

CR 88-27

CERTIFICATE

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STATE OF WISCONSIN

NOV 18 1988

DEPARTMENT OF REGULATION AND LICENSING

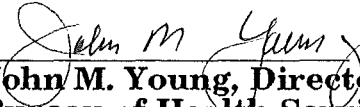
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Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John M. Young, Director, Bureau of Health Professions in the Wisconsin Department of Regulation and Licensing and custodian of the official records of Pharmacy Examining Board do hereby certify that the annexed rules, were duly approved and adopted by the Pharmacy Examining Board on the 9TH day of NOVEMBER, 1988.

I further certify that said copy has been compared to me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin, this 9TH day of NOVEMBER, 1988.


John M. Young, Director
Bureau of Health Service Professions
Department of Regulation and
Licensing

WLD
RULES-18

2-1-89

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	PHARMACY EXAMINING BOARD
PHARMACY EXAMINING BOARD	:	ADOPTING RULES

PROPOSED ORDER

The Pharmacy Examining Board creates ch. Phar 14, relating to forfeitures.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutory authority: ss. 15.08(5)(b), 227.11(2)(a), 450.02(3)(d), Stats.
Statute interpreted: s. 450.10(2), Stats.

In this order the Pharmacy Examining Board creates rules setting forth procedures for assessing forfeitures under s. 450.10(2), and the kinds of violations for which forfeitures may be assessed.

Under s. Phar 14.02, violations are classified into 2 categories, according to whether the violation is substantially threatening to the health, safety or welfare of a patient or the public.

In s. Phar 14.03, the procedure for the assessment of forfeitures is described. Under subs. (1), each notice of forfeiture shall be in writing and shall state the nature of the violation and law alleged to have been violated. The notice shall inform the licensee of the right to a hearing. It may be served by an agent of the board or department at the time of or following an investigation or inspection, or may be sent to the licensee.

The monetary amounts for forfeitures in each category are specified in s. 14.03(2).

The time frame for paying forfeitures and the consequences of the nonpayment of the forfeiture are set forth in s. 14.03(3). In subs (4), the board describes the attorney general's authority to collect unpaid forfeitures.

Finally, under s. Phar 14.04, the procedure is provided for requesting and holding hearings to contest any board action under ch. Phar 14.

The Pharmacy Examining Board believes these rules are needed to interpret its new statutory authority for assessing forfeitures, and to specify a procedure on forfeiture actions as a guideline to the board and its agents, licensees and the public.

ORDER

Pursuant to the authority vested in the Pharmacy Examining Board in ss. 15.08(5)(b), 227.11 and 450.02, Stats., the Pharmacy Examining Board hereby adopts rules as follows:

PHARMACY EXAMINING BOARD
CHAPTER PHAR 14
FORFEITURES

SECTION 1. Chapter Phar 14 is created to read:

Phar. 14.01 AUTHORITY AND INTENT. (1) The board adopts this chapter under authority of ss. 15.08(5)(b), 227.11(2), and 450.02(3)(d), Stats., interpreting s. 450.10(2), Stats.

(2) The intent of the board in adopting this chapter is to specify a procedure for assessing forfeitures under s. 450.10(2), the kinds of violations for which forfeitures may be assessed and the related statutory provisions for collection of amounts assessed.

Phar 14.02 CLASSIFICATION OF VIOLATIONS. In this chapter: (1) CATEGORY "I". A category I violation means a violation of chs. 161 or 450, Stats., or the rules of the board which creates a condition or occurrence relating to the practice of pharmacy that does not substantially threaten the health, safety or welfare of a patient or the public.

(2) CATEGORY "II". A category "II" violation means a violation of chs. 161 or 450, Stats. or the rules of the board which creates a condition or occurrence relating to the practice of pharmacy substantially threatens the health safety or welfare of a patient or that public.

Phar 14.03 FORFEITURES. (1) ASSESSMENT OF FORFEITURES. (a) Category "I" violations. 1. The board or agent of the board or department pursuant to inspection or investigation may issue a notice of forfeiture for category "I" violations.

2. Each notice of forfeiture shall be prepared in writing and shall specify the nature of the violation and the statutory provision or rule alleged to have been violated and the amount of the forfeiture assessed as specified in sub. (2). The notice shall inform the licensee of the right to a hearing under s. Phar ~~14.04~~. The notice shall conform to the requirements in ss. RL 2.05 and 2.06.

3. The notice may be served by an agent of the board or department at the time of or following an investigation or inspection, or may be sent to the licensee.

4. The Board may assess a forfeiture for Category I violations in the amounts specified in sub. (2)(a) upon a finding of unprofessional conduct in a disciplinary proceeding under s. 450.10, Stats.

(b) Category "II" violations. The board may assess a forfeiture for Category II violations in the amounts specified in sub. (2)(b) upon a finding of unprofessional conduct in a disciplinary proceeding under s. 450.10, Stats.

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(c) Each day of violation constitutes a separate offense for which a forfeiture may be assessed, pursuant to s. 450.10(2).

(2) FORFEITURE AMOUNTS. Any licensee who is guilty of a Category I or Category II violation may be subject to the following forfeiture amounts:

(a) A category "I" violation may be subject to a forfeiture of not less than \$10 and not more than \$250 for each violation.

(b) A category "II" violation may be subject to a forfeiture of not less than \$250 and not more than \$1000 for each violation.

(3) PAYMENT OF FORFEITURES. All forfeitures shall be paid in accordance with the following time limits:

(a) Within 20 days of receipt of the notice of forfeiture.

(b) If the assessment of forfeiture is contested and a hearing is held by the board under ch. RL 2, within 20 days of receipt of the final adverse decision of the board under ch. RL 2.

(c) If the decision is appealed to a court, within 20 days of a final adverse decision by the court.

Phar 14.04 SCHOOL FUND. The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

Phar 14.05 UNPROFESSIONAL CONDUCT. If the forfeiture is not paid or the board is not notified within 20 days that the forfeiture is contested such inaction constitutes unprofessional conduct.

Phar 14.06 HEARINGS. (1) A licensee who desires to contest any board action under this chapter shall file a written request for a hearing with the board within 20 days of receipt of the notice of forfeiture.

(2) Hearings under this section shall be held pursuant to ch. RL 2, except that the notice of forfeiture shall serve as the complaint under s. RL 2.06.

Phar 14.07 ENFORCEMENT BY ATTORNEY GENERAL. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews.

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2)(intro), Stats.

Dated Nov 9, 1978

Agency Rod Bohan RPh
Chairperson
Pharmacy Examining Board

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Any forfeiture resulting from this rule shall be credited to the school fund pursuant to Act 10, Section 2 of the Wisconsin Constitution. A reliable estimate of the fiscal impact of this proposed rule is not available.

FISCAL ESTIMATE

There is no statewide or local fiscal effect.

JOH:WLD
RULES-5
10/23/88

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: October , 1988 **FILE REF:**

TO: Gary Poulson,
Assistant Revisor of Statutes

FROM: William Dusso
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

RECEIVED
NOV 18 1988
Revisor of Statutes
Bureau

Agency: PHARMACY EXAMINING BOARD

Clearinghouse Rule: 88-27

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the code. Thanks, Gary.

RULES-115
WLD