

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of CHARLES D. GIRARD License No. 12065 Respondent	} } } }	COMPLAINT AND STATEMENT OF CHARGES
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COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 11th day of July, 1990, and files this Complaint and Statement of Charges against Charles D. Girard, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

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

2. Respondent was issued a license to practice pharmacy in Iowa on April 14, 1954, by examination.

3. Respondent is self-employed as the owner and pharmacist in charge of O'Connell Bros. Drug, Inc., located at 1001 Central Avenue in Fort Dodge, Iowa 50501.

4. Respondent currently resides at 1117 Cooper Drive in Fort Dodge, Iowa 50501.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1992.

6. On or about June 1, 1990, a complaint was received at the Board office which alleged that Respondent had dispensed prescription medication without prescriber authorization to a female patient. The complaint further alleged that the patient had not seen a physician for approximately two and one half years. The complaint was referred to Pharmacy Investigator Morrell A. Spencer for investigation.

7. On June 14, 1990, the Board received an investigative report from Investigator Spencer. His report alleges the following:

a. Respondent dispensed the prescription drug, Moduretic, without prescriber authorization, in the following manner and on the following dates:

(1) On March 12, 1987, Janet E. Secor, D.O.,

issued a prescription for 100 tablets of Moduretic for a female patient. The prescription authorized three refills.

(2) The prescription was assigned prescription number 867430 and was filled on March 12, 1987, at O'Connell Bros. Drug, Inc. Prescription number 867430 was then refilled a total of eight times on the following dates: June 23, 1987; September 29, 1987; January 8, 1988; April 18, 1988; July 28, 1988; November 7, 1988; February 10, 1989; and May 26, 1989. Five of these refills were not authorized by Dr. Secor. Five of these refills were not recorded on the prescription. Six of these refills were not recorded on the patient profile.

(3) On September 8, 1989, Respondent alleges that he received authorization from Dr. Secor to renew prescription number 867430 with refills for one year. On September 8, 1989, Respondent filled a new prescription for 100 tablets of Moduretic for the same female patient. This prescription was assigned prescription number 875328. Dr. Secor denies that this prescription was authorized by her.

(4) On October 24, 1989, the female patient was examined by Dr. Secor. The patient had not been seen by Dr. Secor since March 12, 1987. At that time, Dr. Secor issued a new prescription for the patient for 100 tablets of Moduretic. The new prescription was telephoned to O'Connell Bros. Drug, Inc. where it was received by pharmacist Jerome L. Hammes. This prescription was assigned prescription number 875764 by Pharmacist Hammes but was never filled.

(5) Prescription number 875328 was refilled on December 12, 1989, and March 28, 1990.

b. Respondent dispensed the prescription drug, Synthroid 0.1mg, without prescriber authorization, in the following manner and on the following dates:

(1) On March 12, 1987, Janet E. Secor, D.O., issued a prescription for 100 tablets of Synthroid 0.1mg for a female patient. The prescription authorized three refills.

(2) The prescription was assigned prescription number 867431 and was filled on March 12, 1987, at O'Connell Bros. Drug, Inc. Prescription number 867431 was then refilled a total of eight times on the following dates: June 23, 1987; September 29, 1987; January 8, 1988; April 18, 1988; July 28, 1988; November 7, 1988; February 10, 1989; and May 26, 1989. Five of these refills were not authorized by Dr. Secor. Five of these refills were not recorded on the prescription. Six of these refills were not recorded on the patient profile.

(3) On September 8, 1989, Respondent alleges that he received authorization from Dr. Secor to renew prescription number 867431 with refills for one year. On September 8, 1989, Respondent filled a new prescription for 100 tablets of Synthroid 0.1mg for the same female patient. This prescription was assigned prescription number 875329. Dr. Secor denies that this prescription was authorized by her.

