

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	COMPLAINT
THOMAS M. KOURIS	}	AND
License No. 15215	}	STATEMENT
Respondent	}	OF CHARGES
	}	AND
	}	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 7th day of October, 1991, and files this Complaint and Statement of Charges against Thomas M. Kouris, 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 April 6, 1978, by examination.

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

4. Respondent was issued a license to practice pharmacy in Illinois (license number 051-032718).

5. Respondent currently resides at 3518 32nd Street in Moline, Illinois 61265.

6. On July 23, 1990, the Board received a copy of the Report and Recommendation dated November 16, 1989, in Case No. 89-1313, titled Department of Professional Regulation v. Milan Drug, Ltd. and Thomas M. Kouris from the Illinois Department of Professional Regulation, State Board of Pharmacy. The Illinois Report and Recommendation provides, in part, the following:

On May 15, 1989 the Department filed a three count Complaint against Respondents alleging, among other things, that Respondents had failed to obtain authorizations from three (3) physicians prior to filling prescriptions and had not filled prescriptions for a diet pill for one patient in good faith...the Respondents...[dispensed] controlled substances without authorization and also...[failed] to dispense a Schedule III controlled substance in good faith...The

Respondents were previously disciplined for similar violations of the Pharmacy Practice Act...

A copy of the Illinois Report and Recommendation is attached hereto as Exhibit 1 and is incorporated by reference into this Complaint and Statement of Charges as if fully set forth herein.

7. On July 23, 1990, the Board also received a copy of the Findings of Fact, Conclusions of Law, and Recommendation dated February 8, 1990, in Case No. 89-1313, titled Department of Professional Regulation v. Milan Drug, Ltd. and Thomas M. Kouris from the Illinois Department of Professional Regulation, State Board of Pharmacy. The Illinois Findings of Fact, Conclusions of Law, and Recommendation provides, in part, the following:

The Board recommends that the pharmacist license of Thomas Kouris, license no. 051-032718, be suspended for sixty (60) days, followed by probation for two (2) years.

A copy of the Illinois Findings of Fact, Conclusions of Law, and Recommendation is attached hereto as Exhibit 2 and is incorporated by reference into this Complaint and Statement of Charges as if fully set forth herein.

8. On September 16, 1991, the Board received a certified copy of an Order issued August 29, 1991, by the Appellate Court of Illinois, Third District, in Case No. 3-90-0890 (Circuit Court No. 90 MR 78), titled Milan Drug, Ltd., and Tom Kouris v. Department of Professional Regulation of the State of Illinois. The Illinois Appellate Court Order upheld the decision of the Illinois Department of Professional Regulation to suspend Respondent's Illinois pharmacist license no. 051-032718. A certified copy of the Illinois Appellate Court Order is attached hereto as Exhibit 3 and is incorporated by reference into this Complaint and Statement of Charges as if fully set forth herein.

9. On September 16, 1991, Respondent reported to the Board, in writing, that his Illinois pharmacist license no. 051-032718 had been placed on suspension for a period of two months commencing September 16, 1991, and that his license had been surrendered to the Illinois Department of Registration and Education.

10. Respondent's Illinois pharmacist license no. 051-032718 had previously been disciplined by the Illinois Department of Professional Regulation in April 1987 when his license was suspended for three weeks and then placed on probation for two years. Respondent reported this disciplinary action to the Board, in writing, on or before June 18, 1990.

11. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(8), and 155A.12(10) by virtue of the information and allegations contained in paragraphs 6, 7, 8, 9, and 10.

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.

....
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 violating 657 Iowa Administrative Code section 9.1(4)(u) by virtue of the information 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)...when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

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 suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated 1991 Iowa Code sections 155A.12(1), 155A.12(8), and 155A.12(10) and 657 Iowa Administrative Code section 9.1(4)(u).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Thomas M. Kouris appear before the Iowa Board of Pharmacy Examiners on Monday, November 18, 1991, 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 suspend or revoke the license to practice pharmacy issued to Thomas M. Kouris on April 6, 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 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/Director

STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION)	
of the State of Illinois, Complainant)	
v.)	No. 89-1311
MILAN DRUG, LTD.)	
License No. 054-007354)	
Controlled Substance)	No. 89-1312-X
License No. 003-054-007354-1)	
THOMAS KOURIS)	No. 89-1313
License No. 051-032718, Respondent)	

REPORT AND RECOMMENDATION

This Report and Recommendation is being submitted to the State Board of Pharmacy pursuant to Illinois Revised Statutes (1987), Chapter 111, paragraph 4155.7. This Report and Recommendation is also being submitted to the Director of the Department of Professional Regulation pursuant to my role as Controlled Substances Hearing Officer.

BACKGROUND

On May 15, 1989 the Department filed a three count Complaint against Respondents alleging, among other things, that Respondents had failed to obtain authorizations from three (3) physicians prior to filling prescriptions and had not filled prescriptions for a diet pill for one patient in good faith. Respondents denied the allegations of improper filling, claiming that they obtained the necessary authorizations and that they had given appropriate consideration for dispensing the diet pills.

The matter proceeded to an evidentiary hearing on August 9, 1989. The parties requested that the record be left open for an evidence deposition to be taken. That deposition was tendered to me on September 28, 1989 and I heard closing arguments on October 16, 1989. Board member Clark Moreland was present for the hearing on

August 9, 1989. The Department was represented by Charles Sauer and Maureen Lydon. The Respondents were represented by William Stengel, Jr.

The Department dropped the allegations concerning Maudie Taylor found at Count III of the Complaint at the close of its case.

DISCUSSION

There are essentially two questions to be addressed:

1. Did the Respondents have the authorization from a physician before they dispensed controlled substances?
2. Did the Respondents dispense diet pills (controlled substances) in "good faith"?

The first question must be analyzed in light of the totality of the evidence. Respondents maintain that, when Duane Walton made requests for Darvon (Propoxyphene Compound-65), Mr. Kouris called the physician, Dr. John Skehan, to obtain his approval. But Dr. Skehan testified that his records for Mr. Walton do not indicate that the prescriptions were requested or authorized.

Similarly, Respondents maintain that, when Mr. Walton made requests for prescriptions for his wife (Veda) for Butisol (for insomnia) and Didrex (diet pills), Mr. Kouris phoned Dr. Hussan Diab for approval. Dr. Diab testified that his records for Mrs. Walton do not indicate that the prescriptions were requested or approved.

Mr. Walton testified that there were times when he waited for the prescriptions to be filled while Mr. Kouris made a phone call to obtain approval for the prescriptions. The evidence deposition of Susan Smith, who worked for Dr. Diab during the period of time in question, also indicates that Mr. Kouris called the office for

authorization of prescriptions although she could not recall specifics.

The testimony of Dr. Skehan, Dr. Diab and Ms. Smith indicates to me the precarious nature of the practice of pharmacy when the pharmacist attempts to obtain authorization to dispense controlled substances from a physician. The pharmacist is in many ways at the mercy of the physician to adequately document the approval in the patient's chart or face the charge that the dispensing was not authorized (i.e. "If it is not in the chart, it did not happen.")

After hearing the testimony of Dr. Diab and Dr. Skehan, and after reading the testimony of Ms. Smith, I must conclude that the office practices of those physicians may well have allowed some prescriptions to be approved without documentation in the patient chart. But I cannot conclude that all of the dispensing which was done for these patients was authorized, given the number of prescriptions and refills and, in particular, the dispensing of Butisol to Veda Walton. Every indication in the record as to the Butisol dispensing indicates that Dr. Diab did not authorize the dispensing of Butisol and his office practice would have brought the request for Butisol to his attention if it had been made. Dr. Diab had not given Mrs. Walton a prescription for Butisol, did not use it in his treatment of Mrs. Walton and did not know the indications for use of Butisol. That eight (8) prescriptions for Butisol between January, 1987 and September, 1987 would have been authorized by his office is not believable.

