

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of)	COMPLAINT
CLIFFORD W. HART)	AND
License No. 13493)	STATEMENT
Respondent)	OF CHARGES
)	AND
)	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 5th day of September, 1991, and files this Complaint and Statement of Charges against Clifford W. Hart, 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 Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on October 8, 1968, by examination.

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

4. Respondent is self-employed as a part-owner and the pharmacist-in-charge of Palmer Drug located at 2600 Dodge Street, Dubuque, Iowa 52001. Respondent has been continuously employed as a pharmacist at Palmer Drug during all or part of the time relevant to this complaint and statement of charges.

5. Respondent currently resides at 229 Thunder Hills Estates, Peosta, Iowa 52068.

6. On January 28, 1991, a consumer complaint was received at the Board office which alleged that pharmacists employed at Palmer Drug had repeatedly dispensed two prescription medications, chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg), to a female patient without prescriber authorization between 1972 and 1986. It was further alleged that Richard H. Lee, M.D., had issued the original prescriptions for both medications but had not authorized continuous refills. The complaint was referred to Pharmacy Investigator E. Ray Sheldon for investigation.

7. On April 3, 1991, the Board received a written statement and a copy of a patient medical record from Richard H. Lee, M.D. Dr. Lee stated that he had first seen the patient around 1971. The patient medical record indicated that Dr. Lee did not see the patient between 1976 and 1986. The patient medical record also indicated that Dr. Lee did not authorize prescriptions for the patient for chlorpromazine 50mg (Thorazine 50mg) or doxepin hydrochloride 50mg (Sinequan 50mg) between approximately 1976 and September 19, 1986.

8. On April 11, 1991, the Board received an investigative report from Pharmacy Investigator E. Ray Sheldon which indicates that Respondent and other pharmacists employed at Palmer Drug dispensed the prescription drugs chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg) in the following manner and during the following time period:

a. The patient alleges that on April 3, 1972, Richard H. Lee, M.D., issued her a prescription for chlorpromazine 50mg (Thorazine 50mg). The patient also alleges that on April 17, 1972, Richard H. Lee, M.D., issued her a prescription for doxepin hydrochloride 50mg (Sinequan 50mg). The patient states that after seeing Dr. Lee in April 1972 she did not see him again until 1986.

b. The patient alleges that the prescriptions for chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg) were repeatedly and continuously refilled by Respondent and other pharmacists employed at Palmer Drug from 1972 to 1986 without authorization from Richard H. Lee, M.D., or any other authorized prescriber.

c. Evidence produced by the patient indicates that Respondent and other pharmacists employed at Palmer Drug dispensed either doxepin hydrochloride 50mg (Sinequan 50mg) or chlorpromazine 50mg (Thorazine 50mg) on sixteen occasions in 1981, seventeen occasions in 1982, and ten occasions in 1984. The records purport that all of the prescriptions were issued by Richard H. Lee, M.D.

d. Prescription number 657154 obtained from Palmer Drug indicates that a prescription for 100 capsules of doxepin hydrochloride 50mg (Sinequan 50mg) was filled and dispensed to the patient on July 24, 1986. In addition, prescription number 657156 obtained from Palmer Drug indicates that a prescription for 120 tablets of chlorpromazine 50mg (Thorazine 50mg) was filled and dispensed to the patient on July 24, 1986. Pharmacy records from Palmer Drug indicate that prescription numbers 657154 and 657156 were purportedly issued by Richard H. Lee, M.D.

9. Respondent is guilty of violations of Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), and 155A.29 by virtue of the information and allegations contained in paragraphs 6, 7, and 8.

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

...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

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

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 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.

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the information and allegations contained in paragraphs 6, 7, and 8.

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 9 and 10 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 Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), and 155A.29 and 657 Iowa Administrative Code sections 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), 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 Clifford W. Hart appear before the Iowa Board of Pharmacy Examiners on Tuesday, November 19, 1991, at 1:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Clifford W. Hart on October 8, 1968, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his license.

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

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

IOWA BOARD OF PHARMACY EXAMINERS


Lloyd K. Jessen
Executive Secretary

7. Respondent's license to practice pharmacy is suspended for a period of thirty (30) days. The suspension is stayed however, and the Respondent's license is placed on probation for a period of one (1) year from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

a. Obey all federal and state laws and regulations substantially related to the practice of pharmacy.

b. Report to the Board or its designee quarterly. Said report shall be in person or in writing, as directed. The report shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

c. Provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing education (CE) as directed by the Board.

d. Should Respondent cease to be self-employed, within fifteen (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 document.

e. 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 shall 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 stayed suspension. 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. Respondent shall take and successfully pass the Iowa Drug Law Exam (IDLE) with a score of 75 percent, and the Federal Drug Law Exam (FDLE) with a score of 75, within the one (1) year probationary period after approval of this Stipulation and Informal Settlement. Respondent may take the exams a maximum of three (3) times each in the one year period. Failure to pass IDLE or FDLE within the one year period will be grounds to revoke probation and carry out the stayed suspension.

11. On or before January 1, 1993, Respondent shall pay a civil penalty in the amount of \$1000 by delivering a check made payable to the Treasurer of Iowa to the Executive Secretary of the Board. The check shall be deposited into the general fund.

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

13. This Stipulation and Informal Settlement is subject to approval of the Board. If the Board approves this Stipulation and Informal Settlement, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and

Informal Settlement, it shall be of no force or effect to either party.

14. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 6th day of January, 1992.

Clifford W. Hart
CLIFFORD W. HART
Respondent

Signed and sworn to before me this 6 day of JANUARY, 1992.



William J. Maiers
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

Approved as to form:

William J. Maiers
WILLIAM J. MAIERS
Reynolds & Kenline
Ste. 222 Fischer Bldg.
P.O. Box 239
Dubuque, Iowa 52004-0239

ATTORNEY FOR RESPONDENT

Lynette A. F. Donner
LYNETTE A. F. DONNER
Assistant Attorney General
Iowa Department of Justice
Second Floor, Hoover Bldg.
Des Moines, Iowa 50319

ATTORNEY FOR THE
PUBLIC INTEREST

15. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 14th day of January, 1992.

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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	
CLIFFORD W. HART	}	PETITION
License No. 13493	}	TO REVOKE
Respondent	}	PROBATION
	}	AND
	}	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 8th day of December, 1992, and files this Petition to Revoke Probation and Notice of Hearing against Clifford W. Hart, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

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

2. Respondent was issued a license to practice pharmacy in Iowa on October 8, 1968, by examination.

3. Respondent's license is current until June 30, 1994.

4. Respondent is self-employed as a part-owner and the pharmacist-in-charge of Palmer Drug located at 2600 Dodge Street, Dubuque, Iowa 52001.

5. A complaint and Statement of Charges and Notice of Hearing was filed against Respondent on September 5, 1991.

6. A Stipulation and Informal Settlement was approved on January 14, 1992. That agreement suspended Respondent's license for a period of thirty (30) days. The suspension was stayed, however, and Respondent's license was placed on probation for a period of one year, from January 14, 1992, to January 13, 1993.

7. The Stipulation and Informal Settlement also provided, in part, that during the probationary period the Respondent shall:

7(b). Report to the board or its designee quarterly. Said report shall be in person or in writing, as directed. The report shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

8. Respondent has failed to report to the board as specified in subparagraph 7(b) of the Stipulation and Informal Settlement.

9. Respondent is guilty of violating subparagraph 7(b) of the Stipulation and Informal Settlement by virtue of the information contained in paragraph 8 of this Petition to Revoke Probation.

The Iowa Board of Pharmacy Examiners finds that paragraph 9 constitutes grounds for which Respondent's probation can be revoked and for which his license to practice pharmacy in Iowa can be suspended.

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Respondent appear before the Iowa Board of Pharmacy Examiners on Monday, January 11, 1993, at 1:30 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 revoke Respondent's probation and to suspend his license to practice pharmacy issued on October 8, 1968, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the suspension of his license.

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

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

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary/Director

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of : **STIPULATION**
CLIFFORD W. HART : **AND**
License No. 13493 : **INFORMAL SETTLEMENT**
Respondent :

COMES NOW the Iowa Board of Pharmacy Examiners (the Board) and Clifford W. Hart, R.Ph., (Respondent) and, pursuant to Iowa Code sections 17A.10 and 258A.3(4), enter into the following Stipulation of the contested case currently on file:

1. Respondent was issued a license to practice pharmacy in Iowa on October 8, 1968, by examination.

2. Respondent's license is current until June 30, 1994.

3. Respondent is self-employed as a part-owner and the pharmacist-in-charge of Palmer Drug, a licensed pharmacy located at 2600 Dodge Street, Dubuque, Iowa.

4. A Petition to Revoke Probation and Notice of Hearing was filed against Respondent on December 8, 1992.

5. The Board has jurisdiction of the parties and the subject matter.

6. Respondent does not contest the allegations set forth in the petition and agrees that the Board may treat the allegations as true. The Respondent understands that there is no admission on his part of the truth of the allegations,

but merely an agreement that the Board may treat the allegations as true for the purpose of this Informal Settlement.

7. Respondent's license to practice pharmacy is suspended for a period of thirty (30) days. The suspension is stayed, however, and the Respondent's license is placed on probation for a period of six (6) months from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

a. Inform the Board in writing within ten (10) days of any change of home address, place of employment, home telephone number, or work telephone number.

b. Obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and all federal and state criminal laws.

c. Not supervise any registered intern and shall not perform any of the duties of a preceptor.

d. Report to the Board or its designee quarterly. Said report shall be in writing. The report shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

e. Provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing education (CE) as directed by the Board.

8. Should Respondent reside or practice outside of this State, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of this 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 stayed suspension. If a petition to revoke probation is filed against Licensee 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. Within thirty (30) days of approval of this Stipulation and Informal Settlement, Respondent shall pay a civil penalty in the amount of \$500 by delivering a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund.

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

12. Stipulation and Informal Settlement is subject to approval of the Board. If the Board approves this Stipulation and Informal Settlement, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Informal Settlement, it shall be of no

force or effect to either party.

13. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 23rd day of DECEMBER, 1992.

Clifford W. Hart
CLIFFORD W. HART
Respondent

Signed and sworn to before me this 23 day of December, 1992.

Annis L. Beckman
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

14. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 12th day of JANUARY, 1993.

Alan M. Shepley
ALAN M. SHEPLEY, Chairperson
Iowa Board of Pharmacy Examiners