intent to avoid paying for the items.

13. On January 10, 2001, respondent was a passenger in his brother's car, which respondent had been using as his own for several months while his brother was out of the state for an extended period. When the vehicle was stopped by police in Milwaukee County, the driver, who was not related to respondent, did not have a driver's license, as it had been previously revoked. Respondent's own driver's license had been previously suspended for multiple speeding violations. The police therefore initiated a search of the vehicle.

14. The car was found to contain, among other things, 56 vials of injectable anabolic steroids including 35 vials of Deca-Durabolin® (nandrolone decanoate), and 21 vials of "Sustanon," a testosterone substance not approved in the United States, both Schedule III controlled substances; cocaine; a plastic bag of assorted capsules and tablets; and some dozen pharmacy stock bottles, including methylphenidate (Ritalin®), oxazepam (Serax®), trazodone (Desyrel®), fluoxetine (Prozac®), hydrochlorothiazide, bupropion (Wellbutrin®), risperidone (Risperdal®), gabapentin, and others. Methylphenidate and cocaine are Schedule II controlled substances, oxazepam is a Schedule IV controlled substance; the other named drugs are prescription-only. Respondent also had a plastic bag of marijuana, a Schedule I controlled substance, in the pocket of the jacket which he was wearing at the time police stopped the car.

15. Respondent had no legitimate explanation for the presence of these items in his car, had no prescription or other apparent authority to possess these items, and had no records of the receipt of these items.. They were therefore not possessed in the course of legitimate practice.

16. Also found in the car was a loaded handgun, located under the seat which respondent was occupying at the time the car was stopped by police. Respondent admitted knowledge of the gun to the officer.

17. Following the stop of his vehicle, respondent falsely stated to uniformed Oak Creek Police Officer Joel Bateman that the injectable steroids in the car belonged to respondent's father, who had recently borrowed the car and had ostensibly left his medication in the car.

CONCLUSIONS OF LAW

1. Respondent's actions in relation to the forged prescriptions, as described in Findings of Fact # 2 through 7, above, constitute engaging in conduct in the practice of pharmacy which evidences a lack of knowledge or ability to apply professional principles or skills, in violation of Wis. Stats. § 450.10(1)(a)6; violating Wis. Stats. ch. 961, in violation of Wis. Stats. § 450.10(1)(a)2; obtaining or attempting to obtain compensation by fraud or deceit, in violation of Wis. Stats. § 450.10(1)(a)7.; and engaging in pharmacy practice which constitutes a danger to the health, welfare, or safety of patient or public, in violation of Wis. Admin. Code § Phar 10.03(2).

2. In practicing while under the influence of controlled substances, as described in Finding of Fact # 8, respondent has practiced pharmacy while his ability to practice was impaired by alcohol or other drugs, in violation of Wis. Stats. § 450.10(1)(a)3.

3. By his fraudulent use of customer credit cards, as described in Findings of Fact # 9 through 12, above, respondent has obtained or attempted to obtain compensation by fraud or deceit, in violation of Wis. Stats. § 450.10(1)(a)7.

4. By possessing controlled substances and prescription drugs without a prescription, not in the course of legitimate practice, and without records, as described in Findings of Fact # 13 through 17, above, respondent has violated Wis. Stats. ch. 961, in violation of Wis. Stats. § 450.10(1)(a)2., obtained a controlled substance or a prescription drug by fraud, deceit or willful misrepresentation or by forgery or alteration of a prescription order; or

by willful concealment of a material fact; in violation of Wis. Stats. §§ 450.11(7)(h), and 961.41(3g), and has obtained a drug other than in legitimate practice, in violation of Wis. Admin. Code § Phar 10.03(1)Wis. Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Hani S. Amer to practice pharmacy in the State of Wisconsin be, and hereby is, revoked.

IT IS FURTHER ORDERED that, pursuant to § 440.22, the total costs of this proceeding are assessed against the respondent.

OPINION

This is a rather sad case. Jeffrey Nevens, R.Ph., was managing pharmacist at the Osco Pharmacy in Janesville during the period in question, and he testified as to Amer's conduct during the approximately 16 months that respondent was employed there. Respondent did not appear at the hearing, and did not respond to any of the prehearing conferences. Mr. Nevens' testimony as to Amer's conduct therefore stands alone, and is fully credited.

