

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the Complaint	:	
	:	
and Statement of Charges Against	:	COMPLAINT AND
	:	
Verlyn Dean Moats, Pharmacist	:	STATEMENT OF CHARGES
Respondent	:	

COMES NOW, Norman C. Johnson, executive secretary of the Iowa Board of Pharmacy Examiners, on the 7th day of February, 1986, and files this Complaint and Statement of Charges against Verlyn Dean Moats, a pharmacist licensed pursuant to Iowa Code Chapter 155, and alleges:

1. That John F. Rode, chairperson; Margo L. Underwood, vice chairperson; Rollin C. Bridge; Jerry M. Hartleip; Melba L. Scaglione; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. That Respondent is a resident of Knoxville, Iowa, and was issued license number 12875 to practice pharmacy in the State of Iowa on March 13, 1963.

3. That Respondent's license to practice pharmacy is current until June 30, 1987.

4. That Respondent is the pharmacist owner/manager of Baker Drug, 203 E. Main, Knoxville, Iowa, pharmacy license number 398.

5. That an inspection of Baker Drug and an audit of the records on file in Baker Drug was conducted beginning on August 15, 1985, by E. Ray Shelden and Morrell Spencer who are duly authorized agents of the Board.

6. That four separate audits were conducted.

7. That Audit I involved 19 Schedule II controlled drug dosage forms and covered the period May 1, 1985, through August 15, 1985.

8. That Audit II involved 36 Schedule II controlled drug dosage forms and covered the period April 30, 1983 through August 15, 1985.

9. That Audit III involved 4 Schedule III and IV controlled drug dosage forms and covered the period May 1, 1985, through August 15, 1985.

10. That Audit IV involved 12 Schedule V controlled drug dosage forms and covered the period May 1, 1985, through August 15, 1985.

11. That the results of Audit I revealed the following:

- a. A shortage of 44 Nembutal 100mg capsules, a 9% shortage.
- b. A shortage of 60 Tuinal 200mg pulvules, a 16% shortage.
- c. An overage of 110 Oxycodone with aspirin tablets, a 24% overage.

12. That the results of Audit II revealed the following:

- a. A shortage of 100 Codeine Sulfate 30mg tablets, a 7% shortage.
- b. A shortage of 2 Meperidine 75mg tubex, an 8% shortage.
- c. A shortage of 1 Demerol 50mg/ml 30ml vial, a 17% shortage.
- d. A shortage of 144 Nembutal 100mg capsules, an 11% shortage.
- e. A shortage of 184 Oxycodone w/ aspirin tablets, an 18% shortage.
- f. A shortage of 1035 Percodan tablets, a 22% shortage.
- g. A shortage of 50 Seconal 50mg pulvules, a 13% shortage.
- h. A shortage of 125 Tylox capsules, a 9.5% shortage.
- i. An overage of 105 Amytal 100mg tablets, a 34% overage.
- j. An overage of 230 Dilaudid 2mg tablets, a 12% overage.
- k. An overage of 500 Oxycodone with APAP tablets, a 100% overage.
- l. An overage of 153 Seconal 100mg pulvules, an 8% overage.

13. That the results of Audit III revealed the following:

- a. A shortage of 322 Tylenol with codeine 60mg and APAP with Codeine 60mg tablets, a 9% shortage.
- b. A shortage of 948 Valium 5mg tablets, a 17% shortage.
- c. A shortage of 685 Valium 10mg tablets, a 34% shortage.
- d. An overage of 235 Tylenol with Codeine 30mg and APAP with Codeine 30mg tablets, a 2% overage.

14. That the results of Audit IV revealed the following:

- a. A shortage of 120cc Terpin Hydrate with Codeine, a 1% shortage.
- b. A shortage of 120cc of Robitussin DAC and its generic counterpart, an 8% shortage.
- c. A shortage of 340cc of Novahistine Expectorant with Codeine, Dihistine Expectorant with Codeine and Phen-Hist Expectorant with Codeine, an 18% shortage.

- d. An overage of 160cc of Tussend liquid, a 3% overage.
- e. An overage of 3305cc of Dihistine DH, Novadyne DH and Phen-Hist DH liquid, a 38% overage.

15. That Respondent was not on the premises of Baker Drug at the time Investigators Sheldon and Spencer entered the pharmacy on the morning of August 15, 1985, and that there was no sign posted indicating the absence of a pharmacist.

16. That Respondent's license to practice pharmacy was not displayed in public view at Baker Drug.

17. That Respondent dispensed Baker Drug prescription number 515876, issued on November 5, 1984, to James Hunt for Valium 5mg tablets, on August 7, 1985, a date which was more than six months from its date of issue.

18. That Respondent dispensed Baker Drug prescription number 474876, issued in the name of Harold Simmons on August 2, 1982, for Valium 5mg tablets, three times beyond the legal limit authorized by Iowa law.

19. That Respondent dispensed Baker Drug prescription number 487019, issued in the name of Harold Simmons on April 30, 1983, for Valium 5mg tablets, three times beyond the legal limit authorized by Iowa law.

20. That Respondent dispensed Baker Drug prescription number 496468, issued in the name of Harold Simmons on January 11, 1984, for Valium 5mg tablets, one time beyond the legal limit authorized by Iowa law.

21. That Respondent dispensed Baker Drug prescription number 503672, issued in the name of Harold Simmons on August 1, 1984, for Valium 5mg tablets, five times beyond the legal limit authorized by Iowa law.

22. That Respondent dispensed Baker Drug prescription numbers 487019 and 487020, issued in the name of Harold Simmons on April 30, 1983, without obtaining the signature of the prescriber as required by Iowa law.

23. That Respondent dispensed Preludin 75mg Endurets, a Schedule II controlled substance on a Baker Drug prescription number 516693, issued in the name of Marilyn Tackett on September 4, 1985, by G. M. Arnott, M.D., when the prescription called for Preludin II.

24. That Respondent dispensed five refills of Baker Drug prescription number 513995, issued on June 4, 1985, in the name of Sandra Roland for Tylenol #3 when no refills were authorized.

25. That Respondent dispensed the Schedule II controlled substance Ritalin on Baker Drug prescription numbers 515871, 515872, and 515952 without obtaining a manually signed prescription from the prescriber.

26. That Respondent sold 4 ounce (120cc) bottles of Schedule V cough preparations with full knowledge that the purchases were being made for other than legitimate medical purposes.

27. That Respondent sold 4 ounce (120cc) bottles of Schedule V cough preparations with full knowledge that prior sales of those cough preparations had been made within a 48-hour period.

28. That Respondent dispensed 72 doses of a Schedule III controlled substance, Tylenol #3, to patient Laura Roland on Baker Drug prescription number 514027, when the prescriber only authorized 12 doses to be dispensed.

29. That Respondent dispensed 180 doses of a Schedule III controlled substance, Tylenol #3, to patient Paul Evans on Baker Drug prescription numbers 513884 and 514824 when the prescriber only authorized 36 doses to be dispensed.

30. That Baker Drug prescription number 489065, issued to Theodore Johnson on June 24, 1983, was refilled by Respondent on August 24, 1985, 26 months after its date of issue.

31. That Respondent did not have a policy and procedure manual for the operation of a unit dose dispensing system by Baker Drug.

32. That Respondent authorized the dispensing of the outdated Schedule II controlled substance Eskatrol by virtue of the fact that he did not cause the drug to be removed from the premises of Baker Drug.

33. That Respondent is guilty of violations of Iowa Code Sections 147.7, 155.13(3) and (8), 155.30, 155.33, 155.34, 204.306, 204.308(4) 204.401(d), 205.3, and Board Rules §620--2.7, 6.11(4), 8.11, 8.13(9), 8.13(15), by virtue of the allegations in paragraphs 11 through 32.

