

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
LUIGI N. MICELI, R.Ph.,	:	LS0904082PHM
RESPONDENT.	:	

[Division of Enforcement Case # 08 PHM 056]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Luigi N. Miceli, R.Ph.
10811 88th Street
Pleasant Prairie, WI 53158

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Pharmacy Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 Pharmacy Examining 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. Luigi N. Miceli, R.Ph., Respondent, date of birth November 2, 1962, is licensed by the Wisconsin Pharmacy Examining Board as a pharmacist in the state of Wisconsin pursuant to license number 10794, which was first granted March 25, 1986.
2. Respondent’s address of record with the Department of Regulation and Licensing (DRL) is 10811 88th Street, Pleasant Prairie, WI 53158.
3. On October 10, 2001, the Board issued a Final Decision and Order which suspended Respondent’s license for a period of not less than five (5) years. That Order was based on evidence that Respondent:
 - a. forged four prescription orders for controlled substances;
 - b. diverted stimulants from pharmacy stock while on duty as a pharmacist at The Pharmacy Station in Burlington, Wisconsin;
 - c. was diagnosed with amphetamine dependence, alcohol abuse, and adjustment disorder, with treatment

recommended.

4. The October 10, 2001 Order allowed for a stay of the suspension conditioned upon Respondent's compliance with the terms of the Order. The stay was lifted once, on February 13, 2002, but was ultimately reinstated.

5. Respondent complied with all requirements of the October 10, 2001 Order and on June 25, 2008, the Board granted Respondent an unlimited license.

6. Beginning in May 2003, and on all dates relevant to the facts set out below, Respondent was employed as a pharmacist at Lakeview Pharmacy (the pharmacy) in Racine, Wisconsin.

7. On October 1, 2008, Respondent was charged in Racine County Wisconsin Circuit Court case number 2008CF001206 with:

- a. One count of Theft-Business Setting over \$10,000, a Class G Felony, in violation of Wis. Stat. § 943.20(1)(b).
- b. Four counts of Fraudulent Writings/By Corporation Officer, a Class H Felony, in violation of Wis. Stat. § 943.39(1).

8. As a condition of bail in Racine County Case No. 2008CF001206, Respondent may not work as a pharmacist.

9. The charges resulted from an investigation in which the Racine Police Department learned that Respondent had stolen money from the pharmacy by falsifying transactions. Between December 2007 through September 2008, the pharmacy lost over \$80,000, due to Respondent falsely indicating that previously "sold" items were returned for cash. In reality, there were no returns, Respondent simply took the cash.

10. On September 29, 2008, a Racine police investigator interviewed Respondent. Respondent admitted stealing from the pharmacy, stating that he was in severe debt, most of which stemmed back to the time he was unable to work as a pharmacist due to his drug use. Respondent said that he was no longer using drugs, but was using the stolen money to pay down debt accumulated when his license was suspended. Respondent admitted that he had been stealing from the pharmacy from approximately December 2006, and he did not know how much money he had taken.

11. On September 29, 2008, police discovered ten pills in Respondent's possession. The pharmacy later discovered that Respondent had taken the pills from the pharmacy and had falsified pharmacy records to cover the theft.

12. Under the circumstances of this case, violations of Wis. Stat. § 943.20(1)(b), Theft-Business Setting over \$10,000, and violations of Wis. Stat. § 943.39(1), Fraudulent Writings/By Corporation Officer, are offenses which substantially relate to Respondent's practice of pharmacy.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 450.10 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Under the circumstances of this case, violations of Wis. Stat. § 943.20(1)(b), Theft-Business Setting over \$10,000, and violations of Wis. Stat. § 943.39(1), Fraudulent Writings/By Corporation Officer, are offenses which substantially relate to Respondent's practice of pharmacy.

3. Respondent, by his conduct, has violated laws which substantially relate to the practice under his credential in violation of Wis. Stat. § 450.10(1)(a)2. He is therefore subject to discipline pursuant to Wis. Stat. § 450.10(1)(b).

4. Respondent, by his conduct, has made substantial misrepresentations in the course of practice, which were relied upon by other persons, in violation of Wis. Stat. § 450.10(1)(a)5. He is therefore subject to discipline pursuant to Wis. Stat. § 450.10(1)(b).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Luigi N. Miceli, R.Ph., as a pharmacist in the State of Wisconsin is hereby **REVOKED**.
2. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$350.00 pursuant to Wis. Stat. § 440.22(2).
3. Payment shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817
4. This Order is effective on the date it is signed.

Wisconsin Pharmacy Examining Board

By: Gregory C. Weber
A Member of the Board

4/8/09
Date

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
LUIGI N. MICELI, R.Ph.,	:	LS _____ PHM
RESPONDENT.	:	

[Division of Enforcement Case # 08 PHM 056]

It is hereby stipulated and agreed, by and between Luigi N. Miceli, R.Ph., Respondent; and Sandra L. Nowack attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent’s licensure by the Division of Enforcement (file 08 PHM 056). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.
5. Respondent neither admits nor denies the facts contained in the proposed Final Decision and Order, but concedes that the Board has evidence sufficient to meet its burden, to a standard of preponderance of the evidence, in these proceedings.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent’s attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
8. Respondent is informed that should the Board adopt this Stipulation, the Board’s Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Luigi N. Miceli, R.Ph.
Respondent
10811 88th Street
Pleasant Prairie, WI 53158

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date