

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

Re:)
Pharmacist License of)
PAUL MOSSER) **STATEMENT OF CHARGES**
License No. 19016)
Respondent)

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (1999).
3. On July 10, 1998, the Board issued Respondent, Paul Mosser, a license to engage in the practice of pharmacy by examination as evidenced by license number 19016, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 19016 is current and active until June 30, 2000.
5. Respondent's current address is 735 Wildwood Road, Waterloo, Iowa 50702.
6. Respondent is currently employed as a pharmacist at K-Mart Pharmacy, 2715 Crossroads Blvd., Waterloo, Iowa 50702-4409. Respondent was employed as a pharmacist at Osco Drug 2386, 2068 Logan Avenue, Waterloo, Iowa 50703 during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code § 155A.12(1) (1999) and 657 Iowa Administrative Code § 36.1(4)(b)(4) with professional incompetency, including repeated departure from, or failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.

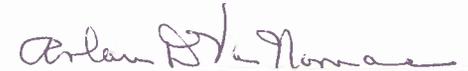
THE CIRCUMSTANCES

1. On April 19, 1999, the Board office received a complaint about several dispensing errors and problem situations that had occurred at the Osco Drug pharmacy where the Respondent was employed and that involved the Respondent.
2. The Board's investigation of the dispensing errors referred to in Paragraph 1 indicated that the Respondent made multiple dispensing errors between August, 1998 and March 1999 while employed at the Logan Avenue Osco Drug pharmacy in Waterloo.
3. At least two patients were harmed by the Respondent's dispensing errors.

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


Lloyd K. Jessen
Executive Secretary/Director

On this 16th day of July, 1999, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Arlan D. VanNorman, Chairperson
Iowa Board of Pharmacy Examiners
1209 East Court Avenue
Des Moines, Iowa 50319

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

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

Re:	)	Case No. 99-19016
Pharmacist License of)	
PAUL MOSSER	)	STIPULATION
License No. 19016	)	AND
Respondent	)	CONSENT ORDER
)	

COME NOW the Iowa Board of Pharmacy Examiners (“the Board”) and Paul Mosser, R.Ph. (“Respondent”) and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (1999), enter into the following Stipulation and Consent Order settling the contested case currently on file.

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on July 16, 1999, 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 10th day of July, 1998, by examination as evidenced by Pharmacist License Number 19016, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 19016, issued to and held by Respondent is active and current until June 30, 2000.
3. Respondent is not currently employed as a pharmacist.

4. A Statement of Charges was filed against Respondent on July 16, 1998.
5. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
6. This Stipulation and Consent Order is entered into in order to resolve pending claims and constitutes no admission on the part of the Respondent.
7. Respondent's license shall be placed on probation for three (3) years, with the following conditions, beginning on the date this Stipulation and Consent Order is accepted by the Board:
 - a. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide his *typewritten* policies and procedures for preventing dispensing errors. The typewritten policies and procedures shall relate to Respondent's practice of pharmacy in his current work setting. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to these policies and procedures whenever engaging in the practice of pharmacy.
 - b. Within six (6) months of the date of approval of this Stipulation and Consent Order by the Board, the Respondent shall complete continuing pharmacy education (CPE) or other formal, structured education in preventing dispensing errors and managing stress in the workplace. The education relating to preventing dispensing errors shall be *not less than* six (6) hours in length and shall be pre-approved by the Board. The education relating to stress in the workplace shall be *not less than* three (3) hours in

length and shall be pre-approved by the Board. Documentation of satisfactory completion of the education shall be submitted to the Board.

This education is in addition to the thirty (30) hours of continuing pharmacy education required every two years for license renewal.

- c. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, place of employment, home telephone number, or work telephone number.
- d. During probation, Respondent shall report to the Board or its designee quarterly. Said report shall be in writing. 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.
- e. During probation, Respondent shall report any dispensing errors and malpractice claims made against him to the Board within ten (10) days of learning of the error or claim.
- f. During the term of his probation, Respondent shall not serve as a pharmacist in charge of a pharmacy, as a pharmacy preceptor, or as a supervisor of registered pharmacist interns. Respondent may apply for modification of the provisions prohibiting Respondent from serving as a pharmacist in charge, serving as a pharmacy preceptor, or supervising registered pharmacist interns after he has successfully completed two years of probation.
- g. Respondent shall appear informally before a committee of the Board or the

full Board as directed by the Board, for the purpose of reviewing his performance as a pharmacist during his probationary period.

8. The Respondent may apply to the Board for modification of the provisions of Respondent's probation, including termination of the probation, after Respondent has successfully completed two years of probation. Respondent understands that the determination of whether to modify or terminate his probation will remain in the Board's discretion.
9. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.
10. Respondent shall notify all present employers and prospective employers (no later than at the time of an interview), including the pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.
11. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

12. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.
13. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.
14. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

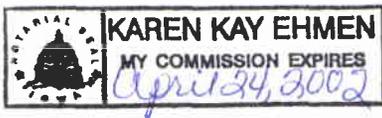
15. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 13 day of September, 1999.

Paul Mosser

Paul Mosser, R.Ph.
Respondent

Subscribed and sworn to before me by Paul Mosser on this 13th day of September, 1999.

Karen Kay Ehmén
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

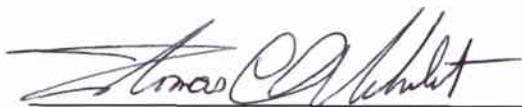


16. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 13 day of Oct., 1999.

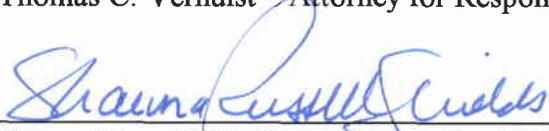


ARLAN D. VAN NORMAN, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

APPROVED AS TO FORM:



Thomas C. Verhulst – Attorney for Respondent



Shauna Russell Shields – Attorney for the State

cc: Thomas C. Verhulst
Gallagher, Langlas & Gallagher, P.C.
405 E. Fifth Street
P.O. Box 2615
Waterloo, IA 50704-2615

Shauna Russell Shields
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:	)	Case No. 2000-19016
Pharmacist License of)	
PAUL MOSSER	)	STATEMENT OF CHARGES
License No. 19016)	
Respondent)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (1999).
3. On July 10, 1998, the Board issued Respondent, Paul Mosser, a license to engage in the practice of pharmacy by examination as evidenced by license number 19016, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 19016 is current and active until June 30, 2000; but on probation.
5. Respondent's current address is 735 Wildwood Road, Waterloo, Iowa 50702.
6. Respondent is not currently employed as a pharmacist. Respondent was employed as a pharmacist at Ottumwa Regional Health Center in Ottumwa, Iowa during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code § 155A.12(1) (1999) and 657 Iowa Administrative Code § 36.1(4)(b)(4) with professional incompetency, including repeated departure from, or failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.

COUNT II

The Respondent is charged under Iowa Code § 155A.12(1) (1999) and 657 Iowa

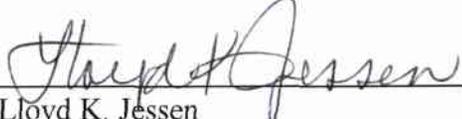
Administrative Code § 36.1(4) with failure to comply with the terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement with the Respondent.

THE CIRCUMSTANCES

1. On October 13, 1999, the Board accepted a Stipulation and Informal Settlement settling a Statement of Charges filed against Respondent's pharmacist license on July 16, 1999.
2. Pursuant to the terms of the settlement, Respondent's license to practice pharmacy was placed on probation for a period of three years from the date of the Board's approval of the Stipulation and Informal Settlement.
3. Under the terms of Respondent's probation, Respondent was required to "notify all present employers and prospective employers (no later than at the time of interview), including the pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by [the Stipulation and Informal Settlement]." The Respondent was also required to "cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read [the Stipulation and Informal Settlement] and understand it."
4. Under the terms of Respondent's probation, Respondent was also required to report any dispensing errors to the Board within ten days of learning of the errors.
5. On or about December 15, 1999, the Board received information indicating that the Respondent had not complied with the terms of his probation set forth in Paragraphs 3 and 4, above.
6. The Board's investigation the of Respondent's alleged noncompliance with the terms of his probation revealed that the Respondent failed to notify his new employer, the Ottumwa Regional Health Center, of the terms, conditions, and restrictions placed on him by the Stipulation and Informal Settlement and to report any dispensing errors to the Board within ten days of learning of the errors.
7. The Respondent's actions in failing to notify his new employer of the terms, conditions, and restrictions placed upon him by the Stipulation and Informal Settlement and failing to report any dispensing errors to the Board within ten days of learning of the errors violated the terms of probation ordered by the Board when it accepted the Stipulation and Informal Settlement on October 13, 1999.
8. The Board's investigation of the Respondent's alleged failure to comply with the terms of his probation also revealed that the Respondent had made several