(4) On October 24, 1989, the female patient was examined by Dr. Secor. The patient had not been seen by Dr. Secor since March 12, 1987. At that time, Dr. Secor issued a new prescription for the patient for 100 tablets of Synthroid 0.1mg. The new prescription was telephoned to O'Connell Bros. Drug, Inc. where it was received by pharmacist Jerome L. Hammes. This prescription was assigned prescription number 875765 by Pharmacist Hammes but was never filled.

(5) Prescription number 875329 was refilled on December 12, 1989, and March 28, 1990.

c. Respondent dispensed the prescription drug, Diabinese 250mg, without prescriber authorization, in the following manner and on the following dates:

(1) On March 26, 1986, Gary L. LeValley, M.D., issued a prescription for 100 tablets of Diabinese 250mg for a male patient. The prescription authorized three refills.

(2) The prescription was assigned prescription number 863965 and was filled on March 26, 1986, at O'Connell Bros. Drug, Inc. Prescription number 863965 was then refilled a total of 12 times on the following dates: July 18, 1986; May 18, 1987; August 14, 1987; December 4, 1987; March 7, 1988; April 18, 1988; June 6, 1988; July 28, 1988; September 23, 1988; November 7, 1988; January 3, 1989; and February 10, 1989. Nine of these refills were not authorized by Dr. LeValley. Eleven of these refills occurred more than one year after the date of issue. Nine of these refills were not recorded on the prescription. Eight of these refills were not recorded on the patient profile.

d. Respondent dispensed the prescription drug, Hydrochlorothiazide 50mg, without prescriber authorization, in the following manner and on the following dates:

(1) On October 3, 1985, Gary L. LeValley, M.D., issued a prescription for 100 tablets of Hydrochlorothiazide 50mg for a male patient. The prescription authorized two refills.

(2) The prescription was assigned prescription number 862130 and was filled on October 3,

1985, at O'Connell Bros. Drug, Inc. Prescription number 862130 was then refilled a total of 4 times on the following dates: June 24, 1986; February 23, 1987; May 18, 1987; and August 14, 1987. Three of these refills occurred more than one year after the date of issue. Two of these refills were not recorded on the prescription.

e. Respondent dispensed the prescription drug, Valisone Cream, without prescriber authorization, in the following manner and on the following dates:

(1) On May 15, 1986, Gary L. LeValley, M.D., issued a prescription for 45 grams of Valisone Cream for a male patient. The prescription authorized "prn" refills.

(2) The prescription was assigned prescription number 864535 and was filled on May 15, 1986, at O'Connell Bros. Drug, Inc. Prescription number 864535 was then refilled a total of 6 times on the following dates: August 16, 1986; March 23, 1987; August 14, 1987; April 28, 1988; September 9, 1988; and December 6, 1988. Five of these refills were not recorded on the prescription. Four of these refills occurred more than one year after the date of issue. Three of these refills were not recorded on the patient profile.

8. Respondent is guilty of violations of 1987 Iowa Code section 155.34 and 1989 Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), 155A.29, and 155A.35 by virtue of the allegations in paragraph 7.

1987 Iowa Code section 155.34 (in effect until July 1, 1987) provided, in part, the following:

No prescription for any prescription drug which is not a controlled substance as defined in section 204.101, subsection 6, shall be filled or refilled more than one year after the date on which the prescription was issued, and no prescription which is authorized to be refilled shall be refilled more than eleven times...

1989 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.

1989 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.

1989 Iowa Code section 155A.29 provides the following:

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than eleven times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

a. The pharmacist is unable to contact the prescriber after reasonable effort.

b. Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.

c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

1989 Iowa Code section 155A.35 provides the following:

A licensed pharmacy shall maintain patient medication records in accordance with rules adopted by the board.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.16(1), 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations in paragraph 7.

657 Iowa Administrative Code section 8.16 provides, in part, the following:

1. After January 1, 1988, a patient medication record system shall be maintained in all pharmacies.

The record system shall be devised to contain the information which the pharmacist in charge believes necessary to give the patient the best professional advice and drug information.

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

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

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

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

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

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

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

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

....
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.

