

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

Re: Pharmacist License of	}	COMPLAINT AND
David A. Miller	}	STATEMENT
License No. 16919	}	OF CHARGES
Respondent	}	AND
	}	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 12th day of October, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against David A. Miller, 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 24, 1987, by examination.
3. Respondent was also licensed to practice pharmacy in the state of Texas (license number 32963) on February 5, 1992; and in the state of South Dakota (license number R-4813) on September 20, 1993.
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, 1995.
5. Respondent currently resides at 918 7th Street N.E., Watertown, South Dakota 57201. Respondent is currently engaged in the practice of pharmacy in South Dakota.

6. The Board has received information which alleges the following:

a. Between February 1992 and January 1993 Respondent was employed as a pharmacist in Waco, Texas.

b. On September 10, 1992, Respondent was arrested by an officer of the Robinson Police Department of Robinson, Texas. Respondent was charged with possession of controlled substances and DWI (driving while under the influence). At the time of arrest, Respondent was found to be in possession of eight (8) Xanax 1.0 mg tablets and eleven (11) Fastin 30 mg capsules. Xanax and Fastin are Schedule IV controlled substances. In Texas, illegal possession of a Schedule IV controlled substance is a Class "A" misdemeanor.

c. On February 18, 1993, in McLennan County Court in Waco, Texas, Respondent pled guilty to the charge of DWI (driving while under the influence). Respondent was sentenced to 120 days in the county jail and fined \$2,000. He was also placed on 24 months of probation and required to complete inpatient treatment for chemical dependency. (In Iowa, a plea or verdict of guilty is deemed to be a conviction within the meaning of Iowa Code section 155A.12.) Respondent was not prosecuted for the possession of controlled substances in McLennan County, Texas.

d. In March 1993 Respondent moved to Watertown, South Dakota. In South Dakota, Respondent sought the professional services of a counseling psychologist who, in a letter dated June 17, 1993, stated that Respondent "is diagnosed as...Sedative, Hypnotic and Anxiolytic Dependence." In addition, the counseling psychologist also stated in the June 17, 1993, letter that "due to the length of time that Mr. Miller has maintained sobriety from use of Xanax and Halcion, this diagnosis is now deemed in partial remission."

e. On or about April 23, 1993, Respondent filed an official application for transfer of pharmaceutical licensure with the National Association of Boards of Pharmacy (NABP) for reciprocal transfer of his Iowa pharmacist license to South Dakota. Page two of the official application contained the following false statement: "I have not been convicted, fined, disciplined or had my license revoked for violation of pharmacy, liquor or drug laws, nor am I presently charged with any such violations." Page three of the official application contained the following false statement: "I, Mr. David A. Miller, under oath, swear and affirm that I have read the following paragraphs and the information therein is complete, true and correct." This false statement was followed by Respondent's notarized signature dated May 17, 1993.

f. On July 8, 1993, Respondent signed a "Pharmacist Rehabilitation Contract" with the South Dakota Pharm-Assist Program. This contract specified the terms under which the Pharm-Assist Committee agreed to assume an advocacy role on behalf of the Respondent with the South Dakota State Board of Pharmacy. Respondent agreed to adhere to the terms of the contract for a minimum of five (5) years from the date of the contract.

g. On July 26, 1993, Respondent filed a "Iowa Pharmacist License Renewal Application" with the Board. In section two (#2) of the application, Respondent indicated his current address as 918 Seventh Street N.E., Watertown, South Dakota 57201.

Question number six (#6) of the application asked the following: "Have you been convicted of a drug-related offense or had your license suspended, revoked, or disciplined since initial licensure in this or another state?" Respondent's response to that question was "no." Respondent's response was false.

Question number eight (#8) of the application asked the following question: "Are you a resident of and currently licensed to practice pharmacy in another state that requires continuing education?" Respondent's response to that question was "yes." Respondent further indicated that he was "a resident of Texas." Respondent's response was false.

Due to Respondent's answer of "yes" to question number eight (#8), Respondent was not required to list continuing education hours obtained between July 1, 1991, and June 30, 1993. He did not report any continuing education hours to the Iowa Board of Pharmacy Examiners for that time period.

Steve Morse, a senior compliance program officer with the Texas State Board of Pharmacy, has indicated to the Board that Respondent was not required to and did not report any continuing education hours to the Texas State Board of Pharmacy for the first renewal of his Texas pharmacist license on September 30, 1992. Respondent did not renew his Texas pharmacist license when it expired on September 30, 1993, nor did he report any continuing education hours obtained between October 1, 1992, and September 30, 1993, to either the Texas State Board of Pharmacy or the Iowa Board of Pharmacy Examiners.