Section 147.7 reads as follows:

"Display of license. Every person licensed under this title to practice a profession shall keep his license publicly displayed in the place in which he practices."

Section 155.13(3) and (8) read as follows:

"...The board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regulations promulgated hereunder, or the violation thereof, and in addition, the board shall have the power to deny, suspend or revoke a license, when the applicant or licensee, or any employee, providing the offense is committed on licensed premises or is in the conduct of the business licensed, is guilty of any of the following facts or offenses:...

3. Distributing on the premises of...drugs for any other than lawful purposes.

8. Violations of the provisions of this chapter."

Section 155.30 reads as follows:

"...any person who violates a provision of Section 155.29 or who

sells, gives away or administers to another person any prescription drug shall be guilty of a public offense...."

Section 155.33 reads as follows:

"Requirements for prescriptions. Each prescription issued or filled in this state:

1. If written, shall contain: (a) The date of issue. (b) The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed. (c) The name and quantity of the drug or medicine prescribed. (d) The directions for use of the drug or medicine. (e) The name, address, and signature of the medical practitioner issuing the prescription.

2. If oral, the medical practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature of the medical practitioner. Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to writing by recording the information required in a written prescription."

Section 155.34 reads as follows:

"Refills limited. No prescription for any prescription drug which is not a controlled substance as defined in section 204.101, subsection 6, shall be filled or refilled more than one year after the date on which the prescription was issued, and no prescription which is authorized to be refilled shall be refilled more than eleven times; provided however, no medical practitioner shall be prohibited from issuing a new prescription for the same drug either in writing or orally."

Section 204.306 reads as follows:

"Records of registrants. Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board...."

Federal regulations in this regard can be found in Code of Federal Regulations (CFR) Title 21. Pertinent parts of those regulations are 1304.03, 1304.04 and 1304.11.

Part 1304.03 reads, in part, as follows:

"Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section...."

Part 1304.04 reads, in part, as follows:

"Maintenance of records and inventories.

(a) Every inventory and other records required to be kept under this Part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration...."

Part 1304.11 reads, in part, as follows:

"General requirements for inventories.

(a) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken...."

Section 204.308(4) reads as follows:

"A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 204.401(1)"d" reads as follows:

"...It is unlawful for any person to...deliver...a controlled substance...any person who violates this subsection with respect to...(d) a substance classified in schedule V, is guilty of a simple misdemeanor...."

Section 205.3 reads as follows:

"Prescriptions. A person shall not fill a prescription for a drug required by chapter 204 or this chapter to be furnished only upon written prescription unless the prescription is ordered for a medical...purpose only."

Board rule §620--2.7 reads as follows:

"Pharmacist temporary absence. In case of the temporary absence of the pharmacist, or the temporary absence of the pharmacist while fulfilling the pharmaceutical services in a local hospital or other health care institution, the pharmacy must display a card or sign which can be read from the front of the pharmacy 'PHARMACIST TEMPORARILY ABSENT. NO PRESCRIPTIONS WILL BE FILLED UNTIL HIS RETURN.' Letters not less than 1 3/4 inches high."

Board subrule §620--6.11(4) reads as follows:

"General procedures. The following will apply when a unit dose dispensing system is employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into single unit, unit dose, or unit of issue packaging. This classification shall be used to determine maximal expiration dating for repackaging set forth in board subrule 6.11(5).

b. Established written policies and procedures shall be available in the pharmacy for inspection by the board or its agents which:

(1) Specify the categories of drugs or drug dosage forms which will or will not be dispensed under the particular unit dispensing system employed.

(2) Specify the pharmacy's recall policy for drugs returned upon a particular manufacturer's or FDA recall.

c. Those drugs not dispensed under a unit dose dispensing system shall be dispensed in accordance with the packaging and labeling requirements of the federal Food and Drug Administration (FDA) and, where applicable, the requirements set forth in Iowa Code sections 155.35, 203A.0(12)"b", and board subrules 8.13(7) and 8.13(11).

Board rule §620--8.11 reads, in part, as follows:

"8.11(204) Manner of issuance of prescriptions. All prescriptions for controlled substances shall be dated as of, and manually signed on, the day when issued and shall bear the full name and address and registration number of the practitioner. A practitioner must manually sign a prescription in the same manner as he would sign a check or legal document. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by those regulations...."

Board subrule §620--8.13(9) reads as follows:

"Refilling of prescriptions. No prescription for a controlled substance listed in schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate uniformly maintained readily retrievable record, such as medication records, which indicate the date, quantity, and name of dispensing pharmacist for each prescription initialed, and dated by the pharmacist as of the date of dispensing, and shall state the amount dispensed. If the pharmacist merely initials and dates the back of the prescription he shall be deemed to have dispensed a refill for the full face amount of the prescription. Additional quantities of controlled substances listed in schedule III or IV may only be authorized by a prescribing practitioner through issuance of a new prescription as provided herein which shall be a new and separate prescription."

Board subrule §620--8.13(15) reads as follows:

"8.13(15) Dispensing without prescription. A controlled substance listed in Schedule V...may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

a. Such dispensing is made only by a pharmacist and not by a non-pharmacist employee even if under the direct supervision of a pharmacist except as specifically provided by other rules of the board.

b. Not more than 120cc. (4 ounces) of any such controlled substance may be distributed at retail to the same purchaser in any given forty-eight-hour period.

c. The purchaser is at least eighteen years of age.

d. The pharmacist requires every purchaser of a controlled substance under this rule not known to him to furnish suitable identification (including proof of age where appropriate).

e. A bound record book for dispensing of controlled substances (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance to the purchaser.

f. A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law."

34. That Respondent is guilty of a violation of Board subrules §620--10.1(4)"b"(3)(4), "h", "j" and "u" by virtue of the allegation in paragraph 33.

Rule 10.1(4) reads as follows:

"The Board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1000 when the board determined that the licensee or registrant is guilty of the following acts or offenses:

b. Professional incompetency. Professional incompetency includes, but is not limited to:

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

h. Distribution of intoxicating liquors or drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of chapters 155, 203, 203A and 204 of The Code.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

u. Violating any of the grounds for revocation or suspension of a license listed in section...155.13 of The Code."

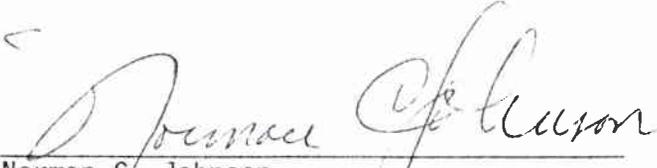
35. That paragraphs 33 and 34 constitute grounds for which Respondent's license to practice pharmacy can be suspended or revoked.

WHEREFORE the undersigned charges that Verlyn Dean Moats has violated Section 155.13(3); 155.13(8); 155.30; 155.33; 155.34; 204.306; 204.308(4); 204.401(d); 205.3 of the Code of Iowa, and Board Rules §620--2.7; 6.3; 6.4; 6.11(4); 8.11; 8.13(9); 8.13(15); 10.1(4)"b"(3) and (4), "h", "j" and "u" of the Iowa Administrative Code.

IT IS HEREBY ORDERED that Verlyn Dean Moats appear before the Iowa Board of Pharmacy Examiners on March 11, 1986, at 2:00 p.m. in the Board Conference Room at 1209 E. Court, Executive Hills West, 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 Verlyn Dean Moats on the 13th day of March 1963, or take whatever additional steps they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS


Norman C. Johnson
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of	:	
VERLYN DEAN MOATS, Pharmacist	:	STIPULATION
License No. 12875	:	

WHEREAS, Verlyn Dean Moats, hereinafter referred to as the Licensee, has had certain allegations made against him by the Board of Pharmacy Examiners, hereinafter referred to as the Board, concerning his professional conduct as a pharmacist, and

WHEREAS, the Licensee admits to the allegations made against him, and

WHEREAS, both the Licensee and the Board desire to arrive at a mutually agreeable informal settlement of this matter,

IT IS MUTUALLY AGREED AND STIPULATED as follows between the Licensee and the Board:

1. That the Board by and through two of its members, Melba L. Scaglione and Gale W. Stapp, and the Licensee have entered into settlement discussions and have agreed upon a disposition of this matter.
2. That the Licensee desires to avoid the uncertainty and the expense of a trial and desires to consent to the disciplinary action to be taken by the Board as specified in paragraph 4, infra.
3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1985 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1985 Code of Iowa and the rules of the Board of Pharmacy Examiners promulgated in accordance and pursuant thereto, particularly Section 17A.12 as it relates to contested cases and provides notice of hearing and records, and Section 17A.18, as it relates to the requirements concerning notice of the suspension and revocation of licenses.
4. It is the understanding of both the Licensee and the Board that they will enter into an Order and Consent to Order which will provide the following:
 - a. License #12875 issued to Licensee is suspended for a period of twelve (12) months effective March 12, 1986, with the suspension stayed.

- b. Licensee to be placed on probation for two (2) years beginning March 12, 1987, and ending March 12, 1989.
- c. Licensee shall pay a fine of five hundred dollars (\$500). Payment shall be made within thirty (30) days of the signing of this order with the check made payable to the State of Iowa.
- d. Licensee shall not supervise any registered intern nor perform any of the duties of a preceptor during the period of stayed suspension and probation.
- e. Licensee shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
- f. Should Licensee leave Iowa to reside or practice outside this state, he shall notify the Board in writing of the date of departure and return. Periods of residency or practice outside the state shall not apply to a reduction in the probationary period.
- g. Licensee shall report in writing no later than the 10th of each month his residency and employment status during the stayed suspension and probationary period.
- h. Licensee shall prepare a policy and procedures manual for the operation of Baker Drug. Such manual shall include, but not be limited to, the following:
 - 1. Procedures for the handling of Schedule II through V controlled substances;
 - 2. Removal and disposal of outdated drugs.A copy of this manual shall be forwarded to the Board office within 30 days of the signing of this Order.
- i. Licensee shall make no sales of Schedule V drugs without a prescription during the period of stayed suspension and probation.
- j. Should Licensee violate probation in any respect, the Board, after giving Licensee 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 Licensee during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

THE ABOVE AND FOREGOING CONSTITUTE THE FULL AND COMPLETE STIPULATION AND AGREEMENT OF THE PARTIES HERETO.


John F. Rode, Chairman
Iowa Board of Pharmacy Examiners


Verlyn Dean Moats, Licensee

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of Pharmacist :
VERLYN DEAN MOATS : ORDER AND CONSENT TO ORDER
License #12875 :

The Iowa Board of Pharmacy Examiners, having been advised of the allegations that Verlyn Dean Moats has conducted himself in a manner which could cause his license to practice pharmacy to be suspended, and the Board of Pharmacy Examiners through two Board Members and said Verlyn Dean Moats, having entered into a Stipulation representing their mutual informed consent as to the waiver of the provisions found in the Iowa Administrative Code appearing at Chapter 17A, particularly Section 17A.12 and Section 17A.18, Code of Iowa 1985, in regards to Notice and Hearing, the parties to this action agree to an informal settlement of this matter, namely that the license of Verlyn Dean Moats be disciplined according to the conditions attached hereto.

ORDER

IT IS THEREFORE ORDERED, subject to the consent of Verlyn Dean Moats to be contained herein to this Order that the license of Verlyn Dean Moats to practice pharmacy be disciplined according to the conditions outlined in the Stipulation attached hereto and made part of this Order.

Date 3-20-86

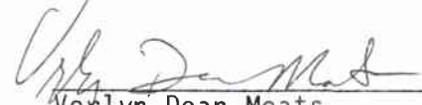


John F. Rode, Chairperson
Iowa Board of Pharmacy Examiners

CONSENT TO ORDER

I, Verlyn Dean Moats, hereby consent to the Order set forth above, waive my right to a hearing in this matter, and thereby specifically waive a right to confrontation, cross-examination of witnesses, production of evidence, making of a record and judicial review.

Date 5-25-86



Verlyn Dean Moats

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

Re:)	COMPLAINT
Pharmacist License of)	AND STATEMENT
VERLYN DEAN MOATS)	OF CHARGES
License No. 12875)	AND
Respondent)	NOTICE
)	OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary-Director of the Iowa Board of Pharmacy Examiners, on the 8th day of March, 1993, and files this Complaint and Statement of Charges and Notice of Hearing against Verlyn Dean Moats, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Alan M. Shepley, Chairperson; Marian L. Roberts, Vice Chairperson; Donna J. Flower; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; 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 March 13, 1963, by examination. Respondent was issued a Complaint and Statement of Charges on February 7, 1986, which alleged that Respondent: (1) had failed to provide accountability for various controlled substances in Schedule II between April 30, 1983, and August 15, 1985; (2) had failed to provide accountability for various controlled substances in Schedules III, IV, and V between May 1, 1985, and August 15, 1985; (3) had dispensed prescriptions for controlled substances beyond the legal limit authorized by Iowa law; (4) had sold Schedule V cough preparations for other than legitimate medical purposes; and (5) had violated other Iowa laws and rules pertaining to the practice of pharmacy and the distribution of

controlled substances. On May 25, 1986, the Respondent and the Board entered into a informal settlement agreement in which Respondent's license to practice pharmacy in Iowa was suspended for one year effective March 12, 1986. The suspension was stayed, however, and Respondent's license was placed on probation with conditions for two years beginning March 12, 1987, and ending March 12, 1989. In addition, Respondent agreed to pay a fine of \$500.

3. Respondent currently resides at Rural Route #3, Box 289, Knoxville, Iowa 50138.

4. Respondent is currently self-employed as pharmacist in charge and owner of Baker Drug, 203 East Main, Knoxville, Iowa 50138.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1993.

6. The Board has received an investigative report from Pharmacy Investigator Dennis D. Dobesh dated February 25, 1993, and other investigative information which allege the following:

a. A complaint was received on January 28, 1993, which alleged that Respondent was unlawfully dispensing Mexican drugs from his pharmacy, Baker Drug.

b. On February 5, 1993, Respondent admitted, in writing, that he had obtained various drugs in Mexico which he dispensed or caused to be dispensed from his pharmacy, Baker Drug, during 1991 and 1992. The drugs included the following: Zantac 150mg, Zantac 300mg, Naprosyn 250mg, Naprosyn 500mg, Tagamet 400mg, Noroxin 400mg, Seldane-D, Feldene 20mg, and Ceclor 500mg. Respondent further admitted that he had obtained the following total quantities of these drugs: 800 tablets

in March 1991; 1,000 tablets in September 1991; 1,500 tablets in March 1992; and 1,200 tablets in December 1992.

c. On February 2, 1993, Board Investigators Dennis D. Dobesh and Gary D. Ebeling seized the following Mexican drugs which were found either on the premises of Baker Drug or inside unit-dose containers which had been filled by pharmacists at Baker Drug and delivered to nursing homes for administration to nursing home residents:

728 tablets of Zantac 150mg
23 tablets of Zantac 300mg
825 tablets of Naprosyn 250mg
538 tablets of Naprosyn 500mg
416 tablets of Tagamet 400mg
69 tablets of Noroxin 400mg
34 tablets of Seldane-D
647 capsules of Feldene 20mg
76 capsules of Ceclor 500mg

d. These drugs were obtained over-the-counter in Mexico. In the United States these drugs are prescription-only. The Mexican Zantac was imprinted as "Azantac" and had a different appearance from Zantac. Some of the other Mexican drugs obtained by Respondent also had a different appearance and different imprint from their U.S.-counterparts. None of the Mexican-obtained drugs were authorized by the FDA for use in the United States.

e. Drugs such as the ones purchased by Respondent in Mexico may not be dispensed by Iowa-licensed pharmacies. Yet, Respondent dispensed these drugs from his pharmacy, Baker Drug, and/or caused these drugs to be dispensed by other pharmacists employed at Baker Drug.

f. Respondent submitted fraudulent claims to the Iowa Medicaid Program and other third party payer programs for an

undetermined number of prescriptions for the following drugs: Zantac 150mg, Zantac 300mg, Naprosyn 250mg, Naprosyn 500mg, Tagamet 400mg, Noroxin 400mg, Seldane-D, Feldene 20mg, and Ceclor 500mg. The claims purported to be for U.S.-priced FDA-approved drugs when, in fact, they were for lower priced Mexican drugs which were not intended or approved for use in the United States. By dispensing lower priced Mexican drugs and submitting Medicaid and other third party payer claims for higher-priced American drugs, the Respondent increased his profits.

g. Respondent removed the Mexican drugs from their original packaging and repackaged them into stock bottles for storage at his pharmacy, Baker Drug. In most cases, the lot numbers and expiration dates of the individual tablets were not recorded or maintained, nor were they indicated on the label of the stock bottles. It is alleged that tablets of various lot numbers and various expiration dates were mixed together.

h. When these Mexican drugs were dispensed to patients by Respondent or by other pharmacists at Baker Drug (upon Respondent's instructions), the prescription vials or containers were labeled with the names of the U.S.-counterparts.

i. A zero-based drug audit beginning January 1, 1991, and ending February 3, 1993, revealed that Respondent failed to provide accountability for the following drugs:

<u>Name & Strength</u>	<u>Shortage in # of tablets</u>	<u>% Shortage</u>
Zantac 300mg	> 251 tablets	40%
Naprosyn 500mg	>1,805 tablets	40%
Tagamet 400mg	>2,407 tablets	32%
Noroxin 400mg	>624 tablets	37%
Seldane-D	>771 tablets	39%

j. An inspection of Baker Drug on February 4, 1993, revealed numerous deficiencies relating to the practice of

pharmacy and the distribution of controlled substances. Some of these deficiencies were similar in nature to those included in the previous Complaint and Statement of Charges issued to Respondent on February 7, 1986.

7. Respondent is guilty of violations of 1993 Iowa Code sections 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 126.3(1), 126.10(1), 126.10(9)(a), 126.10(9)(b), 126.10(9)(c), and 272C.10(3) by virtue of the allegations contained in paragraph 6.

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 the following acts or offenses:...

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

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.

2. Engaged in unethical conduct as that term is defined by rules of the board.

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

1993 Iowa Code section 126.3 (formerly 1991 Iowa Code section

203B.3) provides, in part, the following:

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

1993 Iowa Code section 126.10 (formerly 1991 Iowa Code section 203B.10) provides, in part, the following:

A drug or device is misbranded under any of the following circumstances:

1. If its labeling is false or misleading in any particular.

....

9. a. If it is a drug and its container is so made, formed, or filled as to be misleading.

- b. If it is an imitation of another drug.

- c. If it is offered for sale under the name of another drug.

1993 Iowa Code section 272C.10 (formerly 1991 Iowa Code section 258A.10) provides, in part, the following:

A licensing board established after January 1, 1978, and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:...

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.5(1), 8.14(1)(g), 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(j), 9.1(4)(t) and 9.1(4)(u) by virtue of the allegations contained in paragraph 6.

