

STATE OF IOWA

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

In the Matter of the License)	
to Practice Pharmacy of)	Findings of Fact,
Merlin B. Danielsen)	Conclusions of Law,
Respondent)	and Decision

STATEMENT OF THE CASE

Pursuant to Chapters 17A and 258A of the Code of Iowa, a hearing was held before the Board of Pharmacy Examiners on January 11, 1983, for the purpose of determining whether or not disciplinary action should be taken concerning the license of Merlin Danielsen to practice pharmacy in Iowa.

Board members present for the hearing were: Angelo J. Palmer, chairperson; Vennetta M. Fiedler, vice chairperson; Robert E. Bellinger, Jerry M. Hartleip; John F. Rode; Gale W. Stapp; and Margo L. Underwood. Peter J. Fox served as hearing officer for the Board. The State was represented by Thomas D. McGrane, assistant attorney general. The respondent appeared without counsel.

Pharmacist Danielsen at the hearing and after being fully advised of his right to have all charges proved by evidence and testimony in the hearing waived in part this right. He acknowledged he knew he could have all charges proved by testimony; could cross-examine witnesses; and could call witnesses on his own behalf. Pharmacist Danielsen waived the presentation of testimony in support of the charges and stipulated to the admission into evidence, and with reservation noted later the accuracy of, the investigator's report, admitted as Exhibit 1 and the copies of documents in support of the allegations, admitted as Exhibit 2. Exhibit 1 is a report consisting of 72 pages and keyed to Exhibit 2, a group of 51 folders, each in support of allegations of one or more violations against Danielsen.

Primarily the report speaks of drug shortages. The primary reservation of Danielsen as to the accuracy of the report is that he is not the cause of any shortages other than of Ambenyl Expectorant, except insofar as he was the managing pharmacist. Counsel for the Board agreed that the only shortages for which violations were alleged were those of Ambenyl Expectorant except insofar as Danielsen was responsible for control of the prescription drugs in his role as responsible pharmacist.

The hearing officer, having considered the testimony and evidence, issues the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

(1) Merlin B. Danielsen was licensed to practice pharmacy in Iowa on September 3, 1953. He began employment as a pharmacist at Nabor's Drug, 1920 Elin, Dubuque, Iowa, on June 21, 1977, and left as an employee of Nabor's Drug on January 27, 1978. Mr. Danielsen returned as pharmacist-manager of Nabor's Drug on March 29, 1979, and continued in that position until June 21, 1982, when he was discharged.

(2) Pharmacist Danielsen was also licensed to practice pharmacy in the state of Illinois. That license was revoked

by the Illinois Board of Pharmacy on October 12, 1976.

(3) Pharmacist Danielsen has admitted that he gave eleven pints of a Schedule V controlled substance, Ambenyl Expectorant, to individuals during the period November 16, 1981, through June 10, 1982. Pharmacist Danielsen also admits that the Ambenyl Expectorant was given without benefit of a prescription order. One of Danielsen's reservations as to the investigator's report was the explanation urged in mitigation of the delivery of the Ambenyl. Danielsen asserts that he delivered this Expectorant only under threats of harm to him and his family. The Board doubts Danielsen's credibility in this regard, but assuming arguendo it is true, the Board finds it cannot justify the delivery and failure to report the extortion.

(4) An audit of the prescription records of Nabor's Drug covering the period May 17, 1981, to June 22, 1982, was conducted by Pharmacy Investigators J. W. Reardon and Thomas D. Hill. This audit included 54 dosage forms of Schedule II, III and IV controlled substances. Significant shortages, ranging from 3.4% to 100% were noted in 15 of those dosage forms. Pharmacist Danielsen was the managing pharmacist at Nabor's during this period, and thus was in charge of and responsible for security of the controlled substances. There is no finding that Danielsen was directly involved in causing the shortages reflected in the audit, except as indicated in paragraph 3 above.

(5) Danielsen dispensed a generic drug and caused the submission of billings to John Deere Insurance for the brand name drug on Nabor's Drug prescription 242672 (Ex. 2, folder 7). Overcharges on the initial filling and five subsequent refillings of the prescription resulted in overpayments to Nabor's Drug in the amount of \$35.21. While not all refills with the generic or all billings for excessive amounts were made by Pharmacist Danielsen, the evidence indicates and we find that those not done personally by him were done at his direction. The finding relates to all overcharges, illegal generic substitutions, and improper filling of prescriptions.

(6) Danielsen dispensed a generic drug and charged a private-pay patient for the brand name drug on Nabor's Drug prescriptions 238827 and 240832 (Ex. 2, folder 6). Overcharges on the initial fillings and 14 subsequent refillings of these prescriptions resulted in overpayments to Nabor's Drug in the amount of \$57.96.

(7) Danielsen dispensed a generic drug and caused the submission of billings to Dubuque Packing Co. for the brand name drug on Nabor's Drug prescriptions 229119 and 244225 (Ex. 2, folder 43). Overcharges on these prescriptions resulted in overpayments to Nabor's Drug of \$10.04.

(8) A generic drug was dispensed and Danielsen caused the submission of billings to the Iowa Medical Assistance Program (Title XIX) for the brand name drug on Nabor's Drug prescription 243394 and 245802 (Ex. 2, folder 42). Overcharges on these prescriptions resulted in overpayments to Nabor's Drug in the amount of \$11.77.

(9) Danielsen directed the dispensing of a generic drug and caused the submission of a billing to Dubuque Packing Co. for a brand name drug on Nabor's Drug prescription 240928 (Ex. 2, folder 36). This prescription was filled by Pharmacist Michael Rulli who correctly computed the price reflecting the use of a generic. The correct price was

changed by Pharmacist Danielsen. The overcharge on this prescription resulted in an overpayment to Nabor's Drug of \$7.05.

(10) A generic drug was dispensed and Danielsen caused the submission of a billing to John Deere Insurance for a brand name drug on Nabor's prescription 241214 (Ex. 2, folder 28). The overcharge on this prescription resulted in an overpayment to Nabor's Drug of \$6.65.

(11) A generic drug was dispensed and Danielsen caused the submission of a billing to John Deere Insurance for a brand name drug on Nabor's Drug prescription 244005 (Ex. 2, folder 3). The overcharge on this prescription resulted in an overpayment to Nabor's Drug of \$7.05.

(12) Danielsen dispensed a generic drug and submitted billings to Dubuque Packing Co. for a brand name drug on Nabor's Drug prescription 235375 (Ex. 2, folder 20). Overcharges on the initial filling and five subsequent refillings of this prescription resulted in overpayments to Nabor's Drug of \$23.58.

(13) Danielsen dispensed a generic drug and submitted billings to John Deere Insurance for a brand name on Nabor's Drug prescription 231466 (Ex. 2, folder 27). Overcharges on the initial filling and three subsequent refillings of this prescription resulted in overpayments to Nabor's Drug of \$12.96.

(14) Danielsen dispensed a generic drug and submitted billings to John Deere Insurance for a brand name drug on Nabor's Drug prescription 239125 (Ex. 2, folder 49). Overcharges on the initial filling and four subsequent refillings of this prescription resulted in overpayments to Nabor's Drug of \$20.25.

(15) A generic drug was dispensed and Danielsen caused the submission of billings to the Iowa Medical Assistance Program (Title XIX) for a brand name on Nabor's Drug prescription 242205 (Ex. 2, folder 8). Overcharges on the initial filling and one subsequent refill resulted in overpayments to Nabor's Drug of \$12.46.

(16) Danielsen dispensed a generic drug and submitted billings to John Deere Insurance for a brand name on Nabor's Drug prescription 234349 (Ex. 2, folder 1). Overcharges on the initial filling and three subsequent refillings of this prescription resulted in overpayments to Nabor's Drug of \$27.30.

(17) Danielsen dispensed a generic drug and submitted a billing to the Iowa Medical Assistance Program (Title XIX) for the brand name drug on Nabor's Drug prescription 238823 (Ex. 7, folder 24). The overcharge on the initial filling resulted in overpayments to Nabor's Drug of \$18.61.

(18) A generic drug was dispensed and Danielsen caused the submission of a billing to John Deere Insurance for the brand name drug on Nabor's Drug prescription 240655 (Ex. 2, folder 26). Overcharges on this prescription resulted in overpayments to Nabor's Drug of \$18.47.

(19) A generic drug was dispensed and Danielsen caused the submission of a billing to John Deere Insurance for a higher cost drug on Nabor's Drug prescription 239888 (Ex. 2,

folder 7). Overcharges on the prescription resulted in overpayments to Nabor's Drug of \$14.53.

(20) A lower cost drug was dispensed and Danielsen caused the submission of billings for a higher-cost drug to the Iowa Medical Assistance Program (Title XIX) on Nabor's Drug prescription 244460 (Ex. 2, folder 41). Overcharges on the prescription resulted in overpayments to Nabor's Drug of \$1.19. Danielsen also engaged in what is called therapeutic substitution in that the product dispensed was not generically equivalent nor bioequivalent to the product prescribed.

(21) Danielsen dispensed a generic drug and submitted billings to John Deere Insurance for a brand name on Nabor's Drug prescription 243428 (Ex. 2, folder 9). Overcharges on the initial filling and four subsequent refills resulted in overpayments to Nabor's Drug of \$73.56.

(22) Danielsen dispensed a generic drug and submitted a billing to the Iowa Medical Assistance Program (Title XIX) for the brand name drug on Nabor's Drug prescription 242667 (Ex. 2, folder 50). Overcharges on the initial filling and five subsequent refills resulted in overpayments to Nabor's Drug of \$28.98.

(23) Danielsen dispensed a generic drug and submitted a billing to John Deere Insurance for the brand name drug on Nabor's Drug prescription 235888 (Ex. 2, folder 33). Overcharges on the initial filling and nine subsequent refills resulted in overpayments to Nabor's Drug of \$29.40.

(24) Danielsen dispensed a generic drug and submitted billings to the Iowa Pharmacy Service Corporation for the brand name drug on Nabor's Drug prescription 238405 (Ex. 2, folder 31). Overcharges on the initial filling and seven subsequent refills resulted in overpayments to Nabor's Drug of \$49.62.

(25) Danielsen dispensed a generic drug and submitted a billing to John Deere Insurance for the brand name drug on Nabor's Drug prescription 231761 (Ex. 2, folder 39). Overcharges on the initial filling and seven subsequent refillings resulted in overpayments to Nabor's Drug of \$39.60.

(26) Danielsen dispensed a generic drug and submitted billings to the Iowa Medical Assistance Program (Title XIX) for the brand name drug on Nabor's Drug prescription 230225 (Ex. 2, folder 51). Overcharges on the initial filling and four subsequent refills resulted in overpayments to Nabor's Drug of \$8.52.

(27) Danielsen dispensed a generic drug and submitted a billing to Dubuque Packing Co. for the brand name drug on Nabor's prescription 237618 (Ex. 2, folder 2). Overcharges on a refill of this prescription resulted in overpayments to Nabor's Drug of \$7.50.

(28) Danielsen dispensed a generic drug and submitted billings to a private-pay patient for a brand name drug on Nabor's Drug prescription 237527 (Ex. 2, folder 21). Overcharges on the initial filling and on two subsequent refills resulted in overpayments to Nabor's Drug of \$33.39.

(29) A generic drug was dispensed and Danielsen caused

the submission of billings to the Iowa Medical Assistance Act (Title XIX) for a brand name drug on Nabor's Drug prescription 242887 (Ex. 2, folder 23). Overcharges on the initial filling resulted in overpayment to Nabor's Drug of \$2.98.

(30) A generic drug was dispensed and Danielsen caused the submission of a billing to the Iowa Pharmacy Service Corporation for a brand name drug on Nabor's Drug prescription 239014. In addition, Danielsen dispensed a 15gm tube of the generic drug but billed IPSC for a 30gm tube. Overcharges on this prescription resulted in overpayments to Nabor's Drug of \$8.00.

(31) A compounded drug was dispensed and Danielsen caused the submission of a billing to the Iowa Medical Assistance Program (Title XIX) for a brand name drug on Nabor's Drug prescription 239321. The compounded drug was of equal quantity as the brand name drug but was one-half the potency of the brand name. Overcharge on this prescription resulted in an overpayment to Nabor's Drug of \$4.79.

(32) Danielsen dispensed a generic drug and submitted a billing to John Deere Insurance for a brand name drug on Nabor's Drug prescription 236866. Overcharges on the initial filling and four subsequent refills resulted in overpayments to Nabor's Drug of \$30.65.

(33) Nabor's Drug prescription 241001 called for a compounded solution to be prepared. Danielsen caused the submission of a billing to Dubuque Packing Co. indicating that a more expensive brand name drug was dispensed. Billing overcharges resulted in overpayment to Nabor's Drug of \$2.50.

(34) Nabor's Drug prescription 244383 called for a compounded solution to be prepared. Danielsen caused the submission of a billing to the Iowa Pharmacy Service Corporation indicating that a more expensive brand name drug was dispensed. Billing overcharge resulted in overpayment to Nabor's Drug of \$2.50.

(35) Danielsen caused the submission of a billing to the Iowa Medical Assistance Program for Nabor's Drug prescription 241174 indicating a drug cost of \$6.00. Prescription 241174 was written and dispensed using a lower-cost compounded preparation. The false billing resulted in an overpayment to Nabor's Drug of \$4.99.

(36) Danielsen caused the submission of a billing to the Iowa Medical Assistance Program for Nabor's Drug prescription 235492 indicating a brand name drug was dispensed with a cost of \$6.60. Prescription 235492 was written for and dispensed with a lower-cost compounded preparation. The false billing resulted in overpayment to Nabor's Drug of \$5.60.

(37) Danielsen caused the submission of a billing to the Iowa Medical Assistance Program for Nabor's Drug prescription 239039 indicating a brand name drug was dispensed with a cost of \$13.75. Prescription 239039 was written for and dispensed with a lower-cost compounded preparation. The false billing resulted in an overpayment to Nabor's Drug of \$6.82.

(38) Danielsen dispensed Nabor's Drug prescription 228320 indicating that a brand name drug had been dispensed with a charge to the RPX Insurance Co. of \$11.75. Prescription 228320 was written for and dispensed with a lower-cost compounded preparation. The false billing on the original filling and four subsequent refillings resulted in overpayments to Nabor's Drug of \$24.95.

(39) Danielsen caused the submission of a billing to John Deere Insurance Co. for Nabor's Drug prescription 246595 indicating a brand name drug was dispensed with a cost of \$5.00. Prescription 246595 was written for and dispensed with a lower-cost compounded preparation. The false billing resulted in an overpayment to Nabor's Drug of \$3.00.

(40) Danielsen caused the submission of a billing to John Deere Insurance Co. for Nabor's Drug prescription 246427 indicating a brand name drug was dispensed with a cost of \$5.00. Prescription 246427 was written for and dispensed with a lower-cost compounded preparation. The false billing resulted in an overpayment to Nabor's Drug of \$3.00.

(41) Danielsen caused the submission of billings to John Deere Insurance Co. of Nabor's Drug prescription 236705 indicating a brand name drug was dispensed with a cost of \$10.60. Prescription 236705 was written for and dispensed with a lower-cost compounded preparation. The false billings resulted in overpayments to Nabor's Drug of \$36.00.

(42) Danielsen dispensed a generic drug and submitted a billing to the Iowa Medical Assistance Program (Title XIX) for the brand name drug on Nabor's Drug prescription 243509. Overcharges on a refill of this prescription resulted in an overpayment to Nabor's Drug of \$13.25.

(43) A generic drug was dispensed and Danielsen caused the submission of a billing to the Iowa Medical Assistance Program (Title XIX) for a brand name drug on Nabor's Drug prescription 241046. Overcharges on this prescription resulted in overpayments to Nabor's Drug of \$1.26.

(44) Generic cough and cold preparations were dispensed and Danielsen caused the submission of billings to the Iowa Medical Assistance Program (Title XIX) for brand name cough and cold preparation on 43 prescriptions during the period January 1, 1981 through June 30, 1982. The overcharges on these prescriptions resulted in overpayments to Nabor's Drug of \$28.87.

(45) Danielsen testified that he did not know why he did the aforementioned activities.

CONCLUSIONS OF LAW

Section 155.13, Code of Iowa, provides in pertinent part: "Renewal--denial, suspension or revocation. Each license issued under this chapter unless sooner suspended or revoked, shall be renewable annually upon payment of the annual license fee. The board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regulations promulgated hereunder...."

Section 155.37, Code of Iowa, provides in pertinent part: "Product selection by pharmacist--restrictions. 1.a. If a physician, dentist, podiatrist or veterinarian prescribes, either in writing or orally, a drug by its brand or trade name and does not specifically state that only that designated brand or trade name drug product is to be dispensed, and if the pharmacy to which the prescription is presented or communicated has in stock one or more other drug products with the same generic name and demonstrated bioavailability as the one prescribed, the pharmacist may exercise his or her professional judgment in the economic interest of the patient or the patient's adult representative who is purchasing the prescription by selecting a drug product generically equivalent to but of lesser cost than the one prescribed for dispensing and sale to the patient. If the pharmacist does so, he or she shall inform the patient or the patient's adult representative of the savings which the patient will obtain as a result of substitution and pass on to the patient or the patient's representative the full difference in actual acquisition costs between the drug prescribed and the drug substituted. b. If the cost of the prescription or any part thereof shall be paid by expenditure of public funds authorized under chapters 239, 249, 249A, 252, 253, 254, or 255, the pharmacist shall exercise his or her professional judgment by selecting a drug product of the same generic name and demonstrated bioavailability but of a lesser cost than the one prescribed for dispensing and sale to the person unless the physician, dentist, or podiatrist specifically states that only that designated brand or trade name drug product is to be dispensed. Under no circumstances shall a pharmacy to which the prescription is presented or communicated be required to substitute a drug of the same generic name and demonstrated bioavailability but of lesser cost unless the pharmacy has in stock one or more other such drug products...."

Section 258A.10, Code of Iowa, provides in pertinent part: "Rules for revocation or suspension of license. A licensing board established after January 1, 1978, and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following... 3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of his or her profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established...."

Board regulation IAC-620, Chapter 6.5, provides in pertinent part: "Unethical conduct or practice. 6.5(1) Misrepresentative deeds. It is unethical for a practitioner of the profession of pharmacy to make publication or circulation of 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."

Board regulation IAC-620, Chapter 10 provides in pertinent part: "Discipline. 10.1(2) The board has the authority to impose the following disciplinary sanctions... b. Suspension of a license or registration until further order of the board or for a specified period... 10.1(4) The board may impose any of the disciplinary sanctions set out in subrule 10.1(2) including civil penalties in an

amount not to exceed \$1000.00, when the board determines that the licensee or registrant is guilty of the following acts of offenses... h. Distribution of intoxicating liquors or 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 chapters 155, 203, 203A and 204 of the Code...t. Obtaining any fee by fraud or misrepresentation."

The evidence proves conclusively that Mr. Danielsen delivered considerable quantities of a controlled substance prescription drug to individuals without receiving a valid prescription order for that drug.

The evidence is also clear that considerable shortages of controlled substances occurred at Nabor's Drug during the period of time when Mr. Danielsen was the pharmacist manager.

The evidence also shows that Mr. Danielsen was responsible for submitting or causing to be submitted numerous false and fraudulent billings to third-party prescription programs, including the Iowa Medical Assistance Program. While Mr. Danielsen did not benefit monetarily from these fraudulent claims, he was directly involved in making the decision that they be submitted.

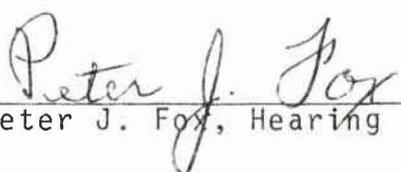
The evidence also shows that Mr. Danielsen ignored the provisions of the Iowa drug product selection statutes. It is clear that he ignored the requirements of physician prescription orders by dispensing products which were not generically equivalent nor pharmaceutically equivalent to the drugs ordered. In doing so he has violated the trust placed upon him by the public.

DECISION AND ORDER

The Iowa Board of Pharmacy Examiners after reviewing the testimony, evidence and exhibits presented at the hearing finds that Merlin B. Danielsen is found to be in violation of those statutes and rules set out in the notice of hearing. The Board finds that Mr. Danielsen has acted in such a manner as to exhibit a blatant disregard of the statutory and regulatory requirements imposed upon pharmacists licensed in Iowa.

It is the decision of the Board that the license to practice pharmacy of Merlin B. Danielsen is suspended for a period of 18 months. The suspension will commence on February 7, 1983, and end on August 7, 1984. Mr. Danielsen testified that he did not know why he acted as he did. In order to gain insight into his actions, Mr. Danielsen shall submit to a psychiatric evaluation by a psychiatrist of the Board's choosing within three months of the date of this order. Such evaluation and treatment are to be at Mr. Danielsen's expense. Mr. Danielsen shall comply with such treatment as prescribed by the psychiatrist. Mr. Danielsen shall also submit to a follow-up psychiatric evaluation immediately prior to the end of his suspension. A report of that evaluation shall be forwarded to the Board prior to reinstatement of his license. The period of suspension shall be followed by five years of probation. During the probationary period, Mr. Danielsen cannot function as a pharmacy manager.

Dated this 7th day of February 1983


Peter J. Fox, Hearing Officer

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	EMERGENCY ORDER
MERLIN B. DANIELSEN	}	AND
License No. 12039	}	COMPLAINT AND
Respondent	}	STATEMENT OF CHARGES
	}	AND
	}	NOTICE OF HEARING

NOW on this 13th day of January 1993, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on September 3, 1953.

2. Respondent was employed as a staff pharmacist by Hartig Drug Company of Dubuque, Iowa, and worked in five of the company's seven pharmacies until December 16, 1992, when he was terminated.

3. The Board has received information which alleges the following:

a. On December 15, 1992, Pharmacy Board Investigator E. Ray Sheldon was contacted by Richard Hartig, the owner of Hartig Drug Company of Dubuque, Iowa, and informed that Respondent was believed to be diverting prescription drugs, including controlled substances, from Hartig Drug Company.

b. On December 16 1992, Respondent admitted to Investigator Sheldon and Dubuque police officers that he had sent certain controlled substances to relatives in Florida for their personal use without legal authorization to do so.

c. On December 16, 1992, a search warrant was issued by the District Court of Iowa for Dubuque County which was executed at Respondent's residence located at 1010 Levon Court, Dubuque, Iowa. As a result of the search, several thousand dosage units of prescription drugs were seized from Respondent's residence, including approximately 557 dosage units of controlled substances which included the following: Adipex-P, Ativan, Dalmane 30mg, Fiorinal, Halcion, Ionamin, Lomotil, Phenobarbital 30mg, Ritalin 5mg, Synalgos D.C., Tylenol with Codeine No. 3, Valium 2mg, Valium 5mg, Vicodin, and Xanax. It was later determined that Respondent obtained most of the seized drugs from his employer, the Hartig Drug Company of Dubuque, Iowa.

d. On December 16, 1992, Respondent was arrested by the Dubuque Police Department and charged with two felony counts of possession with intent to deliver a Schedule III controlled substance.

4. In a Board Decision and Order dated February 7, 1983, Respondent's license to practice pharmacy in Iowa was suspended for 18 months. During the suspension, Respondent was ordered to submit to psychiatric evaluation. Following the suspension, Respondent was placed on probation with the Board for five years. This disciplinary action was taken after the Board made 45 findings of fact. As stated in the Decision and Order, the evidence showed that Respondent: (a) had delivered considerable quantities of a controlled substance prescription drug to individuals without receiving a valid prescription order for that drug; (b) had been the pharmacist manager at Nabor's Drug of Dubuque during a period of time when considerable shortages of controlled substances occurred at that pharmacy; (c) was responsible for submitting or causing to be submitted numerous false and fraudulent billings to third-party prescription programs, including the Iowa Medical Assistance Program; and (d) had ignored the provisions of the Iowa drug product selection statutes by dispensing prescription drug products that were not generically or pharmaceutically equivalent to the drugs prescribed by physicians for their patients. Furthermore, the Board found that the Respondent had "acted in such a manner as to exhibit a **blatant disregard** of the statutory and regulatory requirements imposed upon pharmacists licensed in Iowa."

5. Respondent was also licensed to practice pharmacy in the state of Illinois. That license was revoked by the Illinois State Board of Pharmacy on October 12, 1976, after the Illinois Board made 13 findings of fact. Included in those findings were the following: (a) during the time period of March 2, 1974, to September 2, 1975, Respondent operated Schlegel Drug Store No. 5 in Moline, Illinois, and was the pharmacist in charge; (b) on or about September 5, 1975, an audit of controlled substances at Schlegel Drug Store No. 5 was conducted by Illinois authorities for the time period of March 2, 1974, to September 2, 1975; and (c) the audit revealed the following shortages of Schedule II controlled substances --

162.2 grams of Cocaine HCl
5,491 Seconal 100mg capsules
537 Tuinal 200mg capsules
317 Dexedrine 5mg tablets
6 x 20 cc Morphine Sulfate ampules

In its Conclusions of Law, the Illinois Board concluded that Respondent was "directly responsible for shortages of Schedule II controlled substances revealed in...[the] official Audit" and

that he had failed to maintain proper Schedule II controlled substances records.

6. Respondent currently resides at 1010 Levon Court, Dubuque, Iowa 52001.

7. Respondent's license to practice pharmacy in Iowa is current until June 30, 1994.

8. The information contained in paragraphs 2, 3, 4, and 5, together with other investigative information in the possession of the Board, indicates that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa and thereby have access to controlled substances.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Merlin B. Danielsen were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. Therefore, the Board finds that the public health, safety, and welfare makes emergency summary license suspension imperative, and so directs the Executive Secretary/Director to issue such order. It is the further order of the Board that during the period of the suspension, Respondent shall not enter any pharmacy prescription area and shall not manage any pharmacy, administer any pharmacy, or engage in any pharmacy-related service.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Merlin B. Danielsen to practice pharmacy in Iowa be temporarily suspended until such time as a hearing before the Board of Pharmacy Examiners can be conducted.

With this notice, the Board also directs the Executive Secretary/Director of the Iowa Board of Pharmacy Examiners to file a Complaint and Statement of Charges against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges, the secretary/director alleges that:

9. Alan M. Shepley, Chairperson; Marian L. Roberts, Vice Chairperson; Donna J. Flower; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

10. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(1), 204.402(1)(a), and 204.403(1)(c) by virtue of the allegations in paragraph 3.

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

...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. 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.

...

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

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

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a drug by:

a. Fraud, deceit, misrepresentation, or subterfuge....

Iowa Code section 204.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

11. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(h), and 9.1(4)(u) by virtue of the allegations in paragraph 3.

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:...

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, 203, 203A, and 204.

...

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 10 and 11 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(1), 204.402(1)(a), and 204.403(1)(c), and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(h), and 9.1(4)(u).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Merlin B. Danielsen appear before the Iowa Board of Pharmacy Examiners on Friday, January 22, 1993, at 3:30 p.m., in Room 318, Hotel Fort Des Moines (third floor), 10th and Walnut, 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 Merlin B. Danielsen on September 3, 1953, 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 his own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his license.

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 the public interest in these proceedings. Information regarding the hearing may be obtained from Lynette A. F. Donner, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8760). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS

A handwritten signature in cursive script, appearing to read "Lloyd K. Jessen", written over a horizontal line.

Lloyd K. Jessen
Executive Secretary/Director

PROOF OF RECEIPT

I, MERLIN B. DANIELSEN, hereby acknowledge and certify that I received the attached Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued by the Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, Lloyd K. Jessen, dated January 13, 1993.

Merlin B. Danielsen Jan 15 '93
Merlin B. Danielsen Date

E. Ray Shelden 1/15/93
E. Ray Shelden Date
Investigator
Iowa Board of Pharmacy Examiners
WITNESS 10:30 pm.

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF:)	
)	DIA NO. 93PHB-5
MERLIN B. DANIELSEN)	
1010 Levon Court)	
Dubuque, Iowa 52001)	
)	FINDINGS OF FACT,
License No. 12039)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Respondent)	

A contested case hearing was held on the above referenced matter on February 2, 1993, in Room 312 at the Hotel Fort Des Moines. The Respondent did not appear at the hearing. Present were the members of the Board: Alan M. Shepley, Chairperson; Marian L. Roberts, Vice-Chairperson; Phyllis Miller; Arlan D. Van Norman, and Phyllis Olson. Lynette A. F. Donner, Assistant Attorney General, appeared for the State. Present also were members of the Board staff and a court reporter. The hearing was held in open session. Jenny J. Flaherty, Administrative Law Judge, presided during the hearing. After hearing the State's evidence, the Board convened in closed session, pursuant to Iowa Code section 21.5(2) "f", to discuss the decision to be rendered in a contested case. The Administrative Law Judge was directed to prepare this Order.

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on September 3, 1953.
2. Respondent was employed as a staff pharmacist by Hartig Drug Company of Dubuque, Iowa, and worked in five of the company's seven pharmacies until December 16, 1992, when he was terminated.
3. On December 15, 1992, Pharmacy Board Investigator E. Ray Sheldon was contacted by Richard Hartig, the owner of Hartig Drug Company of Dubuque, Iowa, and informed that Respondent was believed to be diverting prescription drugs, including controlled substances, from Hartig Drug Company.
4. On December 16, 1992, Respondent admitted to Investigator Sheldon and Dubuque police officers that he had sent certain controlled substances to relatives in Florida for their personal use without legal authorization to do so.
5. On December 16, 1992, a search warrant was issued by the District Court of Iowa for Dubuque County which was executed at Respondent's residence located at 1010 Levon Court, Dubuque, Iowa. As a result of the search, several thousand dosage units of prescription drugs were seized from Respondent's residence, including approximately 557 dosage units of controlled substances which included the following: Adipex-P, Ativan, Dalmane 30mg,

Fiorinal, Halcion, Ionamin, Lomotil, Phenobarbital 30mg, Ritalin 5mg, Synalgos D.C., Tylenol with Codeine No. 3, Valium 2mg, Valium 5mg, Vicodin, and Xanax. It was later determined that Respondent obtained most of the seized drugs from his employer, the Hartig Drug Company of Dubuque, Iowa.

6. On December 16, 1992, Respondent was arrested by the Dubuque Police Department and charged with two felony counts of possession with intent to deliver a Schedule III controlled substance.

7. In a Board Decision and Order dated February 7, 1983, Respondent's license to practice pharmacy in Iowa was suspended for 18 months. During the suspension, Respondent was ordered to submit to a psychiatric evaluation. Following the suspension, Respondent was placed on probation with the Board for five years. This disciplinary action was taken after the Board made 45 findings of fact. As stated in the Decision and Order, the evidence showed that Respondent: (a) had delivered considerable quantities of a controlled substance prescription drug to individuals without receiving a valid prescription order for that drug; (b) had been the pharmacist manager at Nabor's Drug of Dubuque during a period of time when considerable shortages of controlled substances occurred at that pharmacy; (c) was responsible for submitting or causing to be submitted numerous false and fraudulent billings to third-party prescription programs, including the Iowa Medical Assistance Program; and (d) had ignored the provisions of the Iowa drug product selection statutes by dispensing prescription drug products that were not generically or pharmaceutically equivalent to the drugs prescribed by physicians for their patients. Furthermore, the Board found that the Respondent had "acted in such a manner as to exhibit a blatant disregard of the statutory and regulatory requirements imposed upon pharmacists licensed in Iowa."

8. Respondent was also licensed to practice pharmacy in the state of Illinois. That license was revoked by the Illinois State Board of Pharmacy on October 12, 1976, after the Illinois Board made 13 findings of fact. Included in those findings were the following: (a) during the time period of March 2, 1974, to September 2, 1975, Respondent operated Schlegel Drug Store No. 5 in Moline, Illinois, and was the pharmacist in charge; (b) on or about September 5, 1975, an audit of controlled substances at Schlegel Drug Store No. 5 was conducted by Illinois authorities for the time period of March 2, 1974, to September 2, 1975; and (c) the audit revealed the following shortages of Schedule II controlled substances --

162.2 grams of Cocaine HCl
5,491 Seconal 100mg capsules
537 Tuinal 200 mg capsules
317 Dexedrine 5 mg tablets
6 x 20 cc Morphine Sulfate ampules

In its Conclusions of Law, the Illinois Board concluded that Respondent was "directly responsible for shortages of Schedule II

controlled substances revealed in . . . [the] official Audit" and that he had failed to maintain proper Schedule II controlled substances records.

