

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

Re:	)	EMERGENCY ORDER
Pharmacist License of	)	AND
PAUL A. GROSS	)	COMPLAINT AND
License No. 16302	)	STATEMENT OF CHARGES
Respondent	)	AND
	)	NOTICE OF HEARING

NOW on this 4th day of March 1994, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on August 1, 1983, by examination.
2. Respondent currently resides at 220 East Division, Audubon, Iowa 50025.
3. Respondent currently works as a relief pharmacist in Iowa.
4. Respondent's license to practice pharmacy in Iowa is current until June 30, 1995.
5. On February 28, 1994, the Board received information which alleged that on February 11-12, 1994, while on duty as a pharmacist at a pharmacy located in Cedar Rapids, Respondent was unable to function in a normal and coherent manner. It was

also alleged that Respondent made several dispensing errors while on duty on February 11-12, 1994.

On March 3, 1994, Respondent admitted to a Board Investigator that he had practiced pharmacy on February 11-12, 1994, in Cedar Rapids, while drinking alcohol and while under the influence of alcohol. Respondent further admitted that he had practiced pharmacy on other occasions while drinking alcohol.

It is alleged that Respondent's use of alcohol, while working, impaired his ability to practice pharmacy with reasonable skill and safety.

6. The information contained in paragraph 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.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Paul A. Gross 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 or activity.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Paul A. Gross 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 and Notice of Hearing against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges and Notice of Hearing, the secretary-director alleges that:

7. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

8. Respondent is guilty of violating 1993 Iowa Code section 155A.12(1) by virtue of the allegations contained in paragraph 5.

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

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

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(d)(1), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations contained in paragraph 5.

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:...

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

....

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 disciplined.

WHEREFORE, the undersigned charges that Respondent has violated 1993 Iowa Code section 155A.12(1) and 657 Iowa Administrative Code sections 9.1(4)(d)(1), 9.1(4)(m), 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 Paul A. Gross appear before the Iowa Board of Pharmacy Examiners

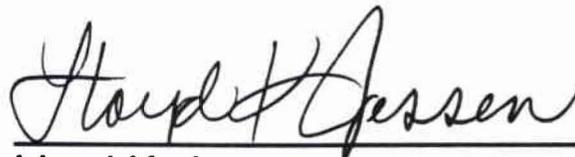
on Wednesday, April 20, 1994, at 2:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to discipline the license to practice pharmacy issued to Paul A. Gross on August 1, 1983, 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 disciplinary action including the permanent suspension or revocation of Respondent's 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 representation of the public interest in these proceedings. Information regarding the hearing may be obtained from Theresa O'Connell Weeg, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-6858). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary/Director

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re:)	
Pharmacist License of	)	DIA NO. 94PHB-7
PAUL A. GROSS)	
License No. 16302	)	PROPOSED
	)	FINDINGS OF FACT,
Respondent	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER

TO: PAUL A. GROSS

On March 4, 1994, the Executive Secretary/Director of the Iowa Board of Pharmacy Examiners (Board) filed an Emergency Order and Complaint and Statement of Charges against Paul A. Gross (Respondent), a licensed pharmacist, alleging that the Respondent had violated a pharmacy related statute and several rules by habitual intoxication or addiction to the use of alcohol or his inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse. Pursuant to Iowa Code section 17A.18(3) Respondent's pharmacist license was temporarily suspended pending hearing.