The bottom of page one of the application states, in part, the following: "If you do not report at least 30 hours of CE...or have not met the CE requirements of *another state in which you currently reside* and are licensed to practice pharmacy, you will be issued an INACTIVE license (emphasis added)."

In section ten (#10) of the application, Respondent indicated the following: "Just moved to South Dakota, [in] process of transferring license." The application was signed by Respondent on July 26, 1993, four months *after* he had moved from Texas to South Dakota.

h. The Iowa Board of Pharmacy Examiners received notification of the disciplinary action taken by the South Dakota Board of Pharmacy against Respondent's South Dakota pharmacist license number R-4813 from a disciplinary report generated by the National Association of Boards of Pharmacy (NABP). The Iowa Board of Pharmacy received the NABP report on November 8, 1993.

7. On December 16, 1993, the Board received a certified copy of a Stipulation for Entry of Consent Order, titled In the Matter of the Certificate of Registration as a Licentiate in Pharmacy of David A. Miller, from the South Dakota State Board of Pharmacy. The Stipulation for Entry of Consent Order dated September 20, 1993, provides, in part, the following:

That Miller consents to, upon issuance of Certificate of Registration by the Board, a 5-year surrender of his registration as a licentiate in pharmacy. In consideration therefor, the Board agrees to stay execution of the surrender and place Miller on probation for a period of time ending July 8, 1998; and

That during the probationary period, Miller will satisfy the following conditions:

A. Miller adheres to the terms of a Pharmacist Rehabilitation Contract with the South Dakota Pharm-Assist Program, signed by Miller and David Kuper on July 8, 1993. (Contract is Appendix A of this Stipulation.)

B. Miller abides by all state and federal statutes and regulations involved in the practice of pharmacy...

8. As evidenced in the Stipulation for Entry of Consent Order of the South Dakota State Board of Pharmacy, Respondent's license to practice pharmacy in South Dakota was disciplined effective September 20, 1993. As evidenced in the Stipulation for Entry of Consent Order of the South Dakota State Board of Pharmacy, Respondent's license to practice pharmacy in South Dakota was placed on probation for a period of time ending July 8, 1998.

9. A copy of the South Dakota State Board's Stipulation for Entry of Consent Order is attached hereto as Exhibit 1 and is 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 South Dakota Board of Pharmacy against his South Dakota pharmacist license number R-4813 on September 20, 1993.

11. Respondent is guilty of violations of 1993 Iowa Code sections 147.55(1), 155A.12(1), 155A.12(3), 155A.12(8), 155A.12(10) by virtue of the allegations contained in paragraphs 6, 7, 8, 9, and 10.

1993 Iowa Code section 147.55 provides, in part, the following:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.

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.

....

3. Violated any of the provisions for licensee discipline set forth in section 147.55.

....

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)(a), 9.1(4)(j), 9.1(4)(k), 9.1(4)(o), 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:...

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy or to operate a pharmacy in this State, and includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged diploma, certificate or affidavit or identification or qualification in making application for a license in this state.

....

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.

....

o. Submission of a false report of continuing education or failure to submit the annual reports of continuing education.

....

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 147.55(1), 155A.12(1), 155A.12(3), 155A.12(8), and 155A.12(10) and 657 Iowa Administrative Code sections 9.1(4)(a), 9.1(4)(j), 9.1(4)(k), 9.1(4)(o), 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 David A. Miller appear before the Iowa Board of Pharmacy Examiners on Wednesday, November 16, 1994, at 9:00 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 David A. Miller on July 24, 1987, 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

STATE OF SOUTH DAKOTA
DEPARTMENT OF COMMERCE
BOARD OF PHARMACY

Iowa Board of Pharmacy Examiners
Exhibit 1

IN THE MATTER OF THE)
CERTIFICATE OF REGISTRATION)
AS A LICENTIATE IN PHARMACY)
OF DAVID A. MILLER)

STIPULATION FOR
ENTRY OF
CONSENT ORDER

THE SOUTH DAKOTA STATE BOARD OF PHARMACY (BOARD) AND DAVID A. MILLER (MILLER) STIPULATE TO THE FOLLOWING:

I

That Miller is currently registered as a Licentiate in Pharmacy by the Iowa Pharmacy Examining Board, Certificate Number 16919; and

II

That Miller has applied to the Board for a Certificate of Registration by submission of National Association of Boards of Pharmacy Official Application for transfer of pharmaceutical licensure No. 9300961; and

III

That Miller, on February 18, 1993, in McLennan County Court, Waco, Texas, pled guilty to the charge of driving while intoxicated; and

IV

That Miller consents to, upon issuance of Certificate of Registration by the Board, a 5-year surrender of his registration as a licentiate in pharmacy. In consideration therefor, the Board agrees to stay execution of the surrender and place Miller on probation for a period of time ending July 8, 1998; and

V

That during the probationary period, Miller will satisfy the following conditions:

- A. Miller adheres to the terms of a Pharmacist Rehabilitation Contract with the South Dakota Pharm-Assist Program, signed by Miller and David Kuper on July 8, 1993. (Contract is Appendix A of this Stipulation.)
- B. Miller abides by all state and federal statutes and regulations involved in the practice of pharmacy; and

VI

That the Board retains the authority to bring an administrative action, pursuant to and in compliance with SDCL ch. 1-26, to suspend, revoke or deny the license or certificate of registration of Miller in the event that any of the conditions of the Stipulation are violated; and

VII

That the terms of this Stipulation shall be disclosed to the National Association of Boards of Pharmacy Disciplinary Clearinghouse; and

That this document shall be entered into a file designated "David A. Miller" to be maintained by the BOARD in the normal course of its business activity.

Dated this 20th day of September, 1993.

BY THE BOARD:


Joan Hogan, President
SD State Board of Pharmacy

Dated this 16 day of SEPTEMBER, 1993.


David A. Miller

ORDER

The parties having entered into a Stipulation for Entry of Consent Order in this matter, and it appearing that the Stipulation disposes of all matters at issue in a reasonable fashion,

IT IS ORDERED that the parties are strictly bound by the terms set forth.

Dated this 20th day of September, 1993.

BY THE BOARD:


Joan Hogan, President
SD State Board of Pharmacy

**SOUTH DAKOTA PHARM-ASSIST PROGRAM
PHARMACIST REHABILITATION CONTRACT**

This contract is a document which specifies the terms under which the Pharm-Assist Committee agrees to assume an advocacy role on your behalf with the South Dakota State Board of Pharmacy.

1. I, David A. Miller, agree to adhere to the terms of this contract for a minimum of five (5) years from the date of this contract.
2. I agree to identify my primary care physician to the Pharm-Assist Committee, and I further agree that this physician share with the Committee information on any drugs prescribed for me.
3. I agree to continue in an outpatient program approved by the Pharm-Assist Committee. This program shall include at least weekly attendance at group therapy (such as NA meetings) for a minimum of three (3) years. At the end of three years, attendance shall be on at least a bi-weekly basis. An NA Log Card with the signature of the group chairperson shall be completed at each meeting and sent to the Pharm-Assist Committee on a monthly basis.
4. I agree to quarterly assessment by a certified counselor in chemical dependency for a minimum of three years, and a semi-annual assessment thereafter. The certified counselor shall be mutually agreed upon by myself and the Pharm-Assist Committee. The results of this assessment will be provided the Pharm-Assist Committee.
5. I agree to completely abstain from any mood-changing drugs (such as alcohol, sedatives, stimulants, narcotics, marijuana, tranquilizers, or other legend and non-legend drugs) except on prescription from my primary care physician, named in paragraph 2 above, after his consultation with the Pharm-Assist Committee.
6. I agree to provide urine samples for drug screens at the discretion of the Pharm-Assist Committee for a minimum of five (5) years.
7. I understand that all expenses connected with my participation in any in-patient or out-patient treatment of my chemical dependency are to be rendered at my own expense, (including my health insurance) and are my own responsibility. This shall include the cost for drug screens required as part of this contract.

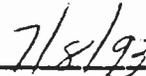
8. Upon the completion of the five (5) year therapy, all of the records of this Committee concerning me will be returned to me or destroyed. Items may be extracted from my records for research or statistical purposes as long as no identifying information is kept.

9. I agree that the Pharm-Assist Committee may make a quarterly report to the South Dakota Board of Pharmacy regarding my compliance with this contract.

10. I understand that my failure to adhere to the terms of this contract will be grounds for release of the Committee from any further advocacy role on my behalf. The matter will be referred to the South Dakota Board of Pharmacy for possible disciplinary action.



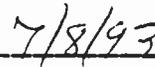
(Pharmacist's Signature)



(Date)



(Pharm-Assist Committee Member Signature)



(Date)

RECEIVED

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IOWA PHARMACY EXAMINERS

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

Re: Pharmacist License of
DAVID A. MILLER
License No. 16919
Respondent

}
}
}
}
}
}

**STIPULATION
AND
CONSENT ORDER**

On this 16 day of November, 19 94, the Iowa Board of Pharmacy Examiners and David A. Miller, of 3008 East 26th Street #H, Sioux Falls, South Dakota, 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 October 12, 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 24th day of July, 1987, by examination as evidenced by Pharmacist License Number 16919, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.

2. That Iowa Pharmacist License Number 16919 issued to Respondent is current until June 30, 1995.

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 October 12, 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.

SECTION I

THEREFORE, IT IS HEREBY ORDERED that Iowa Pharmacist License Number 16919 issued to Respondent is suspended until July 8, 1998, with the suspension placed in abeyance.

SECTION II

Respondent's license shall be placed on probation until July 8, 1998, with the following conditions:

1. The status of Respondent's license shall be "inactive" until such time as Respondent meets the requirements for an "active" license as outlined in 657 Iowa Administrative Code § 8.7(7)(b).

2. While residing in South Dakota, the Respondent shall comply with all of the terms of his "Pharmacist Rehabilitation Contract" with the South Dakota Pharm-Assist Program as signed by Respondent on July 8, 1993.

3. While residing in South Dakota, the Respondent shall comply with all of the terms of probation imposed upon his South Dakota pharmacist license by the South Dakota State Board of Pharmacy on September 20, 1993.

4. The Respondent shall inform the Iowa Board in writing within ten (10) days of any change of home address, place of employment, home telephone number, or work telephone number.

5. The Respondent shall pay all required fees for renewal of his Iowa pharmacist license to prevent the license from lapsing during the period of probation.

6. The Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing pharmacy education (CPE) as directed by the Board.

7. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and all federal and state criminal laws.

8. Should Respondent restore his Iowa license to an "active" status and return to Iowa to practice pharmacy, within fifteen (15) days of Respondent undertaking new employment in an Iowa pharmacy, Respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read and understands this document and the Complaint and Statement of Charges issued to Respondent on October 12, 1994.

9. If the Respondent returns to Iowa to practice pharmacy, Respondent agrees to submit to random, witnessed biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.

10. If the Respondent returns to Iowa to practice pharmacy, Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

11. If the Respondent returns to Iowa to practice pharmacy, Respondent shall comply with any remaining after-care recommendations, including regular attendance at Narcotics Anonymous and/or Alcoholics Anonymous support group meetings, regular attendance at other aftercare group meetings, and involvement in the Pharmacists Aiding Pharmacists in Iowa (PAP'I) program.

12. Respondent agrees not to use any controlled substance or other prescription drug in any form unless prescribed for him by a licensed, treating physician. Respondent shall inform any treating physician of the terms of this Stipulation and Consent Order prior to accepting any medication containing a controlled substance.

13. Should Respondent reside or practice pharmacy outside of South Dakota or Iowa, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of South Dakota or Iowa shall not apply to reduction of the probationary period.

SECTION III

1. Respondent shall fully and promptly comply with all Orders of the Board and the statutes and rules regulating the practice of pharmacy in Iowa. Any violation of the terms of this Order is grounds for further disciplinary action, upon notice and opportunity for hearing, for failure to comply with an Order of the Board, in accordance with Iowa Code section 272C.3(2)(a).

2. 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 the 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.

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

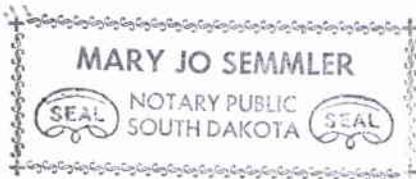
4. This proposed settlement is subject to approval of a majority of the full Board. If the Board approves this Stipulation and Consent Order, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Consent Order, it shall be of no force or effect to either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

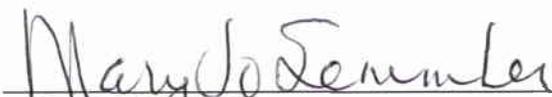
5. This Stipulation and Consent Order is accepted by Respondent on the 6 day of April, 1995.



DAVID A. MILLER, R.Ph.
Respondent

Subscribed and Sworn to before me on this 6 day of April, 1995.





NOTARY PUBLIC IN AND FOR THE 8-14-98
STATE OF SOUTH DAKOTA

6. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 16 day of November, 1994.



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