657 Iowa Administrative Code section 8.5 provides, in part, the following:

Unethical conduct or practice. The provisions of this section apply to licensed pharmacists and registered pharmacist-interns.

8.5(1) Misrepresentative deeds. A pharmacist shall not 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 Iowa Administrative Code section 8.14 provides, in part, the following:

Prescription label requirements.

8.14(1) The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:...

g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. ***Under no circumstances shall the label bear the name of any product other than the one dispensed*** (emphasis added).

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:...

b. Professional incompetency. Professional incompetency includes but is not limited to:...

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

....

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

....

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

....

t. Obtaining any fee by fraud or misrepresentation.

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 7 and 8 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 1993 Iowa Code sections 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 126.3(1), 126.10(1), 126.10(9)(a), 126.10(9)(b), 126.10(9)(c), and 272C.10(3) and 657 Iowa Administrative Code sections 8.5(1), 8.14(1)(g), 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(j), 9.1(4)(t), and 9.1(4)(u).

IT IS HEREBY ORDERED that Verlyn Dean Moats appear before the Iowa Board of Pharmacy Examiners on Wednesday, April 7, 1993, at 2:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

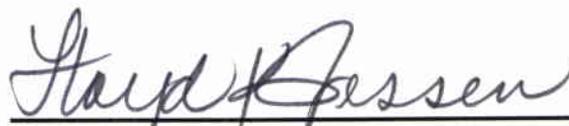
The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Verlyn Dean Moats on March 13, 1963, and take whatever additional action that they deem necessary and appropriate.

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

A handwritten signature in cursive script, reading "Lloyd K. Jessen", written over a solid horizontal line.

Lloyd K. Jessen
Executive Secretary/Director

V O L U N T A R Y S U R R E N D E R O F
L I C E N S E T O P R A C T I C E P H A R M A C Y

I, VERLYN DEAN MOATS, of Rural Route #3, Box 289, Knoxville, Iowa 50138, of my own free will and without any mental reservation and not as a result of any inducement, promise, or threat on the part of anyone, do hereby voluntarily surrender my license to practice pharmacy in the State of Iowa, number 12875, to the Iowa Board of Pharmacy Examiners, for an indefinite period of time. This surrender of license shall become effective upon the signature of the licensee, VERLYN DEAN MOATS, and of a representative of the Iowa Board of Pharmacy Examiners being affixed to this voluntary surrender document.

I, VERLYN DEAN MOATS, of my own free will and without any mental reservation and not as the result of any inducement, promise, or threat given or made by any representative, officer, or employee of the Iowa Board of Pharmacy Examiners, or of any other state official, do hereby further acknowledge that by voluntarily signing this surrender statement that I am knowingly and willingly giving up the exercise of the following legal rights:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy Examiners on the matter of my continued licensure pursuant to Chapter 155A, Code of Iowa 1993.
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) My right to submit evidence and to have witnesses called on my own behalf at such formal hearing.
- (4) My right to be represented by an attorney in this matter at this time.

I, VERLYN DEAN MOATS, do hereby acknowledge that pursuant to 657 Iowa Administrative Code section 9.25, a license to practice pharmacy which has been voluntarily surrendered shall be considered a revocation of license with respect to a request for reinstatement, which will be handled under the terms established by 657 Iowa Administrative Code section 9.23, which provides as follows:

Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license or permit was voluntarily surrendered, an

initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

2. A person whose license to practice pharmacy was revoked must successfully pass NABPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657-9.24.

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

I, VERLYN DEAN MOATS, hereby further acknowledge that I shall not engage in any of the practices or aspects thereof of the practice of pharmacy in the State of Iowa for which such a license is required.

4-9-93

Date of Signature

Verlyn Dean Moats

VERLYN DEAN MOATS

4/9/93

Date of Signature

[Signature]

Iowa Board of Pharmacy Examiners

Subscribed and sworn to before me this 9th day of April, 1993.



Terri L. Rankin

Notary Public