

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re:)	COMPLAINT
Pharmacist License of)	AND STATEMENT
NANETTE K. COOLEY)	OF CHARGES
License No. 16630)	AND
Respondent)	NOTICE
)	OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 15th day of November, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against Nanette K. Cooley, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.
2. Respondent was issued a license to practice pharmacy in Iowa on July 30, 1985, by examination.
3. Respondent currently resides at 7014 Oliver Smith Drive, Urbandale, Iowa 50322.
4. Respondent is currently employed as a staff pharmacist at Urbandale Pharmacy, 6941 Douglas Avenue, Des Moines, Iowa 50322.
5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1995.
6. The Board has received investigative information which alleges the following:

a. Respondent failed to take a complete biennial inventory of all controlled substances at the Urbandale Pharmacy on May 22, 1993. The biennial inventory did not include sixteen or more Schedule III and IV controlled substances which were present at Urbandale Pharmacy on May 22, 1993, but which were not counted or recorded in the inventory which was signed by Respondent.

b. Respondent has dispensed APAP with Codeine 30mg, a Schedule III controlled substance, to two patients (including one Iowa Medicaid--Title XIX recipient) without physician authorization. The following prescription and refill of a prescription were *not* authorized by the prescriber indicated on the prescriptions or in the pharmacy's computer files:

DATE FILLED	RX #	DRUG	QTY	PATIENT
03-02-93	097781	APAP/Codeine 30mg	100	RC
02-11-94	103486	APAP/Codeine 30mg	30	CL (XIX)

7. Respondent is guilty of violations of 1993 Iowa Code sections 124.308(3), 124.401(1)(c)(6), 124.402(1)(a), 155A.12(1), 155A.12(2), 155A.12(4), 155A.12(5), 155A.23(2), 155A.23(4), and 205.3 by virtue of the allegations contained in paragraph 6.

1993 Iowa Code section 124.308 provides, in part, the following:

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

1993 Iowa Code section 124.401 provides, in part, the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to

manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

....

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

....

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

1993 Iowa Code section 124.402 provides, in part, the following:

1. It is unlawful for any person:
 - a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308.

1993 Iowa Code section 155A.12 provides, in part, the following:

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
2. Engaged in unethical conduct as that term is defined by rules of the board.

...

4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.

5. Violated any provision of the controlled substances Act or rules relating to that Act.

1993 Iowa Code section 155A.23 provides, in part, the following:

A person shall not:...

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

...

4. Make or utter any false or forged prescription or written order.

1993 Iowa Code section 205.3 provides the following:

A person shall not fill a prescription for a drug required by chapter 124 or this chapter to be furnished only upon written prescription unless the prescription is ordered for a medical, dental, or veterinary purpose only.

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.8(10), 8.5(1), 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(h), 9.1(4)(j), 9.1(4)(t), and 9.1(4)(u) by virtue of the allegations contained in paragraph 6.

657 Iowa Administrative Code section 6.8 provides, in part, the following:

Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657--Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:...

6.8(10). A biennial inventory of controlled substances shall be maintained;

657 Iowa Administrative Code section 8.5 provides, in part, the following:

Unethical conduct or practice. The provisions of this section apply to licensed pharmacists and registered pharmacist-interns.

8.5(1) Misrepresentative deeds. A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

b. Professional incompetency. Professional incompetency includes but is not limited to:...

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

...

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

...

h. Distribution of...drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of Iowa Code chapters 155A, 124, and 126.

...

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony

or misdemeanor, which statute or law relates to the practice of pharmacy.

...

- t. Obtaining any fee by fraud or misrepresentation.
- u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55, 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 7 and 8 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent has violated 1993 Iowa Code sections 124.308(3), 124.401(1)(c)(6), 124.402(1)(a), 155A.12(1), 155A.12(2), 155A.12(4), 155A.12(5), 155A.23(2), 155A.23(4), and 205.3 and 657 Iowa Administrative Code sections 6.8(10), 8.5(1), 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(h), 9.1(4)(j), 9.1(4)(t), and 9.1(4)(u).

IT IS HEREBY ORDERED that Nanette K. Cooley appear before the Iowa Board of Pharmacy Examiners on Tuesday, February 7, 1995, at 2:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Nanette K. Cooley on July 30, 1985, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of her own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision, including disciplinary action, may be rendered.

The hearing will be presided over by the Board which will be assisted by an administrative law judge from the Iowa Department of Inspections and Appeals. The office of the Attorney General is responsible for representing the public interest in these proceedings. Information regarding the hearing may be obtained

from Linny C. Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen

Executive Secretary/Director

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re: Pharmacist License of
NANETTE K. COOLEY
License No. 16630
Respondent

**STIPULATION
AND
CONSENT ORDER**

On this 11 day of July, 1995, the Iowa Board of Pharmacy Examiners and Nanette K. Cooley, R.Ph., 7014 Oliver Smith Drive, Urbandale, Iowa, each hereby agree with the other and stipulate as follows:

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Complaint and Statement of Charges and Notice of Hearing filed against Respondent on November 15, 1994, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That Respondent was issued a license to practice pharmacy on the 30th day of July, 1985, as evidenced by License Number 16630, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 16630 issued to and currently held by Respondent is current and in full force until June 30, 1997.
3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on November 15, 1994.

5. Respondent does not admit to the truth of any of the allegations set forth in the Complaint and Statement of Charges. This Stipulation and Consent Order is executed as a compromise settlement of disputed claims.

6. Respondent agrees to accept a citation and warning for the alleged violations set forth in the complaint.

7. Respondent also agrees to obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and the distribution of controlled substances and all federal and state criminal laws.

8. This Stipulation and Consent Order is subject to approval of a majority of the full Board. If the Board fails to approve this Stipulation and Consent Order, it shall be of no force or effect to either party.

9. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 10th day of July, 1995.

Nanette K. Cooley RPh
NANETTE K. COOLEY, R.Ph.
Respondent

Subscribed and Sworn to before me on this 10th day of July, 1995.

David J. [Signature]
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

10. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 11 day of July, 1995.



MARIAN L. ROBERTS, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
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