At the beginning of Amer's employment, Mr. Nevens testified that Amer "was a very intelligent intern. His knowledge of cardiovascular medicine was excellent. He was a very good counselor to patients, very knowledgeable on medicines and disease states and I thought was on his way to becoming a very good pharmacist" (Tr., p. 5). "[W]hen Mr. Amer first came on board with us as a post graduate intern, a very competent individual, rather meticulous in his work making sure that things were filled correctly. Checking dosages, checking with patients, reviewing profiles for interactions, discussing these potentials with patients. Calling physicians to possibly get orders changed where another medication from a different doctor would have interacted. Things of this nature, things that a truly competent and professional individual would do on a daily basis. He did transfer that over from his post graduate internship to his licensure also. He began practicing at a very professional level" (Tr., p. 29).

Within a few months, however, Mr. Amer's performance deteriorated precipitously. Nevens testified that the pharmacy began getting complaints from patients that their medications were being filled incorrectly, including the wrong medication, the wrong medication strength, or the mixing of medication strengths; and that Amer was providing incorrect instructions. The volume of these complaints increased as time went by, and were accompanied by other lapses in professionalism, including habitual tardiness. Two specific instances are instructive in terms of his deteriorating performance. A few months before his termination, Mr. Amer at one point was discovered by the pharmacy assistant sitting on the floor in the pharmacy, propped up against a cabinet, asleep (Tr., p. 30). On another occasion, Amer was complaining that his shoes were hurting him. He proceeded to take off his shoes and socks and go about his duties in the pharmacy in his bare feet until ordered by management to put his shoes back on.

This deteriorating performance culminated in the series of events occurring on September 27 and 28, 2000. It is on September 27, that Amer dispensed \$850 worth of Oxytocin pursuant to two forged prescriptions. Whether he dispensed this Schedule II Controlled Substance to himself or to a confederate only Mr. Amer knows, but this much is known: the two prescriptions in question were such obvious forgeries that respondent knew or should have known that they were such. These kinds of professional misconduct permit no conclusion other than that respondent was clearly impaired while on duty as a pharmacist.

In his original Complaint, complainant alleges that respondent was guilty of misconduct in dispensing this medication pursuant to two questionable prescription orders without any attempt to confirm their validity, and by accepting the representations of the patients as to the quantity ordered and writing in those quantities on the prescription himself. That a licensed pharmacist could display that level of incompetence strains one's credulity and, in his Amended Complaint, complainant offers as an alternative theory the allegation that respondent created the forgeries himself or conspired with others to create them, then obtained and paid for the drugs himself, entering the bogus prescriptions into the pharmacy's records. However, whether respondent acted with criminal intent (which is probable) or merely with astounding incompetence makes little difference in terms of the appropriate outcome of this case. There can be little question that Mr. Amer's conduct in his practice of pharmacy in the period leading up to the events of September 27, 2000, and his probably criminal conduct on that date, militate for the conclusion that respondent must be barred from the practice of pharmacy.

That conclusion is reinforced by respondent's actions on December 8, 2000, the date upon which he failed to return the credit cards of two pharmacy customers and fraudulently utilized the cards to make purchases for himself. And any remaining doubt is resolved by respondent's proven conduct on January 1, 2001. When stopped in his brother's car which he had been using for some time in his brother's absence, the car was found to contain a virtual treasure trove of prescription drugs and controlled substances, including cocaine and marijuana. Moreover, under the seat of respondent's car, the police found a Ruger 9mm handgun with a full clip and a round in the chamber.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v.*

Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968). Respondent's whereabouts are unknown and it appears that he has left the country. Given that fact and the magnitude of the violations found, rehabilitation is probably not a realistic goal at this time. Deterrence is certainly a consideration, and revocation of respondent's license may well dissuade an inexperienced pharmacist from taking that first step on the downward spiral that marked respondent's collapse. More important, however, is protecting the public by removing this individual from the profession, and revocation is necessary to accomplish that.

Section 440.22(2), Wis. Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Pharmacy Examining Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The ALJ's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated this 8th day of October, 2001.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge