

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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Re: Pharmacist License of	)	<b>COMPLAINT</b>
<b>KENNETH W. GERDES</b>	)	<b>AND</b>
License No. 12517	)	<b>STATEMENT</b>
Respondent	)	<b>OF CHARGES</b>

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**COMES NOW**, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 28th day of August, 1989, and files this Complaint and Statement of Charges against Kenneth W. Gerdes, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on August 27, 1959, by examination.

3. Respondent is self-employed as the owner and pharmacist in charge of the Gerdes Pharmacy located at 212 Plymouth Street S.W., LeMars, Iowa 51031.

4. Gerdes Pharmacy is an approved pharmacy provider for the Iowa Medicaid (Title XIX) program and has been an approved pharmacy provider during all times relevant to this complaint and statement of charges. Gerdes Pharmacy holds Medicaid provider number 0036673.

5. Respondent currently resides at 36 12th Street S.W., LeMars, Iowa 51031.

6. Respondent's license to practice pharmacy in Iowa is current until June 30, 1990.

7. On November 20, 1987, the Board received information from Linda E. Adams, an investigator for the Iowa Department of Inspections and Appeals, which alleged that Respondent and his business, Gerdes Pharmacy, were engaging in Medicaid fraud. On January 5, 1988, a joint investigation and audit of Gerdes

Pharmacy was begun in LeMars, Iowa, by four investigators from the Iowa Board of Pharmacy Examiners, four investigators from the Iowa Department of Inspections and Appeals, and two investigators from the U.S. Department of Health and Human Services, Office of Inspector General.

8. The joint investigation and audit produced the following findings:

a. Gerdes Pharmacy received unentitled payments totaling \$165.65 for three false prescription claims submitted for Medicaid recipient Juliana Johnson (Title XIX # 0243094J) between August 17, 1987, and September 24, 1987, for prescription drugs which were either not prescribed for or not dispensed to Ms. Johnson. Attachment number 1, which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

b. Gerdes Pharmacy received unentitled payments totaling \$158.60 for four false prescription claims submitted for Medicaid recipient Denise Eye (Title XIX # 0640732D) between October 6, 1986, and March 30, 1987, for prescription drugs which were either not prescribed for or not dispensed to Ms. Eye. Attachment number 2, which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

c. Gerdes Pharmacy received unentitled payments totaling \$145.36 for three false prescription claims submitted for Medicaid recipient William Yeager (Title XIX # 0243060A) between August 14, 1987, and September 24, 1987, for prescription drugs which were either not prescribed for or not dispensed to Mr. Yeager. Attachment number 3, which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

d. Gerdes Pharmacy received an unentitled payment of \$31.56 for one false prescription claim submitted for Medicaid recipient James Staab (Title XIX # 0737888H) on June 11, 1987, for a prescription drug which was not prescribed for and not dispensed to Mr. Staab. Attachment number 4, which describes the false prescription claim, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

e. Gerdes Pharmacy received unentitled payments totaling \$271.19 for ten false prescription claims submitted for

Medicaid recipient Howard Grau (Title XIX # 0242667D) between March 14, 1986, and June 1, 1987, for prescription drugs which were either not prescribed for or not dispensed to Mr. Grau. Attachment number 5, which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

9. The investigation and audit of Gerdes Pharmacy was then continued by the Iowa Board of Pharmacy Examiners acting alone. During this phase of the investigation, a former employee of Gerdes Pharmacy made the following admissions to investigators from the Board: (1) during the course of her employment at Gerdes Pharmacy, Respondent Kenneth W. Gerdes approached her about creating false Medicaid claims for prescription drugs; (2) during the course of her employment at Gerdes Pharmacy, she agreed to and did create false prescriptions and false Medicaid claims for prescription drugs at the urging and direction of Respondent Kenneth W. Gerdes; and (3) the false prescriptions and false Medicaid claims for prescription drugs were created for both institutionalized (nursing home) and non-institutionalized Medicaid recipients.

10. On July 10, 1989, the Board received an investigative report from Pharmacy Investigator Morrell A. Spencer which documented the following additional findings of Medicaid fraud:

a. Gerdes Pharmacy received unentitled payments totaling \$952.17 for 50 false prescription claims submitted for Medicaid recipient Anna Klemme (Title XIX # 0242231I) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Klemme. Attachment "A", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

b. Gerdes Pharmacy received unentitled payments totaling \$1,225.70 for 42 false prescription claims submitted for Medicaid recipient Cynthia Krause (Title XIX # 0241790E) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Krause. Attachment "B", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

c. Gerdes Pharmacy received unentitled payments totaling \$33.57 for five false prescription claims submitted for

Medicaid recipient Herman Luksan (Title XIX # 1252937I) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Luksan. Attachment "C", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

d. Gerdes Pharmacy received unentitled payments totaling \$146.98 for 14 false prescription claims submitted for Medicaid recipient Florence Wilhelmi (Title XIX # 0670999B) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Wilhelmi. Attachment "D", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

e. Gerdes Pharmacy received unentitled payments totaling \$1,105.46 for 70 false prescription claims submitted for Medicaid recipient Rita Wiltgen (Title XIX # 0602408G) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Wiltgen. Attachment "E", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

f. Gerdes Pharmacy received unentitled payments totaling \$168.40 for seven false prescription claims submitted for Medicaid recipient Eva Conner (Title XIX # 1206182H) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Conner. Attachment "F", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

g. Gerdes Pharmacy received an unentitled payment of \$11.82 for one false prescription claim submitted for Medicaid recipient Julia Dobbert (Title XIX # 0847992E) during calendar year 1987 for a prescription drug which was either not prescribed, not dispensed, or not administered to Ms. Dobbert. Attachment "G", which describes this false prescription claim, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

h. Gerdes Pharmacy received unentitled payments totaling \$425.25 for 15 false prescription claims submitted for Medicaid recipient Clementine Hentges (Title XIX # 0241761F)

during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Hentges. Attachment "H", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

i. Gerdes Pharmacy received unentitled payments totaling \$330.87 for ten false prescription claims submitted for Medicaid recipient Edna Kloster (Title XIX # 1200911A) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Kloster. Attachment "I", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

j. Gerdes Pharmacy received unentitled payments totaling \$27.30 for two false prescription claims submitted for Medicaid recipient Richard Koerner (Title XIX # 0242764I) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Koerner. Attachment "J", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

k. Gerdes Pharmacy received unentitled payments totaling \$701.22 for 28 false prescription claims submitted for Medicaid recipient Eva Lubben (Title XIX # 0773375A) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Lubben. Attachment "K", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

l. Gerdes Pharmacy received unentitled payments totaling \$876.02 for 44 false prescription claims submitted for Medicaid recipient Helene Ludwigs (Title XIX # 0241796B) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Ludwigs. Attachment "L", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

m. Gerdes Pharmacy received unentitled payments totaling \$864.03 for 56 false prescription claims submitted for Medicaid recipient Caroline Marienau (Title XIX # 0241817F)

during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Marienau. Attachment "M", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

n. Gerdes Pharmacy received unentitled payments totaling \$395.03 for 15 false prescription claims submitted for Medicaid recipient Kathryn McHale (Title XIX # 0241806I) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. McHale. Attachment "N", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

o. Gerdes Pharmacy received unentitled payments totaling \$797.03 for 23 false prescription claims submitted for Medicaid recipient Freda Nicholson (Title XIX # 0639144E) during calendar years 1985 and 1986 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Nicholson. Attachment "O", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

p. Gerdes Pharmacy received unentitled payments totaling \$411.20 for 22 false prescription claims submitted for Medicaid recipient Herlig Petersen (Title XIX # 0242355F) during calendar years 1985 and 1986 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Petersen. Attachment "P", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

q. Gerdes Pharmacy received unentitled payments totaling \$621.88 for 48 false prescription claims submitted for Medicaid recipient Esther Polson (Title XIX # 1010244F) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Polson. Attachment "Q", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

r. Gerdes Pharmacy received unentitled payments

totaling \$144.51 for five false prescription claims submitted for Medicaid recipient Ernest Popkin (Title XIX # 1145395A) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Popkin. Attachment "R", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

s. Gerdes Pharmacy received an unentitled payment of \$45.61 for one false prescription claim submitted for Medicaid recipient Caroline Rolfes (Title XIX # 0242382J) during calendar year 1987 for a prescription drug which was either not prescribed, not dispensed, or not administered to Ms. Rolfes. Attachment "S", which describes this false prescription claim, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

t. Gerdes Pharmacy received unentitled payments totaling \$69.13 for three false prescription claims submitted for Medicaid recipient Etta Sorgdrager (Title XIX # 1291527C) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Sorgdrager. Attachment "T", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

u. Gerdes Pharmacy received unentitled payments totaling \$228.12 for 14 false prescription claims submitted for Medicaid recipient Martha Trometer (Title XIX # 1119658D) during calendar years 1985 and 1986 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Trometer. Attachment "U", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

v. Gerdes Pharmacy received unentitled payments totaling \$378.65 for 15 false prescription claims submitted for Medicaid recipient Christine Vander Hamm (Title XIX # 0574376J) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Vander Hamm. Attachment "V", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

w. Gerdes Pharmacy received unentitled payments totaling \$234.37 for 12 false prescription claims submitted for

Medicaid recipient Cora Winchester (Title XIX # 0830133E) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Winchester. Attachment "W", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

x. Gerdes Pharmacy received unentitled payments totaling \$324.67 for nine false prescription claims submitted for Medicaid recipient Catherine Arens (Title XIX # 1164982E) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Arens. Attachment "X", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

y. Gerdes Pharmacy received unentitled payments totaling \$1,268.60 for 46 false prescription claims submitted for Medicaid recipient Eleanora Bauler (Title XIX # 0468376I) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Bauler. Attachment "Y", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

z. Gerdes Pharmacy received unentitled payments totaling \$23.01 for three false prescription claims submitted for Medicaid recipient James R. Clasen (Title XIX # 0242606B) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Clasen. Attachment "Z", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

aa. Gerdes Pharmacy received unentitled payments totaling \$605.46 for 20 false prescription claims submitted for Medicaid recipient Christina Collmann (Title XIX # 0241714E) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Collmann. Attachment "AA", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

bb. Gerdes Pharmacy received unentitled payments totaling \$546.25 for 24 false prescription claims submitted for

Medicaid recipient John Dunn (Title XIX # 0241893G) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Dunn. Attachment "BB", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

cc. Gerdes Pharmacy received unentitled payments totaling \$365.76 for 14 false prescription claims submitted for Medicaid recipient Margaret Flaherty (Title XIX # 0799049B) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Flaherty. Attachment "CC", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

dd. Gerdes Pharmacy received unentitled payments totaling \$162.03 for 12 false prescription claims submitted for Medicaid recipient Martha Gamerdinger (Title XIX # 0752306A) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Gamerdinger. Attachment "DD", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

ee. Gerdes Pharmacy received unentitled payments totaling \$545.75 for 31 false prescription claims submitted for Medicaid recipient Anna Hart (Title XIX # 0500185D) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Hart. Attachment "EE", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

ff. Gerdes Pharmacy received unentitled payments totaling \$362.17 for 18 false prescription claims submitted for Medicaid recipient Ivan Hart (Title XIX # 0500187J) during calendar years 1985 and 1986 for prescription drugs which were either not prescribed, not dispensed, or not administered to Mr. Hart. Attachment "FF", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

gg. Gerdes Pharmacy received unentitled payments

totaling \$148.53 for five false prescription claims submitted for Medicaid recipient Clara Hoxie (Title XIX # 0796333C) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Hoxie. Attachment "GG", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

hh. Gerdes Pharmacy received unentitled payments totaling \$369.21 for 15 false prescription claims submitted for Medicaid recipient Ruth Hubbell (Title XIX # 0637950G) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Hubbell. Attachment "HH", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

ii. Gerdes Pharmacy received unentitled payments totaling \$8.26 for two false prescription claims submitted for Medicaid recipient Ivy Jennings (Title XIX # 1277500C) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Jennings. Attachment "II", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

jj. Gerdes Pharmacy received unentitled payments totaling \$499.46 for 20 false prescription claims submitted for Medicaid recipient Hermina Kluver (Title XIX # 0669904E) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Kluver. Attachment "JJ", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

kk. Gerdes Pharmacy received unentitled payments totaling \$1,259.95 for 36 false prescription claims submitted for Medicaid recipient Blanche Labahn (Title XIX # 0241792A) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Labahn. Attachment "KK", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

ll. Gerdes Pharmacy received unentitled payments

totaling \$300.54 for 23 false prescription claims submitted for Medicaid recipient Viola Luther (Title XIX # 0840671B) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Luther. Attachment "LL", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

mm. Gerdes Pharmacy received unentitled payments totaling \$227.54 for seven false prescription claims submitted for Medicaid recipient Lucy Phillips (Title XIX # 0839253B) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Phillips. Attachment "MM", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

nn. Gerdes Pharmacy received unentitled payments totaling \$41.38 for eight false prescription claims submitted for Medicaid recipient Elvira Schnepf (Title XIX # 1272846G) during calendar year 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Schnepf. Attachment "NN", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

oo. Gerdes Pharmacy received unentitled payments totaling \$328.66 for 18 false prescription claims submitted for Medicaid recipient Gladys Watson (Title XIX # 1005034C) during calendar years 1985, 1986, and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Watson. Attachment "OO", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

pp. Gerdes Pharmacy received unentitled payments totaling \$162.68 for 20 false prescription claims submitted for Medicaid recipient Angie Westergard (Title XIX # 1080262J) during calendar years 1986 and 1987 for prescription drugs which were either not prescribed, not dispensed, or not administered to Ms. Westergard. Attachment "PP", which itemizes and describes these false prescription claims, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

11. In summary, Gerdes Pharmacy received unentitled Medicaid payments totaling \$18,516.59 for 859 false prescription claims submitted to the Iowa Medicaid program during calendar years 1985, 1986, and 1987 for 47 institutionalized Medicaid recipients who resided in one of four institutions located in LeMars, Iowa: (1) the Plymouth County Group Home; (2) the Abbey of LeMars; (3) the Brentwood Good Samaritan Center; and (4) the Plymouth Manor Care Center. Grouped by place of recipient residence, the unentitled Medicaid payments occurred in the following manner:

a. Gerdes Pharmacy received unentitled Medicaid payments totaling \$772.36 for 21 false prescription claims submitted to the Iowa Medicaid program for five Medicaid recipients who resided at the Plymouth County Group Home.

b. Gerdes Pharmacy received unentitled Medicaid payments totaling \$3,463.88 for 181 false prescription claims submitted to the Iowa Medicaid program for five Medicaid recipients who resided at The Abbey of LeMars. Attachment number 6, which itemizes the unentitled Medicaid payments per recipient per calendar year, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

c. Gerdes Pharmacy received unentitled Medicaid payments totaling \$6,730.44 for 321 false prescription claims submitted to the Iowa Medicaid program for 18 Medicaid recipients who resided at the Brentwood Good Samaritan Center. Attachment number 7, which itemizes the unentitled Medicaid payments per recipient per calendar year, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

d. Gerdes Pharmacy received unentitled Medicaid payments totaling \$7,549.91 for 336 false prescription claims submitted to the Iowa Medicaid program for 19 Medicaid recipients who resided at the Plymouth Manor Care Center. Attachment number 8, which itemizes the unentitled Medicaid payments per recipient per calendar year, is hereby incorporated by reference and thereby made a part of this complaint and statement of charges.

12. Respondent is guilty of fraudulent practice in the first degree, as defined in 1989 Iowa Code section 714.9, by virtue of the allegations in paragraphs 8, 10, and 11.

Iowa Code section 714.9 provides the following:

Fraudulent practice in the first degree is a

fraudulent practice where the amount of money or value of property involved exceeds five thousand dollars.

Fraudulent practice in the first degree is a class "C" felony.

13. Respondent is guilty of violations of 1989 Iowa Code sections 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.23(2), 155A.23(4), 249A.7, 714.8(3), 714.8(4) and 714.8(10) by virtue of the allegations in paragraphs 8, 10, and 11.

Iowa Code section 147.55 provides, in part, the following:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:...

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

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.

3. Violated any of the provisions for licensee discipline set forth in section 147.55.

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.

Iowa Code section 249A.7 provides, in part, the following:

A person who obtains...payments for medical

assistance under this chapter by misrepresentation...shall be guilty of a fraudulent practice.

Iowa Code section 714.8 provides, in part, the following:

A person who does any of the following acts is guilty of a fraudulent practice.

....

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records...knowing the same to be false.

....

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

Iowa Code section 249A.5 provides, in part, the following:

Medical assistance...paid to a provider of services is not recoverable unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, while living, as a debt due the state...

14. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.5(1), 9.1(4)(c), 9.1(4)(j), 9.1(4)(t), and 9.1(4)(u) by virtue of the allegations in paragraphs 8, 10, and 11.

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

1. It is unethical for a practitioner of the profession of pharmacy to...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:...

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.

....  
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.

441 Iowa Administrative Code section 79.2(2) provides, in part, the following grounds for sanctioning Medicaid providers:

Sanctions may be imposed by the department [of human services] against a provider for any one (1) or more of the following reasons:

a. Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise.

b. Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled, including charges in excess of usual and customary charges.

....  
f. Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, or continuing that conduct following notification that it should cease.

....  
j. Violating any provision of Iowa Code chapter 249A, or any rule promulgated pursuant thereto.

....  
l. Violations of any laws, regulations, or code of ethics governing the conduct of occupations or professions or regulated industries.

professions or regulated industries.

....  
t. Indictment for fraudulent billing practices...

441 Iowa Administrative Code section 79.2(3) provides that the following sanctions may be imposed on providers based on the grounds specified in 79.2(2):

- a. A term of probation for participation in the medical assistance program.
- b. Termination from participation in the medical assistance program.
- c. Suspension from participation in the medical assistance program...
- d. Suspension or withholding of payments to provider.
- e. Referral to peer review.
- f. Prior authorization of services.
- g. One hundred percent (100%) review of the provider's claim prior to payment.
- h. Referral to the state licensing board for investigation.
- i. Referral to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.

The Iowa Board of Pharmacy Examiners finds that paragraphs 12, 13, and 14 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

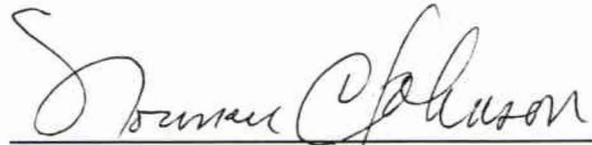
**WHEREFORE**, the undersigned charges that Respondent has violated 1989 Iowa Code sections 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.23(2), 155A.23(4), 249A.7, 714.8(3), 714.8(4), and 714.8(10) and 657 Iowa Administrative Code sections 8.5(1), 9.1(4)(c), 9.1(4)(j), 9.1(4)(t), and 9.1(4)(u).

**IT IS HEREBY ORDERED** that Kenneth W. Gerdes appear before the Iowa Board of Pharmacy Examiners on October 10, 1989, at 1:00 o'clock 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 Kenneth W. Gerdes on August 27, 1959, 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. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS



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Norman C. Johnson  
Executive Secretary

MAR 01 1990

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

Re: Pharmacist License of :  
**KENNETH W. GERDES,** : **STIPULATION**  
 License No. 12517 :  
 Respondent :

**WHEREAS,** Kenneth W. Gerdes, hereinafter referred to as the Licensee, has had certain allegations made against him by the Board of Pharmacy Examiners, hereinafter referred to as the Board, concerning his professional conduct as a pharmacist, and

**WHEREAS,** both the Licensee and the Board desire to arrive at a mutually agreeable informal settlement of this matter,

**IT IS MUTUALLY AGREED AND STIPULATED** as follows between the Licensee and the Board:

1. That the Board, through its representative Alan M. Shepley, and the Licensee have entered into settlement discussions and have agreed upon a disposition of this matter.

2. That the Licensee desires to avoid the uncertainty and the expense of a trial and desires to consent to the disciplinary action to be taken by the Board as specified in paragraph 4, infra.

3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1989 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1989 Code of Iowa and the rules of the Board of Pharmacy Examiners promulgated in accordance and pursuant thereto, particularly Section 17A.12 as it relates to contested cases and provides notice of hearing and records, and Section 17A.18 as it relates to the requirements concerning notice of the suspension and revocation of licenses.

4. It is the understanding of both the Licensee and the Board that they will enter into an Order and Consent to Order which will provide for the following:

a. License number 12517 is suspended for a period of six (6) months with all but 30 days stayed. Suspension period to begin effective with the signing of the attached Order and Consent to Order.

b. Licensee is placed on probation for a period of three (3) years. Probation period to begin 30 days after the Order and Consent to Order is signed.

c. Licensee shall not own or operate a pharmacy in Iowa for five (5) years from the date of this Order.

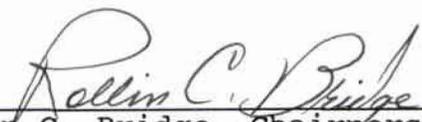
d. Licensee shall not supervise any registered intern nor perform any of the duties of a preceptor during the periods of stayed suspension and probation.

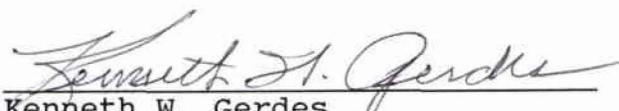
e. Licensee shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

f. Should Licensee leave Iowa to reside or practice outside this state, he shall notify the Board in writing of the date of departure and return. Periods of residency or practice outside the state shall not apply to a reduction in the probationary period.

g. Licensee shall submit quarterly reports in writing to the Board office no later than the 10th of the month when due and shall report his residency and employment status during both the period of the stayed suspension and the probationary period.

**THE ABOVE AND FOREGOING CONSTITUTE THE FULL AND COMPLETE STIPULATION AND AGREEMENT OF THE PARTIES HERETO.**

  
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Rollin C. Bridge, Chairperson  
Iowa Board of Pharmacy Examiners

  
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Kenneth W. Gerdes

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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Re: Pharmacist License of : **ORDER**  
**KENNETH W. GERDES** : **AND**  
License No. 12517 : **CONSENT TO ORDER**  
Respondent :

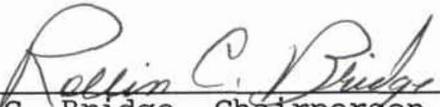
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The Iowa Board of Pharmacy Examiners, having been advised of the allegations that Kenneth W. Gerdes has conducted himself in a manner which could cause his license to practice pharmacy to be suspended, and the Board of Pharmacy Examiners through a Board Member and said Kenneth W. Gerdes, having entered into a Stipulation representing their mutual informed consent as to the waiver of the provisions found in the Iowa Administrative Code appearing at Chapter 17A, particularly Section 17A.12 and Section 17A.18, Code of Iowa 1989, in regards to Notice and Hearing, the parties to this action agree to an informal settlement of this matter, namely that the license of Kenneth W. Gerdes be disciplined according to the conditions attached hereto.

**ORDER**

**IT IS THEREFORE ORDERED**, subject to the consent of Kenneth W. Gerdes to be contained herein to this Order that the license of Kenneth W. Gerdes to practice pharmacy be disciplined according to the conditions outlined in the Stipulation attached hereto and made part of this Order.

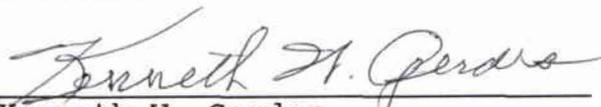
Date 2/8/90

  
Rollin C. Bridge, Chairperson  
Iowa Board of Pharmacy Examiners

**CONSENT TO ORDER**

I, Kenneth W. Gerdes, hereby consent to the Order set forth above, waive my right to a hearing in this matter, and thereby specifically waive a right to confrontation, cross-examination of witnesses, production of evidence, making of a record and judicial review.

Date 02/23/90

  
Kenneth W. Gerdes