I must therefore conclude that the Respondents dispensed controlled substances without proper authorization.

The second area of inquiry is whether or not the dispensing of Didrex to Veda Walton was done in good faith. The Controlled Substances Act requires a pharmacist to exercise an independent judgment from the prescriber before dispensing a controlled substance. (See the definition of "good faith" at Illinois Revised Statutes, Chapter 56 1/2, paragraph 1102(u).) Expert testimony must be applied at this point to determine whether the diet pills dispensed to Mrs. Walton were in good faith.

Patrick Schleich, a retail pharmacist in a small community in Illinois, testified as the Department expert. He noted that Didrex is a Schedule III Controlled Substance which has a maximum effective use of six to twelve weeks. A patient may even use Didrex for up to five months, according to Mr. Schleich, but the pharmacist must assure himself of the propriety of this longer time period by personally conferring with the physician. This is necessary because the long term use of Didrex could result in the dependence of the patient on the drug. Mr. Schleich concluded that the longevity of dispensing of Didrex to Mrs. Walton (January, 1987-September, 1987) was not appropriate and violated good faith standards.

Newt Connell testified for the Respondents on the good faith issue. He noted that, if the pharmacist felt comfortable in his contact with the physician about the use of Didrex, then it would be acceptable for the pharmacist to continue to refill the requests. The opinion assumes that there was adequate dialogue for the pharmacist to conclude that the physician's treatment plan was legitimate.

Initially, I cannot conclude that Mr. Kouris had adequate communication with Dr. Diab to allow Mr. Kouris to make an independent

assessment that the long term use of Didrex was acceptable in her case. Also, I give more weight to Mr. Schleich's view that long term use of Didrex is contraindicated. The pharmacist is under an obligation to make an independent determination of the propriety of dispensing a habit-forming drug after the period for which it is indicated in the literature. Mr. Kouris did not make this assessment and his dispensing of Didrex to Mrs. Walton for almost nine months was inappropriate.

I must therefore conclude that the Respondents violated Illinois Revised Statutes (1985), Chapter 111, paragraph 4019(i) and Illinois Revised Statutes (1987), Chapter 111, paragraph 4150(18) by dispensing controlled substances without authorization and also violated the Controlled Substances Act (Chapter 56 1/2, paragraph 1312(b) and 1304(a)(5) by failing to dispense a Schedule III controlled substance in good faith.

RECOMMENDATION

While past violations by the Respondents may not be used to determine whether they are guilty of the present allegations, past discipline may be considered to fashion an appropriate remedy once a present violation has been established. The Respondents were previously disciplined for similar violations of the Pharmacy Practice Act. (See Consent Order in Case Nos. 87-58 and 87-59 attached.)

Since these are repeat offenders and the offense took place while they were on probation, I believe that a stiffer discipline is warranted. For that reason, I believe that it would be appropriate for the State Board of Pharmacy to suspend the license of Thomas Kouris for a period in excess of the 21 day suspension he received

previously. A period of suspension on the pharmacy's license is also warranted.

As Controlled Substances Hearing Officer, I recommend to the Director of the Department of Professional Regulation that the Controlled Substances license of Milan Drug, Ltd. be suspended for a period of 30 days to be followed by a period of probation for two years.

DATED: November 16, 1989

Thomas R. Chiola
THOMAS R. CHIOLA
ADMINISTRATIVE LAW JUDGE

TRC:kai

STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

* EXHIBIT *
* NO. 2 *

DEPARTMENT OF PROFESSIONAL REGULATION)	
of the State of Illinois, Complainant)	
v.)	
MILAN DRUG LTD.)	No. 89-1311
License No. 054-007354)	
CONTROLLED SUBSTANCES)	No. 89-1312-X
License No. 003-054-007354-1)	
THOMAS M. KOURIS)	No. 89-1313
License No. 051-032718, Respondents)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board hereby adopts the Report and Recommendation of Hearing Officer Chiola (Report attached) as its Findings of Fact and Conclusions of Law.

RECOMMENDATION

The Board hereby adopts the reasoning of the Recommendation of Hearing Officer Chiola, in his Report and Recommendation.

The Board recommends that the pharmacy license of Milan Drug, Ltd. be suspended for thirty (30) days, followed by two (2) years probation. The Board concurs with the Hearing Officer that a thirty (30) day suspension of the controlled substance license No. 003-054-007354-1, followed by a probation of two (2) years, is appropriate.

The Board recommends that the pharmacist license of Thomas Kouris, license No. 051-032718, be suspended for sixty (60) days, followed by probation for two (2) years.

Conditions for each probation should include the following:

1. Respondents shall be subject to random inspections by Department investigators or inspectors at times pharmacy services are available to the public; Respondents shall be in compliance with the laws and

regulations governing pharmacy and controlled substances; and

2. Respondents should only fill and dispense prescriptions, especially those for controlled substances, after fully considering and applying the "good faith" factors as detailed in the Illinois Controlled Substance Act; and
3. Respondents should only fill or refill prescriptions duly authorized by prescribers.

DATED THIS 24th DAY OF February, 19 72.

Sister Margaret Wright
CHAIRMAN

Al Natale
MEMBER

Al Natale
MEMBER

Clinton J. ...
MEMBER

James ...
MEMBER

MEMBER

MEMBER

No. 3-90-0890

IN THE
 APPELLATE COURT OF ILLINOIS
 THIRD DISTRICT
 A.D. 1991

RECEIVED
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IOWA PHARMACY EXAMINERS

MILAN DRUG, LTD., and TOM KOURIS,)
)
 Plaintiffs-Appellees,)
)
 v.)
)
 DEPARTMENT OF PROFESSIONAL)
 REGULATION OF THE STATE OF)
 ILLINOIS,)
)
 Defendant-Appellant.)

Appeal from the
 Circuit Court of
 Rock Island County

 No. 90 MR 78

 Honorable
 Susan B. Gende
 Judge Presiding

ORDER

Following a hearing, respondents Thomas Kouris and Milan Drug, Ltd. had their licenses suspended by the Illinois Department of Professional Regulation (Department). The respondents sought administrative review. The circuit court entered an order reversing the decision of the Department. The Department appeals. We reverse.

Milan Drug, Ltd. is a retail pharmacy operating in Milan, Illinois. Thomas Kouris has been the owner and pharmacist of Milan Drug since January, 1981. On May 15, 1989, the Department filed a complaint against Milan Drug Ltd. and Mr. Kouris, alleging that they had violated the Pharmacy Practice Act (Ill. Rev. Stat. 1985, ch. 111, par 4001 et seq.; Ill. Rev. Stat. 1987, ch. 111, par 4121 et seq.) and the Controlled Substances Act (Ill.

Rev. Stat. 1985, ch. 56½, par. 1100 et seq). Specifically, the Department charged that between January, 1987, and April 1988, Milan Drug, Ltd. and Mr. Kouris dispensed prescriptions without prescriber authorization and without good faith, in violation of the two Acts.

Count I of the complaint alleged that between January 2, 1987, and September 19, 1987, respondents dispensed two controlled substances, Didrex and Butisol Sodium (Butisol), 19 times to Veda Walton. Count II of the complaint alleged that from January 7, 1987, through April 11, 1988, respondents dispensed a controlled substance, Propoxyphene Compound-65 (Darvon), 29 times to Duane Walton. Count III of the complaint alleged that between February 3, 1987, and March 28, 1988, respondents dispensed two controlled substances, Darvocet N-100 and Diazepam, 36 times to Maudie Taylor.

Respondents filed an answer to the complaint admitting that they filled the prescriptions in the quantities described and on the dates enumerated for each person named in the complaint. Respondents, however, denied doing so without prescriber authorization and without good faith.

A formal evidentiary hearing was held before the Board of Pharmacy of the Department of Professional Regulation. Conducting the hearing was Mr. Thomas Chiola, Controlled Substances Hearing Officer and Hearing Officer for the State Board of Pharmacy. Also present was Mr. Clark Moreland, a member of the State Board of Pharmacy. Both the Department and plaintiffs were represented by counsel.

The Department presented three witnesses: Dr. John Skehan, Duane Walton's physician; Dr. Mohammed Hussan Diab, Veda Walton's physician; and Mr. Patrick Schleich, an expert in the practice of pharmacy. Respondents presented four witnesses: Mr. Kouris; Duane Walton; Veda Walton; and Nute Connell, respondents' pharmaceutical expert. An evidence deposition of Susan Smith, a fired employee of Dr. Diab, was also placed into evidence.

At the close of the hearing, the Department withdrew Count III of the complaint and withdrew the lack of good faith charge with respect to the Duane Walton prescriptions. The two remaining questions to be decided were:

- "1. Did the respondents have the authorization from a physician before they dispensed controlled substances?
2. Did the respondents dispense diet pills (controlled substance) in "good faith"?"

Mr. Chiola's "Report and Recommendation" concluded that the dispensing of Butisol to Veda Walton was done without authorization. He also found that Mr. Kouris failed to have adequate communication with Dr. Diab concerning long term use of Didrex and that Mr. Kouris failed to make an adequate independent assessment of the propriety of continuing Didrex. The conclusion of Mr. Chiola was that the respondents had failed to properly dispense a schedule III controlled substance.

Mr. Chiola recommended, based on the respondents' past violations of the two Acts and the fact that these instant offenses took place while the respondents were on probation, that

Mr. Kouris' pharmacist license and Milan Drug, Ltd.'s pharmacy license be suspended in excess of 21 days and that the Controlled Substances license of Milan Drug, Ltd., be suspended for a period of 30 days, to be followed by a period of probation for two years.

The State Board of Pharmacy (Board) subsequently adopted Mr. Chiola's findings of fact and conclusions of law. The Board recommended that the pharmacist license of Mr. Kouris be suspended for 60 days, followed by a two year probation. The Board also recommended that the pharmacy license of Milan Drug, Ltd. be suspended for 30 days followed by a 2 year probation and that Milan Drug, Ltd.'s controlled substance license also be suspended for 30 days, followed by a two year probation.

Respondents were given notice of their right to move for a rehearing and did so. The Department filed a memorandum in response. Subsequently, the Director of the Department of Professional Regulation issued an order denying respondents' motion for rehearing. The Director adopted the Findings of Fact, Conclusions of Law and Recommendation of the Board of Pharmacy in disciplining Mr. Kouris and Milan Drug, Ltd.

Respondents then filed their complaint for administrative review before the circuit court. Following the submission of briefs, the parties orally argued the case on September 7, 1990. At oral argument, respondents moved to submit two affidavits into evidence that had not been submitted at the administrative hearing. Over the Department's objection, the court allowed the admission of the affidavits.

The first affidavit was a three-sentence paragraph of a doctor purporting to assess the condition of Dr. Skehan's patient records. The second affidavit was a statement from a purported patient of Dr. Skehan and customer of Milan Drug, Ltd. assessing the practices of both. After the affidavits were submitted into evidence, respondents' counsel argued the contents contained therein to the court.

On October 31, 1990, the circuit court issued a letter opinion reversing the decision of the Department. The court ruled:

- "1) The decision of the administrative agency is not just and reasonable in light of the evidence presented.
- 2) The decision of the administrative agency is against the manifest weight of the evidence.
- 3) An opposite conclusion from that of the administrative agency is clearly evident."

The circuit court then requested respondents' counsel to draft an order consistent with the letter opinion. The final order was signed by the court and was filed on November 16, 1990. The order included the first two grounds for the court's decision contained in the letter opinion, but omitted the third. The Department appeals.

The Department contends that the circuit court's decision must be reversed because the court erroneously admitted evidence which was outside the administrative record and because the

Department's decision to suspend the respondents' licenses was not against the manifest weight of the evidence.