....
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 8 and 9 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

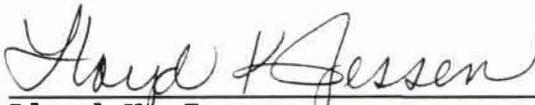
1987 Iowa Code section 155.34; 1989 Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), 155A.29, and 155A.359; and 657 Iowa Administrative Code sections 8.16(1), 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u).

IT IS HEREBY ORDERED that Charles D. Girard appear before the Iowa Board of Pharmacy Examiners on Tuesday, August 14, 1990, at 10:00 o'clock a.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 Charles D. Girard on April 14, 1954, 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



A handwritten signature in cursive script, reading "Lloyd K. Jessen", is written over a horizontal line.

Lloyd K. Jessen
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: PHARMACIST LICENSE OF)	DIA NO. 90PHB-9
)	
CHARLES D. GIRARD)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
LICENSE NO. 12065,)	DECISION AND ORDER
Respondent)	

To: Charles D. Girard:

A Complaint and Statement of Charges was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on July 11, 1990. The Complaint alleged that the Respondent had violated a number of pharmacy-related statutes and rules. The Complaint and Statement of Charges included the Notice of Hearing, which set the hearing for August 14, 1990 at 10:00 a.m. in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa. The hearing on the above Complaint and Statement of Charges was held on Tuesday, August 14, 1990 beginning at 10:15 a.m. Present were the following members of the Board: Melba L. Scaglione, Chairperson; Donna L. Flower, John F. Rode, Alan M. Shepley, and Phyllis Olson. Thomas D. McGrane, Assistant Attorney General, appeared on behalf of the State. The Respondent, Charles D. Girard, was present but was not represented by counsel. Present also were members of the staff of the Board, Mrs. Girard, and a court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was closed to the public at the request of the licensee, pursuant to Iowa Code section 258A.6(1). After hearing the testimony and examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code section 21.5(1)f (1989) to deliberate. The undersigned Administrative Law Judge was instructed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Complaint and Statement of Charges, the recorded testimony of the witnesses, and the following exhibits:

- State's Exhibit 1: Investigative report dated June 12, 1990.
- State's Exhibit 2: Prescription records and ledger card from O'Connell Brothers Drug, Inc.
- Respondent's Exhibit A: Record of doctor visits and checks issued for female patient.

FINDINGS OF FACT

1. The Respondent, Charles D. Girard, was issued Iowa Pharmacist License Number 12065 on April 14, 1954, by examination. (Official file).

2. Respondent is self-employed as the owner and pharmacist in charge of O'Connell Bros. Drug, Inc., located at 1001 Central Avenue, Fort Dodge, Iowa 50501. (Testimonies of Morrell Spencer and Respondent).

3. On or about June 1, 1990 a complaint was received at the Board office which alleged that Respondent had dispensed prescription medication without prescriber authorization to a female patient. The complaint further alleged that the patient had not seen a physician for approximately two and one-half years. The complaint was referred to Pharmacy Investigator Morrell A. Spencer for investigation. (Testimony of Morrell Spencer).

4. Morrell Spencer investigated the complaint and on June 14, 1990 submitted his investigative report to the Board. Mr. Spencer visited O'Connell Bros. Drug, Inc. in Fort Dodge, Iowa and examined the prescriptions and the ledger cards for the patient in question. (Testimony of Morrell Spencer; State's Exhibits 1 and 2).

