

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

Re: Pharmacist License of	}	COMPLAINT AND
JERRY B. KLEIN	}	STATEMENT
License No. 15296	}	OF CHARGES
Respondent	}	AND
	}	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 20th day of December, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against Jerry B. Klein, a pharmacist licensed pursuant to Iowa Code chapter 155A., and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; 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.
2. Respondent was issued a license to practice pharmacy in Iowa on July 12, 1978, by examination.
3. Respondent is also licensed to practice pharmacy in the state of Wyoming (license number 2334).
4. The status of Respondent's license to practice pharmacy in Iowa is active. Respondent's license to practice pharmacy in Iowa is current until June 30, 1996.
5. Respondent currently resides at 7391 Rimrock, Gillette, Wyoming 82716. Respondent is currently engaged in the practice of pharmacy in Wyoming.
6. The Board has received information which alleges the following:
 - a. On July 18, 1994, Respondent was disciplined by the Wyoming State Board of Pharmacy for two incidents in January 1994 of dispensing unauthorized prescriptions for codeine-containing cough syrups.

b. The Iowa Board of Pharmacy Examiners received notification of the disciplinary action taken by the Wyoming Board of Pharmacy against Respondent's Wyoming pharmacist license number 2334 from a disciplinary report generated by the National Association of Boards of Pharmacy (NABP). The Iowa Board of Pharmacy received the NABP report on or about August 15, 1994.

c. On August 22, 1994, the Board received a certified copy of a Complaint titled In the Matter of the Suspension of the License to Practice Pharmacy of Jerry Bradley Klein, Docket No. 2-94, from the Wyoming State Board of Pharmacy. The Complaint, dated April 29, 1994, provides, in part, the following:

3. Klein was investigated by the Board's staff inspector beginning February 15, 1994.

4. The investigation revealed that Klein generated and filled two non-authorized prescriptions as follows:

a. Prescription no. 4008967 dated January 7, 1994 for Prometh with COD 120 ML (Phenergan w/codeine syrup)...

b. Prescription no. 4009129 dated January 22, 1994 for Promethazine VC/COD 120 ML (Phenergan VC W/COD Syr)...

5. The investigation also revealed that both the prescriptions set forth in paragraph 4 above were allegedly prescribed by a "Dr. OTC", presumably meaning "over-the-counter"; therefore, neither prescription was prescribed nor authorized by a licensed practitioner.

6. Additionally the investigation revealed that many of the controlled substance prescriptions were piled unbound in a drawer, out of order, not numbered and with patient addresses missing.

7. On August 22, 1994, the Board received a certified copy of the Findings of Fact, Conclusions of Law and Order of Suspension titled In the Matter of the Suspension of the License to Practice Pharmacy of Jerry Bradley Klein, Docket No. 2-94, from the Wyoming State Board of Pharmacy. The Findings of Fact, Conclusions of Law and Order of Suspension, dated July 18, 1994, provides, in part, the following:

1. Licensee Jerry Bradley Klein is a registered pharmacist in the state of Wyoming, holding license no. 2334.

2. Licensee is the owner and managing pharmacist of Decker's East Pharmacy in Gillette, Wyoming.

3. Licensee admits to two incidents in January, 1994, of dispensing non-authorized prescriptions of cough syrups containing codeine, a controlled substance, in violation of pharmacy laws regarding labeling and controlled substances laws and rules, and to certain record-keeping infractions.

4. Licensee and the Executive Director stipulated to the foregoing violations and agreed to seek and accept a thirty-day suspension of Licensee's license.

8. As evidenced in the Findings of Fact, Conclusions of Law and Order of Suspension of the Wyoming State Board of Pharmacy, Respondent's license to practice pharmacy in Wyoming was disciplined effective July 18, 1994. As evidenced in the Findings of Fact, Conclusions of Law and Order of Suspension of the Wyoming State Board of Pharmacy, Respondent's license to practice pharmacy in Wyoming was suspended for a period of fifteen (15) days beginning August 1, 1994, and ending August 15, 1994.

9. Certified copies of the Wyoming State Board's Complaint and Findings of Fact, Conclusions of Law and Order of Suspension are attached hereto as Exhibit 1 and are incorporated by reference into this Complaint and Statement of Charges and Notice of Hearing as if fully set forth herein.

10. Respondent failed to report to the Iowa Board of Pharmacy Examiners that disciplinary action had been taken by the Wyoming Board of Pharmacy against his Wyoming pharmacist license number 2334 on July 18, 1994.

11. Respondent is guilty of violations of 1993 Iowa Code sections 155A.12(1), 155A.12(8), 155A.12(10) by virtue of the allegations contained in paragraphs 6, 7, 8, 9, and 10.

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.

....

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

12. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u) by virtue of the allegations contained in paragraphs 6, 7, 8, 9, and 10.

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:...

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.

....

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

....

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 11 and 12 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 sections 155A.12(1), 155A.12(8), and 155A.12(10) and 657 Iowa Administrative Code sections 9.1(4)(j), 9.1(4)(k), 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 Jerry B. Klein appear before the Iowa Board of Pharmacy Examiners on Tuesday, February 7, 1995, at 10:00 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 discipline the license to practice pharmacy issued to Jerry B. Klein on July 12, 1978, 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, including disciplinary action, may be rendered.

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 Linny C. Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). 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

STATE OF WYOMING

Iowa Board of Pharmacy Examiners

Exhibit 1

IN THE MATTER OF THE SUSPENSION)
OF THE LICENSE TO PRACTICE)
PHARMACY OF JERRY BRADLEY KLEIN)

Docket No. 2-94

COMPLAINT

Comes now the Executive Director of the Wyoming State Board of Pharmacy for her Complaint against Jerry Bradley Klein, R.Ph. ("Klein") seeking suspension of his license to practice pharmacy in the State of Wyoming. In support of the Complaint and relief sought, the Director states and alleges the following:

1. Klein is a registered pharmacist in the State of Wyoming and holds license no. 2334. As such the Board of Pharmacy has interest in and jurisdiction over the matter contained herein.
2. Klein is owner and managing pharmacist at Decker's East Pharmacy, 408 Douglas Highway, Gillette, Wyoming 82716. Retail license no. 52-02750, controlled substance registration #BV3028582.
3. Klein was investigated by the Board's staff inspector beginning February 15, 1994.
4. The investigation revealed that Klein generated and filled two non-authorized prescriptions as follows:
 - a. Prescription no. 4008967 dated January 7, 1994 for Prometh with COD 120 ML (Phenergan w/codeine syrup), filled in the name of Antonette Dolphay; and
 - b. Prescription no. 4009129 dated January 22, 1994 for Promethazine VC/COD 120 ML (Phenergan VC W/COD Syr), filled in the name of Pat D. Miller.
5. The investigation also revealed that both the prescriptions set forth in paragraph 4 above were allegedly prescribed by a "Dr. OTC", presumably meaning "over-the-counter"; therefore, neither prescription was prescribed nor authorized by a licensed practitioner.
6. Additionally the investigation revealed that many of the controlled substance prescriptions were piled unbound in a drawer, out of order, not numbered and with patient addresses missing.
7. Klein has violated various laws and regulations relating to the practice of pharmacy. Among those violated, but not limited to, are:
 - (a) W.S. §33-24-136 relating to mislabeling.

(b) Wyoming State Board of Pharmacy Controlled Substances Rules and Regulations, Chapter VI, Sections 6.03(a); 6.04(a); 6.21(a) and (c); 6.24 and 6.31(a) all relating to issuance and filling of prescriptions for a controlled substance.

(c) Wyoming State Board of Pharmacy Controlled Substances Rules and Regulations, Chapter IV, Section 4.01(c) relating to records and inventory requirements.

8. That pursuant to W.S. §33-24-122(a), (vi) and (vii), the foregoing violations are grounds for suspension of Klein's license.

WHEREFORE, the Executive Director of the Wyoming State Board of Pharmacy requests that the Board enter an order suspending the license to practice pharmacy of Jerry Bradley Klein; and ordering such further relief as the Board deems appropriate.

Dated this 29th day of April, 1994.

Marilynn H. Mitchell
Marilynn H. Mitchell
Executive Director of the
Wyoming State Board of Pharmacy
1720 S. Poplar Street, Ste. #5
Casper, WY 82601

Wm. L. Weaver
Assistant Attorney General
P.O. Box 2760
Casper, WY 82602
(307) 235-3661

I, hereby, certify that this is a true and correct copy of the records on file in the office of the Wyoming State Board of Pharmacy.

Attest: Marilynn H. Mitchell
Marilynn H. Mitchell
Executive Director

8/17/94

BEFORE THE BOARD OF PHARMACY

RECEIVED

AUG 21 1994

STATE OF WYOMING

IOWA PHARMACY EXAMINERS

IN THE MATTER OF THE SUSPENSION)	Docket No. 2-94
OF THE LICENSE TO PRACTICE)	
PHARMACY OF JERRY BRADLEY KLEIN)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF SUSPENSION

This matter came on for hearing before the Wyoming State Board of Pharmacy on the 29th day of June, 1994, at 2:30 p.m. in Casper, Wyoming, before the entire board and their hearing officer. The Executive Director appeared with her counsel, William Weaver, and the Licensee (Contestee) appeared with his counsel, Robert Klus. The parties presented a stipulation to the Board and evidence regarding the stipulation was taken in the form of sworn testimony from the Licensee.

The Board received three exhibits: 1, the notice of hearing and complaint; 2, the evidence of mailing by certified mail and receipt of the same; and 3, the Licensee's answer. The Board also recognized the stipulation as part of the pleadings within the record. Based upon the record, the Board finds as follows:

1. Licensee Jerry Bradley Klein is a registered pharmacist in the state of Wyoming, holding license no. 2334.
2. Licensee is the owner and managing pharmacist at Decker's East Pharmacy in Gillette, Wyoming.
3. Licensee admits to two incidents in January, 1994, of dispensing non-authorized prescriptions of cough syrups containing codeine, a controlled substance, in violation of pharmacy laws regarding labeling and controlled substances laws and rules, and to certain record-keeping infractions.
4. Licensee and the Executive Director stipulated to the foregoing violations and agreed to seek and accept a thirty-day suspension of Licensee's license.
5. There are no disputes as to adequacy of notice or any material facts.
6. This is a contested case proceeding arising under the Wyoming Administrative Procedure Act, W.S. 16-3-101, the Wyoming Pharmacy Act, W.S. 33-24-101 et seq., and the Wyoming Controlled Substances Act, W.S. 35-7-1001 et seq., and the Rules and Regulations of the State Board of Pharmacy.

7. This Board has jurisdiction and authority to grant, issue, renew, suspend and revoke pharmacy licenses, specifically set forth at W.S. 33-24-122 and related statutes.

8. The Licensee admitted violations of the requirements of W.S. 33-24-136 relating to mislabeling and Chapter VI of the Board's Rules regarding Controlled Substances, and further admitted violations of record-keeping requirements of Chapter IV of the same Rules.

9. The Board has before it clear and convincing evidence of violation of statutory and rule requirements that constitute a basis for license suspension pursuant to W.S. 33-24-122 (a) (ii), (vi) and (vii).

10. The Board concludes that the Licensee's violations are of such severity that they should not go unsanctioned, but that the recommended 30-day suspension, under the circumstances, is more harsh than is necessary to accomplish the purposes of punishing the offenses, warning Licensee and others and protecting the public's safety. The Board concludes that a suspension of 15 days is adequate to accomplish these purposes.

WHEREFORE IT IS HEREBY ORDERED that the Wyoming license to practice pharmacy issued to Jerry Bradley Klein, No. 2334, be and the same hereby is SUSPENDED for a period of fifteen days commencing at 12:01 a.m. August 1, 1994, and ending at midnight August 15, 1994.

SO ORDERED this 18th day of July, 1994.

STATE OF WYOMING BOARD OF PHARMACY

Jancy D. Walter
Jancy D. Walter, R.Ph., President

Jennifer S. Nevins, R.Ph.
Jennifer S. Nevins, R.Ph., Vice-President

Floyd D. Harnagel
Floyd D. Harnagel, R.Ph., Secretary

I, hereby, certify that this is a true and correct copy of the records on file in the office of the Wyoming State Board of Pharmacy.

Attest: Marilynn H. Mitchell - 8/17/94
Marilynn H. Mitchell
Executive Director

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

Re: Pharmacist License of
JERRY B. KLEIN
License No. 15296
Respondent

}
}
}
}
}
}

**STIPULATION
AND
CONSENT ORDER**

On this 20th day of February, 1995, the Iowa Board of Pharmacy Examiners and Jerry B. Klein, of 7391 Rimrock, Gillette, Wyoming, each hereby agree with the other and stipulate as follows:

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Complaint and Statement of Charges and Notice of Hearing filed against Respondent on December 20, 1994, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That Respondent was issued a license to practice pharmacy in Iowa on the 12th day of July, 1978, by examination as evidenced by Pharmacist License Number 15296, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.

2. That Iowa Pharmacist License Number 15296 issued to Respondent is current until June 30, 1996.

3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on December 20, 1994.

5. Respondent does not contest the allegations set forth in the complaint. 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 solely for the purpose of this Stipulation and Consent Order.

6. Respondent agrees to accept a citation and warning for the alleged violations set forth in the complaint. In addition, within sixty (60) days of the date that this Stipulation and Consent Order is accepted by the Board, the Respondent shall pay a civil penalty of \$250.00 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.

7. This proposed Stipulation and Consent Order is subject to approval of a majority of the full Board. If the Board approves this Stipulation and Consent Order, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Consent Order, it shall be of no force or effect to either party.

8. This Stipulation and Consent Order is accepted by Respondent on the 16th day of February, 1995.


JERRY B. KLEIN, R.Ph.
Respondent

Subscribed and Sworn to before me on this 16th day of February, 1995.




NOTARY PUBLIC IN AND FOR THE
STATE OF WYOMING

9. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 20th day of February, 1995.


MARIAN L. ROBERTS, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

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

Re:)	Case No. 2000-15296
Pharmacist License of)	
JERRY B. KLEIN)	STATEMENT OF CHARGES
License No. 15296)	
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 (1999).
3. On July 12, 1978, the Board issued Respondent, Jerry B. Klein, a license to engage in the practice of pharmacy by examination as evidenced by license number 15296, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 15296 is current and active until June 30, 2001.
5. Respondent's current address is 11 Rawhide, P.O. Box 568, Story, Wyoming 82842.
6. Upon information and belief, Respondent is currently practicing as a pharmacist in the state of Wyoming and has been practicing as such during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code § 155A.12(10) (1999) and 657 Iowa Administrative Code § 36.1(4) with having had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in Iowa Code subsections 155A.12(1) through (9).

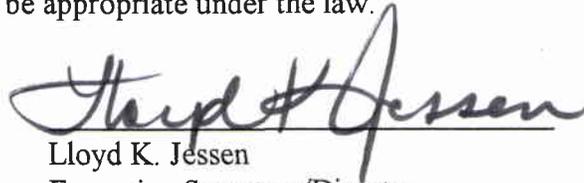
THE CIRCUMSTANCES

1. On or about July 17, 2000, the Board office received notification from the Respondent that the State of Wyoming had taken disciplinary action against

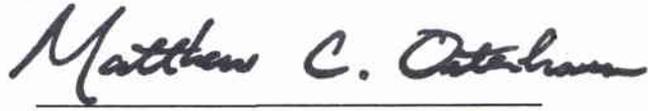
Respondent's license.

2. In the Consent Order involving Respondent's license filed in Wyoming, the Respondent admitted to conduct that would subject the Respondent to discipline in the State of Iowa pursuant to Iowa Code subsections 155A(1) through (9). A copy of the Consent Order is attached hereto as "Exhibit A" and incorporated herein by reference.
4. The Consent Order imposed an administrative penalty in the amount of two thousand dollars and placed Defendant's license to practice pharmacy in the State of Nebraska on probation for a period of one year.

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 30th day of January, 2001, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Matthew C. Osterhaus, 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