Section 3-110 of the Code of Civil Procedure provides:

"Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." (Ill. Rev. Stat. 1989, ch. 110, par. 3-110.)

As to the Department's first contention, we agree that the circuit court erred in admitting into evidence the two affidavits. The language contained within Section 3-110 is clear as to the point that "[n]o new or additional evidence in support of or in opposition to any finding, order determination or decision of the administrative agency shall be heard by the [reviewing] court." See also Jackson v. Department of Labor (1988), 168 Ill. App. 3d 494, 523 N.E.2d 5.

As to the Department's second contention, it is well-settled that an administrative decision may be overturned only if it is against the manifest weight of the evidence. (Board of Education of Tonica Comm. High School v. Sickley (1985), 133 Ill. App. 3d 921, 479 N.E.2d 1142; Rolands v. School Directions of Dist. No. 125 (1976), 44 Ill. App. 3d 658, 358 N.E.2d 945.) A decision is against the manifest weight of the evidence if "after viewing in the light most favorable to the agency, the court determines that

no rational trier of fact could have agreed with the agency's decision." Blunier v. Board of Fire and Police Commissioners (1989), 190 Ill. App. 3d 92, 101, 545 N.E.2d 1363, 1368.

In the instant case, the hearing officer made two factual findings. The first was that the respondents dispensed Butisol, a controlled substance, to Veda Walton without proper authorization. The second was that the dispensing of Didrex, also a controlled substance, to Veda Walton was not done in good faith. These findings formed the basis for the discipline imposed upon the respondents by the Department.

Our examination of the record reveals support for both of these factual findings.

THE "PROPER AUTHORIZATION" FINDING

The refills at issue were not written prescriptions, but were instead orally requested by Duane Walton, Veda's husband. Dr. Diab, Veda Walton's physician, never prescribed Butisol to her. It was originally prescribed by a different doctor. Dr. Diab denied authorizing the numerous refills to Mrs. Walton. Mrs. Walton's patient chart did not indicate that Butisol refills had been authorized. At the time authorization for the Butisol refills was attributed to Dr. Diab, he was not even aware that the drug existed. He never prescribed Butisol for anyone.

Mr. Kouris testified that he called Dr. Diab's office and spoke with a woman he now recognizes as Susan Smith. According to Mr. Kouris, she was the person who gave the "o.k." that it was "all right" to dispense the Butisol. Mr. Kouris admitted that he had never met or personally spoken with Dr. Diab.

Ms. Smith did not recall Mr. Kouris ever calling the office concerning prescriptions for Butisol. She believed she would have remembered had he done so, as she was familiar with Mrs. Walton and knew that Mrs. Walton was authorized to get certain prescriptions refilled.

Clearly there is evidence to support the conclusion that Mr. Kouris did not have prescriber authorization to dispense the Butisol to Mrs. Walton.

THE "GOOD FAITH" FINDING

As to the second factual finding, pursuant to the Controlled Substances Act, a pharmacist, in lieu of a written prescription, may, in "good faith," dispense controlled substances upon an oral prescription of a practitioner. We have already concluded that evidence exists to support the Department's decision that Mr. Kouris did not have prescriber authorization to dispense Butisol. Accordingly, the respondents also violated the Controlled Substances Act in relation to the dispensing of Butisol.

We also find, however, that ample evidence exists to support the Department's decision that the respondents violated the Controlled Substances Act in relation to the dispensing of Didrex to Mrs. Walton.

"Good faith" is defined in the Controlled Substances Act as:

"[A]pplication of the term to a pharmacist shall mean the dispensing of a controlled substance pursuant to the prescriber's order which in the professional judgment of the pharmacist is lawful. The pharmacist shall be guided by accepted professional standards including but not limited to the following, in making the judgment:

- (1) Lack of consistency of doctor-patient relationship,

- (2) frequency of prescriptions for same drug by one prescriber for large numbers of patients.
 - (3) quantities beyond those normally prescribed,
 - (4) unusual dosages,
 - (5) unusual geographic distances between patient, pharmacist and prescriber,
 - (6) consistent prescribing of habit-forming drugs."
- Ill. Rev. Stat., ch. 56 $\frac{1}{2}$, par. 1102(u) (1985).