5. Respondent dispensed the prescription drug, Moduretic, without prescriber authorization, in the following manner and on the following dates:

a) On March 12, 1987, Janet E. Secor, D.O., issued a prescription for 100 tablets of Moduretic for a female patient. The prescription authorized three refills.

b) The prescription was assigned prescription number 867430 and was filled on March 12, 1987, at O'Connell Bros. Drug, Inc. Prescription number 867430 was then refilled a total of eight times on the following dates: June 23, 1987; September 29, 1987; January 8, 1988; April 18, 1988; July 28, 1988; November 7, 1988; February 10, 1989; and May 26, 1989. Five of these refills were not authorized by Dr. Secor. Five of these refills were not recorded on the prescription. Six of these refills were not recorded on the patient profile.

c) On September 8, 1989, Respondent filled a new prescription for 100 tablets of Moduretic for the same female patient. This prescription was assigned prescription number 875328. Dr. Secor denies that this prescription was authorized by her. Dr. Secor has no documentation of authorizing the prescription. She told the investigator that it would be very unusual to have authorized the prescription without documentation.

d) On October 24, 1989, the female patient was examined by Dr. Secor. The patient had not been seen by Dr. Secor since March 12, 1987. At that time, Dr. Secor issued a new prescription for the patient for 100 tablets of Moduretic. The new prescription was telephoned to O'Connell Bros. Drug, Inc. where it was received by pharmacist Jerome L. Hammes. This prescription was assigned prescription number 875764 by Pharmacist Hammes but was never filled.

e) Prescription number 875328 was refilled on December 12, 1989 and March 28, 1990.

(Testimonies of Morrell Spencer, Respondent; State's Exhibits 1 and 2).

6. Respondent dispensed the prescription drug, Synthroid 0.1 mg, without prescriber authorization, in the following manner and on the following dates:

a) On March 12, 1987, Janet E. Secor, D.O., issued a prescription for 100 tablets of Synthroid 0.1 mg for a female patient.

b) The prescription authorized three refills. The prescription was assigned prescription number 876431 and was filled on March 12, 1987, at O'Connell Bros. Drug, Inc. Prescription number 867431 was then refilled a total of eight times on the following dates: June 23, 1987; September 29, 1987; January 8, 1988; April 18, 1988; July 28, 1988; November 7, 1988; February 10, 1989; and May 26, 1989. Five of these refills were not authorized by Dr. Secor. Five of these refills were not recorded on the prescription. Six of these refills were not recorded on the patient profile.

c) On September 8, 1989, Respondent filled a new prescription for 100 tablets of Synthroid 0.1 mg for the same female patient. This prescription was assigned prescription number 875329. Dr. Secor denies that this prescription was authorized by her.

d) On October 24, 1989, the female patient was examined by Dr. Secor. The patient had not been seen by Dr. Secor since March 12, 1987. At that time, Dr. Secor issued a new prescription for the patient for 100 tablets of Synthroid 0.1 mg. The new prescription was telephoned to O'Connell Bros. Drug, Inc. where it was received by pharmacist Jerome L. Hammes. The prescription was assigned prescription number 875765 by Pharmacist Hammes but was never filled.

e) Prescription 875329 was refilled on September 12, 1989 and March 28, 1990.

7. Respondent testified that the female patient was a long-term customer of his. Respondent knew the female patient well and found her to be a very honest person. Respondent testified that he refilled the female patient's prescriptions for Moduretic and Synthroid when she verbally told him that she had seen Dr. Sutton, an associate of Dr. Secor's, on May 4, 1988. The female patient told Respondent that Dr. Sutton told her to continue with her same prescriptions until her next annual physical. However neither Dr. Sutton nor her office staff called Respondent to renew the prescriptions. Respondent did not call Dr. Sutton's office to verify that the prescriptions were to be refilled. (Testimony of Respondent; Respondent's Exhibit A).

8. Respondent dispensed the prescription drug Diabinese 250 mg, without prescriber authorization, in the following manner and on the following dates:

a) On March 26, 1986, Gary L. LeValley, M.D., issued a prescription for 100 tablets of Diabinese 250 mg for a male patient. The prescription authorized three refills.

b) The prescription was assigned prescription number 863965 and was filled on March 26, 1986, at O'Connell Bros. Drug, Inc. Prescription number 863965 was then refilled a total of 12 times on the following dates: July 18, 1986; May 18, 1987; August 14, 1987; December 4, 1987; March 7, 1988; April 18, 1988; June 6, 1988; July 28, 1988; September 23, 1988; November 7, 1988; January 3, 1989; and February 10, 1989. Nine of these refills were not authorized by Dr. LeValley. Eleven of these refills occurred more than one year after the date of issue. Nine of these refills were not recorded on the prescription. Eight of these refills were not recorded on the patient profile.

(Testimonies of Morrell Spencer, Respondent; State's Exhibits 1 and 2).

9. Respondent dispensed the prescription drug, Hydrochlorothiazide 50 mg, without prescriber authorization, in the following manner and on the following dates:

a) On October 3, 1985, Gary L. LeValley, M.D., issued a prescription for 100 tablets of Hydrochlorothiazide 50 mg for a male patient. The prescription authorized two refills.

b) The prescription was assigned prescription number 862130 and was filled on October 3, 1985, at O'Connell Bros. Drug, Inc. Prescription number 862130 was then refilled a total of four times on the following dates:

June 24, 1986; February 23, 1987; May 18, 1987; and August 14, 1987. Three of these refills occurred more than one year after the date of issue. Two of these refills were not recorded on the prescription.

(Testimonies of Morrell Spencer, Respondent; State's Exhibits 1 and 2).

10. Respondent dispensed the prescription drug, Valisone Cream, without prescriber authorization, in the following manner and on the following dates:

a) On May 15, 1986, Gary L. LeValley, M.D., issued a prescription for 45 grams of Valisone Cream for a male patient. The prescription authorized "prn" refills.

b) The prescription was assigned prescription number 864535 and was filled on May 15, 1986 at O'Connell Bros. Drug, Inc. Prescription number 864535 was then refilled a total of six times on the following dates: August 16, 1986; March 23, 1987; August 14, 1987; April 28, 1988; September 9, 1988; and December 6, 1988. Five of these refills were not recorded on the prescription. Four of these refills occurred more than one year after the date of issue. Three of these refills were not recorded on the patient profile.

(Testimonies of Morrell Spencer, Respondent; State's Exhibits 1 and 2).

11. Respondent admitted refilling the prescriptions without specific authorization from the prescribing physician. Respondent admitted that he did not put all of the refills on the prescriptions because he had no legal authorization to refill the prescriptions. Respondent testified that because the patient had seen a physician who had indicated that she should continue with the same prescription, no patient harm occurred. Regardless of whether or not the patient had seen the physician, Respondent was not authorized to refill the prescription without contacting the physician or the physician's office. (Testimony of Respondent).

CONCLUSIONS OF LAW

1. Iowa Code section 155.34 (1987) provides in relevant part:

No prescription for any prescription drug which is not a controlled substance as defined in section 204.101, subsection 6, shall be filled or refilled more than one year after the date on which the prescription was issued, and no prescription which is authorized to be refilled shall be refilled more than eleven times.

. . .

The preponderance of the evidence established that Respondent violated Iowa Code section 155.34 (1987) when he refilled the above identified prescriptions more than one year after issue.

In addition, Respondent violated this Code provision when he refilled the prescription for Diabinese more than eleven times.

2. Iowa Code section 155A.12 (1989) provides in relevant part:

. . . 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.

3. Iowa Code section 155A.23 (1989) provides in relevant part:

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.

The preponderance of the evidence established that Respondent violated Iowa Code section 155A.23 (1989) when he willfully omitted listing all refills on the prescriptions because he knew he lacked legal authorization to refill both prescriptions. In addition Respondent made a willful false statement on prescription number 875329 when he falsely stated that both prescriptions were refillable for one year. Prescription numbers 875328 and 875329 were not authorized refills by the prescribing physician. Respondent made a false prescription when he refilled prescriptions for Moduretic, Synthroid, Diabinese, Hydrochlorothiazide, and Valisone Cream without receiving authorization from the prescribing physician.

4. Iowa Code section 155A.29 (1989) provides the following:

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than eleven times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

a. The pharmacist is unable to contact the prescriber after reasonable effort.

b. Failure to refill the prescription might result in an interruption of therapeutic regimen or

create patient suffering.

c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

The preponderance of the evidence established that Respondent has violated Iowa Code section 155A.29 (1989) when he refilled patient prescriptions without prescriber authorization and he made no effort to contact the prescriber for authorization.

5. Iowa Code section 155A.35 (1989) provides the following:

A licensed pharmacy shall maintain patient medication records in accordance with rules adopted by the board.

6. 657 Iowa Administrative Code section 8.16 provides, in part, the following:

1. After January 1, 1988, a patient medication record system shall be maintained in all pharmacies. The record system shall be devised to contain the information which the pharmacist in charge believes necessary to give the patient the best professional advice and drug information.

The preponderance of the evidence established that the Respondent violated Iowa Code section 155A.35 (1989) and 657 Iowa Administrative Code section 8.16 when he failed to maintain a patient medication record system containing information necessary to give the best professional advice and drug information. The record system maintained by the Respondent only gives the prescription number, the patient's name, and the price of the prescriptions. This information is insufficient to allow the pharmacist to give the best professional advice and drug information.

7. 657 Iowa Administrative Code section 9.1 provides, in part, the following:

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

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

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

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

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

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

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

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.
. . . .

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 preponderance of the evidence has established that the Respondent has violated 657 Iowa Administrative Code section 9.1(4)(b), (2), (3), and (4), by refilling prescriptions without prescriber authorization and by failing to maintain adequate patient records of his refills. Such actions constitute a substantial deviation from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances. These actions also indicate a failure to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances. These actions also constitute a willful and repeated departure from or failure to conform to, a minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa. There was a potential for patient harm due to the Respondent's actions.

The preponderance of the evidence also established a violation of 657 Iowa Administrative Code section 9.1(c). By refilling prescriptions without prescriber authorization and by failing to place all refill information on each prescription, the Respondent knowingly made misleading, deceptive or untrue representations in the practice of pharmacy. By his actions Respondent also engaged in practice that is potentially harmful to the public. The patients' condition could have changed, requiring a change in their prescriptions.

The preponderance of the evidence also established that Respondent violated 657 Iowa Administrative Code section 9.1(j) and (u) by virtue of the above violations already cited.

DECISION AND ORDER

WHEREFORE, IT IS THE ORDER of the Iowa Board of Pharmacy Examiners that License Number 12065 issued to the Respondent, Charles D. Girard, shall be suspended for a period of ninety (90) days. However, the period of suspension shall be stayed and Respondent's license shall be placed on probation for a period of one (1) year upon the following terms and conditions:

1. Within thirty (30) days of the date of receipt of this Order, Respondent shall remit a \$1,500.00 civil penalty to the Board office. Failure to pay the civil penalty within thirty days shall result in a \$100.00 per day penalty.
2. Respondent shall take the Iowa Drug Law Exam (IDLE) and achieve a passing score of 65 percent within ninety (90) days of the date of receipt of this Order. Respondent may take the exam a maximum of three (3) times in a ninety day period. If Respondent fails to pass the exam in ninety days, then the ninety day suspension will be imposed. Respondent will then be allowed three more attempts to pass the test.
3. Within thirty (30) days of the date of receipt of this Order Respondent shall submit for Board approval policies and procedures for a patient medication record system. Respondent shall identify the specific information to be included on the patient profiles and how it will be utilized by him in the practice of pharmacy. Respondent shall also submit for Board approval policies and procedures for refill authorizations and documentations, including methodology on verifying and documenting who authorized each refill.
4. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
5. Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

6. Should Respondent leave Iowa to reside or practice outside the state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to the reduction of the probationary period.

7. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

8. Upon successful completion of probation, Respondent's certificate will be fully restored.

Dated this 29th day of August, 1990.

Melba L. Scaglione
Melba L. Scaglione, Chairperson
Iowa Board of Pharmacy Examiners

Margaret LaMarche
Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals

ML/jmm