9. Respondent currently resides at 1010 Levon Court, Dubuque, Iowa 52001.

10. Respondent's license to practice pharmacy in Iowa is current until June 30, 1994.

CONCLUSIONS OF LAW

The Iowa Board of Pharmacy Examiners is regulated under the general professional licensing provisions of Iowa Code Chapter 147 and 258A and the specific provisions of Chapters 155A and 204. The Board has adopted rules under Iowa Code Chapter 17A which are set forth at 657 Iowa Administrative Code (IAC).

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

. . . The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. 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.

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

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

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a drug by:

a. Fraud, deceit, misrepresentation, or subterfuge

Iowa Code section 204.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308; . . .

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:

. . .
c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; . . .

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:

. . .
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, 203, 203A, and 204.

. . .
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.

On December 16, 1992, a search of the Respondent's residence was conducted by Dubuque police officers. Several thousand dosage units of prescription drugs, which included controlled substances, were seized from his residence. The Respondent admitted to the Board's investigator and police officers that he had shipped controlled substances to relatives in Florida for their personal use without proper and legal authorization to do so. The Respondent had obtained the drugs from his employer without the employer's knowledge. The Respondent was arrested on December 16, 1992, and charged with two felony counts of possession with intent to delivery a Schedule III controlled substance.

The Board had issued a disciplinary decision on February 7, 1983, suspending the Respondent's pharmacy license for 18 months imposing a five-year probationary period for an offense the same as that set forth in finding of fact #4. In addition, the Respondent's

Illinois pharmacy license was revoked in 1976 for illegally dispensing controlled substances. The evidence proves conclusively in this case that the Respondent, by his own admission, shipped considerable quantities of prescription drugs to relatives in Florida without proper authorization (i.e., a valid prescription order).

The evidence is also clear that considerable shortages of controlled substances occurred at Hartig Drug Pharmacy while Respondent was employed as a pharmacist there.

By taking prescription drugs from his employer unauthorized and shipping the drugs to relatives in Florida for distribution and usage, the Respondent has violated Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)"a", 204.308(1), 204.402(1)"a", and 204.403(1)"c", and 657 Iowa Administrative Code sections 9.1(4)"c", 9.1(4)"h" and 9.1(4)"u".

The Board finds that the public's health, safety and welfare would be jeopardized if the Respondent were allowed to continue in the pharmacy profession. He has shown willful disregard for the public's safety by dispensing drugs to unauthorized individuals for their own use or for disbursement to others for whom the use of such drugs has not been prescribed by a licensed physician. The ramifications of the Respondent's actions could have been tragic.

For the foregoing reasons, the Board finds it necessary to impose further disciplinary action as set forth in the following Order.

ORDER

It is the ORDER of the Iowa Board of Pharmacy Examiners that pharmacy license number 12039 issued to the Respondent be REVOKED permanently with no option for reinstatement. It is also ORDERED, pursuant to Iowa Code section 258A.6 and 657 IAC 9.27, that the respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing.

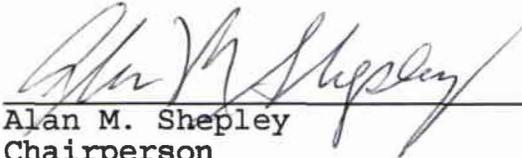
Revocation of the license is effective as of the date on which this Order is signed.

In accordance with the provisions of Iowa Code section 17A.16 (1991) a party may file an application for rehearing within twenty (20) days after the issuance of this decision. In accordance with Iowa Code section 17A.19(3) (1991) a petition for judicial review must be filed within thirty (30) days after the application has been denied or deemed denied. If a party does not file an application for rehearing the petition for judicial review must be filed within thirty (30) days after the issuance of this decision. If an application for rehearing is granted, the petition for judicial review must be filed within thirty (30) days after the issuance of the agency's final decision on rehearing.

DIA No. 93PHB-5

Page 6

Dated this 19th day of February, 1993.



Alan M. Shepley
Chairperson
Iowa Board of Pharmacy Examiners

JJF/jmm

Copies to:

Merlin B. Danielsen (CERTIFIED)
1010 Levon Court
Dubuque, IA 52001

Lynette A. F. Donner
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319