Didrex is a Schedule III Controlled Substance which, in the opinion of the Department's expert Mr. Schleich, has a maximum effective use of six to twelve weeks. In Mr. Schleich's view, a patient may use Didrex for up to five months, but the pharmacist must assure himself of the propriety of this longer time period by personally conferring with the physician. This is necessary because the long term use of Didrex could result in the dependence of the patient on the drug.

Mr. Kouris dispensed Didrex to Mrs. Walton from January to September 1987. He did not meet with or speak personally with Dr. Diab at any time. The hearing officer concluded that the lack of communication prohibited Mr. Kouris from making an independent assessment that the long term use of Didrex was acceptable in this case. We agree with this conclusion.

In addition, there exists evidence that supports the hearing officer's findings and conclusions as to factors (3), (4) and (6). Accordingly, we find that ample evidence supports the Department's conclusion that the respondents dispensed both Butisol and Didrex to Mrs. Walton without good faith.

The decision of the circuit court of Rock Island is reversed.

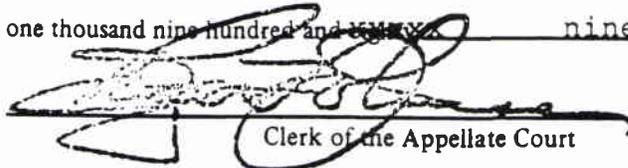
Reversed.

GORMAN, J., with STOUDEr, P.J., and McCUSKEY, J., concurring.

STATE OF ILLINOIS, }
APPELLATE COURT, } ss.
THIRD DISTRICT, }

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 2nd day of August in the year of our Lord one thousand nine hundred and ~~thirty~~ ninety one.


Clerk of the Appellate Court

STATE OF ILLINOIS



APPELLATE COURT

THIRD DISTRICT

OTTAWA

A NOTICE OF ISSUANCE OF MANDATE

DATE: 08/29/91

TO: Rosalyn B. Kaplan
Solicitor General
100 West Randolph Street, Room 12-302
Chicago, IL 60601

CASE NO. 3-90-0890

Circuit Court No. 90MR78

TITLE: MILAN DRUG, LTD., and TOM KOURIS,
Plaintiffs-Appellees,
v.
DEPARTMENT OF PROFESSIONAL
REGULATION OF THE STATE OF
ILLINOIS,
Defendant-Appellant.

This is to notify you that, pursuant to Supreme Court Rule 368, the Mandate in the above cause has been issued to the Clerk of the Circuit Court for filing.

A handwritten signature in black ink, appearing to be "Robert J. ...", written over a horizontal line.

Clerk of the Appellate Court

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 as directed by the Board.

d. Notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after the approval of this Stipulations and Informal Settlement, and 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 Illinois to reside or practice outside of Illinois or Iowa, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside Illinois or Iowa shall not apply to

reduction of the probationary period.

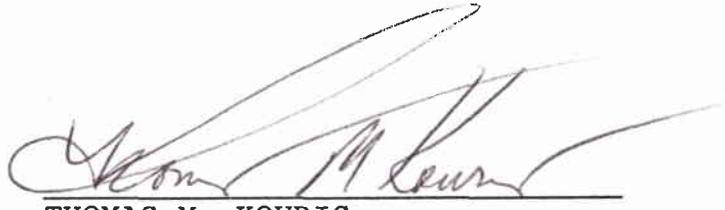
9. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the stayed suspension. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction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

10. Within thirty days after approval of this Stipulation and Informal Settlement, 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.

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

12. 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.

13. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 30 day of Dec, 1992.



THOMAS M. KOURIS
Respondent

Signed and sworn to before me this 30th day of December, 1991.



NOTARY PUBLIC IN AND FOR THE
STATE OF Illinois



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



MELBA L. SCAGLIONE, Chairperson
Iowa Board of Pharmacy Examiners