

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

Re:)	Case No. 2002-13046
Pharmacist License of)	
DENNIS D. KILLION)	STATEMENT OF CHARGES
License No. 13046)	
Respondent)	

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2001).
3. On September 10, 1964, the Board issued Respondent, Dennis D. Killion, a license to engage in the practice of pharmacy by examination as evidenced by license number 13046, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 13046 is current and active until June 30, 2004.
5. Respondent's current address is 611 Corning St., Red Oak, Iowa 51566.
6. Respondent is currently employed as Hy Vee Pharmacy in Red Oak, Iowa. The Respondent was self-employed as the Pharmacist in Charge at Oak Hill Pharmacy in Red Oak, Iowa such during times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code § 147.55(5) (1997) (1999) & (2001) and 657 Iowa Administrative Code §§ 36.1(4)(e) & (u) with being convicted of a felony related to the profession or occupation of pharmacist.

COUNT II

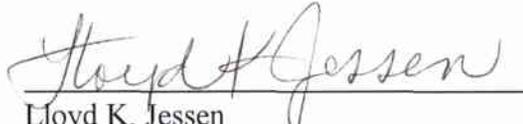
The Respondent is charged under Iowa Code § 155A.12(1) & (2) (1997) (1999) & (2001)

and 657 Iowa Administrative Code §§ 8.5(1) & 36.1(4)(c) with knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy and engaging in unethical conduct.

THE CIRCUMSTANCES

1. On or about October 15, 2002, the Board received information that the Respondent had been convicted in federal court in Nevada for Gray-Market Drug Diversion Schemes.
2. The U.S. Attorney for the District of Nevada filed a Criminal Indictment against the Respondent on November 14, 2001 alleging the Respondent had committed criminal violations of conspiracy and aiding and abetting mail fraud.
3. The essence of the criminal indictment filed against the Respondent was that he participated in a gray-market drug diversion scheme. The nature of the alleged scheme is described in the criminal indictment that is attached to this Statement of Charges as Exhibit A and incorporated herein by reference.
4. On April 6, 2002, the Respondent entered into a plea agreement with the U.S. Attorney's office.
5. On September 6, 2002, the U.S. District Court, District of Nevada, imposed its Judgement in a Criminal Case in the case captioned *United States of America v. Dennis Dean Killion, Case No. CR-S-01-414-PMP(PAL)*. The federal court found that Respondent pled guilty to 1 count of conspiracy, in violation of 18 U.S.C. section 371. The Court sentenced Respondent to 3 years of probation with six months' home confinement and fined the Respondent \$114,579.00.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 4th day of Dec., 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:

Pharmacist License of)

DENNIS D. KILLION)

License No. 13046)

Respondent)

) Case No. 2002-13046

**STIPULATION
OF
FACTS**

Pursuant to Iowa Code §§17A.10 and 17A.10A (2003), the Iowa Board of Pharmacy Examiners (hereinafter, “the Board”) and Dennis D. Killion (hereinafter, “Respondent”), enter into the following Stipulation to be utilized in the licensee disciplinary proceeding currently pending before the Iowa Board of Pharmacy Examiners. The Board and Respondent stipulate as follows:

1. Respondent is the subject of disciplinary proceedings now pending before the Board. A Statement of Charges was filed against Respondent on December 4, 2002 alleging that Respondent had participated in a “gray-market drug diversion scheme.” A copy of the Statement of Charges is attached hereto as Exhibit 1. The Statement of Charges cited Respondent’s conviction in the case *United States of America v. Dennis Dean Killion, Case Number CR-S-01-414-PMP(PAL), United States District Court for the District of Nevada.*
2. Respondent’s grand jury indictment in *United States of America v. Dennis Dean Killion, Case Number CR-S-01-414-PMP(PAL)*, contained twenty eight counts:

“Conspiracy” (count one) and “Mail Fraud; Aiding and Abetting” (counts two through twenty-eight).

3. In response to the indictment, Respondent entered a plea bargain in which he agreed to plead guilty to one count of conspiracy. Judgment against Respondent, in *United States of America v. Dennis Dean Killion*, was entered on September 11, 2002, following Respondent’s plea of guilt to a charge of conspiracy in violation of 18 USC 371. Respondent was sentenced to six months’ home confinement, three years probation, ordered to maintain gainful employment and fined \$114,579. A copy of the “Judgment in a Criminal Case” against Respondent is attached as Exhibit 2.

4. The conspiracy of which Respondent was convicted involved purchase of pharmaceuticals by an Iowa closed-door pharmacy (Oak Hill Pharmacy) owned by Respondent. The Oak Hill Pharmacy signed a contract with Managed Healthcare Associates, Inc., by which the Oak Hill Pharmacy represented that products bought from Managed Healthcare Associates, Inc., would be dispensed only to long-term care, nursing home patients. In exchange for promising that the products purchased from Managed Healthcare Associates, Inc. would only be dispensed to nursing home patients, the Oak Hill Pharmacy received discounts from the distributors on the pharmaceuticals purchased.

Respondent’s criminal conviction arose from the fact that instead of Oak Hill Pharmacy selling discounted pharmaceuticals only to nursing home patients, it sold the pharmaceuticals it had purchased at a discount to another, wholesale pharmacy owned by Respondent (Acorn Company) which resold the discounted pharmaceuticals to a company called Las Vegas Pharmaceuticals Distributors. Respondent received in excess

of \$114,000 in commissions for the sales of pharmaceuticals to Las Vegas
Pharmaceuticals Distributors. The investigation did not reveal any violations of drug
pedigree or of the PDMA.

5. Respondent has been convicted of a felony related to the profession of pharmacy,
in violation of 657 Iowa Administrative Code 36.1(4)(e).

6. Respondent has been convicted of a felony that may affect the Respondent's
ability to practice his profession, in violation of 657 Iowa Administrative Code
36.1(4)(e).

7. Respondent does not contest that he made misleading, deceptive, untrue and
fraudulent representations in the practice of pharmacy, in violation of 657 Iowa
Administrative Code 36.1(4)(c).

8. Respondent has been licensed as a pharmacist since September 10, 1964, and has
not been the subject of prior disciplinary action brought before the Board.

IT IS SO STIPULATED.

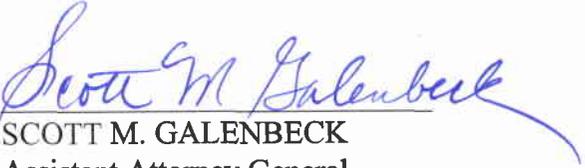
June 24, 2003



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June 23, 2003



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Killion stip3.doc

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2002-13046
Pharmacist License of:)	DIA NO: 03PHB019
DENNIS D. KILLION)	
License No. 13046)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

TO: DENNIS D. KILLION

On December 4, 2002, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Dennis D. Killion (Respondent), a licensed pharmacist. The Statement of Charges alleged two counts:

COUNT I: Being convicted of a felony related to the profession or occupation of pharmacist, in violation of Iowa Code section 147.55(5)(1997)(1999) & (2001) and 657 IAC 36.1(4)"e" & "u."

COUNT II: Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy and engaging in unethical conduct, in violation of Iowa Code section 155A.12(1) and (2)(1997)(1999) & (2001) and 657 IAC 8.5(1) and 36.1(4)"c."

A Notice of Hearing was issued on December 11, 2002, but the hearing was continued. The hearing on the Statement of Charges was held on June 24, 2003 at 2:00 p.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Paul Abramowitz; Michael J. Seifert; Leman Olson; Vernon Benjamin; G. Kay Bolton and Barbara Ellen O'Roake. The Respondent appeared, and was represented by his counsel, Alan G. Stoler and Michael J. O'Bradovich. The state was represented by Scott Galenbeck, 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, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's

Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Statement of Charges; Notice of Hearing; the testimony of the witness; the Stipulation of Facts; and Exhibits 1, 1-A, and 2.

FINDINGS OF FACT

1. The parties' Stipulation of Facts, which is attached to this Decision and Order, is hereby adopted as though fully set forth. (Stipulation of Facts)

2. On September 10, 1964, the Board issued the Respondent license number 13046 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. License number 13046 is current and active until June 30, 2004. The Respondent has been employed as a pharmacist by the Hy Vee Pharmacy in Red Oak, Iowa for two years and four months. Prior to that, he was the pharmacist-in-charge and owner of the Oak Hill Pharmacy in Red Oak, Iowa. (Testimony of Respondent; Exhibit 1)

The Respondent has continually practiced pharmacy in Red Oak, Iowa since 1964. The Respondent has served in a number of leadership positions in the pharmacy profession, including the Iowa Board of Pharmacy Examiners, the Iowa Pharmacy Association, and the Council on Human Services. (Testimony of Respondent)

CONCLUSIONS OF LAW

Count I

Iowa Code section 147.55(5) provides, in relevant part:

147.55 Grounds.

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. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of

conviction or plea of guilty shall be conclusive evidence.

Accord, 657 IAC 36.1(4)"e."

The Respondent admits that he has been convicted of a felony related to the profession of pharmacy and that the felony may affect his ability to practice his profession. (Stipulated Facts #5,6) The preponderance of the evidence established that the Respondent has violated Iowa Code section 147.55(5) and 657 IAC 36.1(4)"e."

Count II

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

155A.12 Pharmacist license-grounds for discipline.

...The board 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 the rules of the board.

Effective February 5, 1997, 657 IAC 8.5(1) provided that it was unethical conduct for a pharmacist to make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

657 IAC 36.1(4)"c" currently provides that the Board may discipline a licensee for knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy or engaging in unethical conduct...

The Respondent does not contest that he made misleading, deceptive, untrue and fraudulent representations in the practice of pharmacy. (Stipulated Fact #7) The preponderance of the evidence established that the Respondent has engaged in unethical conduct and has knowingly made misleading, deceptive, untrue and fraudulent representations in the practice of pharmacy, in violation of Iowa Code section 155A.12(1), (2), and 657 IAC 8.5(1) and 36.1(4)"c."

Sanction

In determining an appropriate sanction, the Board considered the factors outlined in 657 IAC 36.1(3). The Respondent's violations are very serious and reflect poorly on the integrity of the pharmacy profession as a whole. The Respondent's long career in pharmacy and service in various leadership positions within the profession convince the Board that the Respondent knew the requirements of the laws and ethical standards governing his practice as a pharmacist. However, in deciding to stay the suspension of the Respondent's license, the Board also gave serious consideration to the Respondent's otherwise unblemished career, his acceptance of both legal and professional responsibility for his crime, the federal court's decision to grant him probation, and his cooperation with the Board. The Board specifically determined that a substantial fine was appropriate due to the economic nature of the Respondent's crime.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy license no. 13046, issued to Dennis D. Killion, shall be **SUSPENDED** for a period of six (6) months, effective immediately upon service of this order. **IT IS FURTHER ORDERED** that imposition of the period of suspension shall be **STAYED**, and the Respondent's license shall be placed on **PROBATION** for a period of three (3) years, subject to the following conditions:

- 1) The Respondent shall pay a civil penalty in the amount of \$10,000, within thirty (30) days of the date of this order.
- 2) The Respondent shall personally attend and successfully complete the Creighton University School of Pharmacy and Health Professions course entitled "PHA456 Pharmacy Ethics." Respondent shall contact Dr. Linda Scheirton at (402)280-3108 to arrange enrollment in the course. Following successful completion of the course, Respondent shall prepare and submit to the Board a typewritten paper on ethics in the practice of pharmacy along with evidence of successful completion of the course.
- 3) The Respondent shall file quarterly written reports with the Board by June 5th, September 5th, December 5th and March 5th of each year of probation and shall appear before the Board if requested.

4) During the period of probation, the Respondent shall not own, manage, or be the pharmacist-in-charge of any pharmacy.

5) During the period of probation, the Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

6) During the period of probation, the Respondent shall notify all prospective employers of this decision and order and the terms, conditions and restrictions imposed on Respondent by this decision. Within 15 days of receipt of this decision, and thereafter within 15 days of undertaking new employment, the Respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read the Board's decision, including the Stipulation of Facts.

7) The Respondent shall notify the Board of any change in address or employment within fourteen (14) days.

8) The Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

9) 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.

10) 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.

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

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall

bill the Respondent for any witness fees and expenses or 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 29th day of July, 2003.

Kay Bolton, for
Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

Alan G. Stoler and Michael J. O'Bradovich,
Attorneys for Respondent

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.