The hearing on the Emergency Order and Complaint and Statement of Charges was held before the panel of the Board on April 20, 1994, at 2:00 p.m. in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa. The members of the panel were Phyllis Olson, Vice Chairperson, Phyllis Miller, and Arlan D. Van Norman. The Respondent appeared and was not represented by counsel. The state was represented by Theresa Weeg, Assistant Attorney General. The hearing was recorded by a certified 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 Respondent's request, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Emergency Order and Complaint and Statement of Charges and Notice of Hearing, the testimony of the witnesses, and the following exhibits:

- State's Exhibit A: Complaint form.
- State's Exhibit B: Administrative Warning April 4, 1989
- State's Exhibit C: Investigative Report and Attachments
1 - 12
- State's Exhibit D: Summary of Investigation
- State's Exhibit E: Summary of Investigation with notes

State's Exhibit F: Proof of Receipt

State's Exhibit G: Powell III Discharge Summary

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on August 1, 1983, by examination. Respondent's license is current until June 30, 1995. (Board file)

2. On April 4, 1989, the Respondent was issued an administrative warning by the Board for a dispensing and labeling error. (Exhibit B)

3. On February 18, 1994, the Board received a complaint from a licensee. The complainant alleged that the Respondent had made numerous errors while working as a relief pharmacist on February 11 and 12, 1994, at the Medicap Pharmacy in Cedar Rapids. The complainant also alleged that the Respondent spent the night on the floor of the pharmacy. (testimony of E. Ray Shelden; Exhibit A)

4. The Board's investigation of the complaint revealed the following errors by the Respondent on February 11 and 12, 1994:

a) Although the regular pharmacist had preset the computer with the correct date, the Respondent reset the computer for October 11, 1994. Consequently 30 - 40 prescriptions were filled on February 11 and 12, 1994, but bore a future date in October, 1994. As a result, all of the third party billings were returned unpaid and had to be corrected and rebilled.

b) The third party signature log was signed but dates, patient names, types of insurance and prescription numbers were not completed.

c) In some cases, prescription numbers on the written prescriptions and on the computer printouts did not match.

d) A prescription for Entex PSC, filled by the Respondent, was labeled as ULR-LA. ULR-LA is a white scored tablet and is not a bioequivalent for Entex. However, when the prescription bottle was returned it was found to contain blue scored tablets. The blue scored tablets were identified by the Poison Control Center as "Trindex." In addition, the label on the bottle indicated that 40 doses had been dispensed, but the bottle was not large enough to hold 40 doses.

e) A prescription for Tussi-Organidin DM was incorrectly filled with Tussionex, a strong Codeine cough syrup. This error would cause serious problems if the patient was allergic to Codeine.

f) A prescription for Ibuprofen 800 mg was incorrectly filled with Premarin.

g) The regular pharmacist was unable to determine what drug the Respondent dispensed for R 88366 Codimal LA. The computer printout indicated that the Respondent dispensed Decomamine SR, but the container for that drug still had the manufacturer's seal intact.

h) The Respondent refilled a prescription for Toradol 10 mg that had no refills left.

i) R 88373 Amoxicillin 125 mg/5 ml for "Bradley Smith" written by Dr. Robb had been mixed with water for dispensing, but was in a pharmacy container and not manufacturer's packaging. It was sitting beside another dry, not mixed manufacturer's bottle of Amoxicillin 125 mg/5 ml for "Bradley Schmidt," also authorized by Dr. Robb. Dr. Robb authorized the first prescription but did not have a patient named "Bradley Schmidt."

5. The regular pharmacist informed the Board's investigator that when the Respondent worked as a relief pharmacist, Medicap reimbursed him for his mileage and motel costs. On February 10, 1994, however, the burglar alarm at the pharmacy was turned off at 9:43 p.m. and never reset. A neighboring business owner reported that it appeared that the Respondent had spent the night at the pharmacy. The Respondent later admitted that he had spent the night at the pharmacy. (testimonies of E. Ray Shelden, Respondent; Exhibit C)

6. On March 3, 1994, the Respondent agreed to an interview with the executive secretary and the investigator for the Board. The Respondent admitted that he had been drinking while working at the Medicap Pharmacy on February 11 and 12, 1994. The Respondent agreed to seek treatment, and he was admitted to Powell III chemical dependency treatment center on March 3, 1994. (testimony of E. Ray Shelden; Exhibit C)

7. The Respondent completed chemical dependency treatment at Powell III on March 31, 1994, and was discharged. His aftercare plan includes obtaining an AA sponsor, attendance at at least two AA meetings a week, and a weekly Powell III growth group or an alternative group nearer to his home. (testimony of Respondent; Exhibit G)

8. The Respondent testified that his problems with alcohol began approximately three years ago. He went through a difficult divorce two years ago and has been working as a relief pharmacist since April 1993. According to Respondent, he had never drunk alcohol while working before February 11 and 12, 1994. The Respondent

speculated that the isolation of working as a relief pharmacist had aggravated his alcohol problem. If his license is reinstated, he plans to seek a permanent position as a pharmacist. (testimony of Respondent)

9. Since his discharge from Powell III on March 31, 1994, the Respondent has attended his weekly growth group each Thursday night. As of the date of the hearing, the Respondent had attended only two AA meetings. The Respondent testified that he had only attended two meetings because he had been out of state, visiting his brothers. (testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 155A.12 (1993) 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.

657 IAC 9.1(4) "d"(1) "m" and "u" provide in relevant part:

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: . . .

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or chemical abuse . . .

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 established that the Respondent violated Iowa Code section 155A.12 (1993) and 657 IAC 9.1(4) "d"(1), "m" and "u". His addiction to alcohol and his use of alcohol while working as a pharmacist rendered him unable to practice pharmacy with reasonable skill and safety, as established by his numerous errors at the Medicap Pharmacy on February 11 and 12, 1994. As of

the date of hearing the Respondent had completed treatment and had begun his aftercare program. The panel concludes that the Respondent's license to practice pharmacy, which has been summarily suspended, could be reinstated, subject to stringent terms and conditions.

DECISION AND ORDER

It is THEREFORE ORDERED, that when this PROPOSED DECISION becomes a final order, the summary suspension of the pharmacist license number 16302, issued to Paul A. Gross, shall be vacated.

It is FURTHER ORDERED that license number 16032 shall immediately be SUSPENDED for a period of ninety (90) days. However, the suspension shall be STAYED, and the license shall be placed on probation for a period of five (5) years, subject to the following terms and conditions:

- 1) The Respondent shall continue to comply with his aftercare program at Powell III until discharged. The aftercare program shall submit quarterly reports to the Board documenting the Respondent's compliance. The aftercare program shall notify the Board, in writing, when the Respondent is discharged from aftercare.
- 2) The Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.
- 3) The Respondent shall attend Alcoholics Anonymous (AA) meetings at least twice each week and shall obtain written verification of his attendance.
- 4) The Respondent shall submit quarterly written reports to the Board or its designee. The reports shall include documentation of his attendance at AA meetings.
- 5) The Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
- 6) Respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on Respondent by said decision.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read this decision.

- 7) Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

8) Should Respondent leave Iowa to reside or practice outside this 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 reduction of the probationary period.

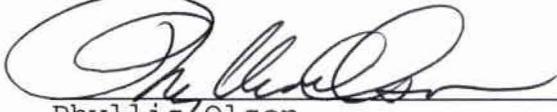
9) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall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

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

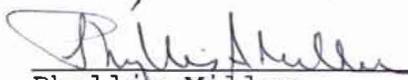
Finally, it is ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 9.27, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary of the Board shall bill the Respondent for any transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 31st day of May, 1994.

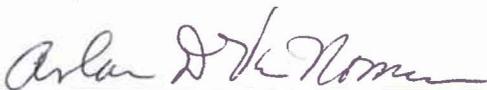
THE PANEL:



Phyllis Olson



Phyllis Miller



Arlan D. Van Norman

ML/jmm

cc: Theresa Weeg

In accordance with 657 IAC 9.6(10) a proposed decision becomes a final decision unless appealed by a party adversely affected by serving a notice of appeal on the executive secretary/director, in person or by certified mail, within thirty (30) days after service of the proposed decision on the appealing party. The board may also review the proposed decision on its own motion.