dispensing errors while working at the Ottumwa Regional Health Center.

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


Lloyd K. Jessen
Executive Secretary/Director

On this 2nd day of February, 2000, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Arlan D. VanNorman, Chairperson
Iowa Board of Pharmacy Examiners
1209 East Court Avenue
Des Moines, Iowa 50319

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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re:	)	DIA NO: 00PHB001
Pharmacist License of	)	CASE NO: 2000-19016
PAUL MOSSER)	
License No. 19016	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

TO: PAUL MOSSER

On February 2, 2000, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Paul Mosser (Respondent). The Respondent was charged with professional incompetency, in violation of Iowa Code section 155A.12(1)(1999) and 657 IAC36.1(4)"b"(4) [Count I] and failure to comply with terms of probation, in violation of Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4). A Notice of Hearing was issued on February 15, 2000 and was served upon the Respondent by certified mail, return receipt requested.

The hearing on the Statement of Charges was held on April 11, 2000 at 3:20 p.m., at the Board office, 400 S.W. 8th Street, Suite E, Des Moines, Iowa. The following members of the Board presided at the hearing: Arlan D. Van Norman, R.Ph., Chairperson; Phyllis A. Olson, R.Ph., Matthew Osterhaus R.Ph.; Katherine Linder, R.Ph.; Matthew C. Osterhaus, R.Ph.; Michael Seifert, R.Ph., and G. Kay Bolton, public member. The Respondent did not appear for the hearing, nor was he represented by counsel. The state was represented by Christina Kuhn, Assistant Attorney General. The proceedings were recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public pursuant to Iowa Code Section 272C.6(1)(1999).

After hearing the testimony and reviewing the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(1999) to deliberate their decision. The Board asked the administrative law judge to draft their decision, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Statement of Charges, filed 7/16/99
- State Exhibit 2: Stipulation and Consent Order, approved 10/13/99

- State Exhibit 3: Acknowledgment of Stipulation and Consent Order by Ottumwa Regional Health Center (ORHC), 12/13/99
- State Exhibit 4: Complaint by ORHC, 12/17/99
- State Exhibit 5: Investigative Report, 12/23/99
- State Exhibit 6: Statement of Charges 2000-19016, approved 2/2/00
- State Exhibit 7: Correspondence dated 12/13/99 (Respondent to Board)

FINDINGS OF FACT

1. On July 10, 1998, the Board issued the Respondent license number 19016, by examination, to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. License number 19016 is current and active until June 30, 2000, but is on probation. (State Exhibits 1, 2, 6)

2. On July 16, 1999, the Board issued a Statement of Charges against the Respondent, charging him with professional incompetency, due to multiple dispensing errors which occurred between August 1998 and March 1999. The Statement of Charges alleged that at least two patients were harmed by the Respondent's dispensing errors. (Testimony of Ray Shelden; State Exhibit 1)

3. On October 13, 1999, the Board accepted a Stipulation and Informal Settlement of the Statement of Charges filed on July 16, 1999. Pursuant to the terms of the settlement, the Respondent's license to practice pharmacy was placed on probation for a period of three years, subject to numerous terms and conditions. Among the terms and conditions of probation were the following:

...

7. ...

a. Within sixty (60) days of approval of this Stipulation and Consent Order by the Board, the Respondent will provide his typewritten policies and procedures for preventing dispensing errors. The *typewritten* policies and procedures shall relate to Respondent's practice of pharmacy in his current work setting. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to these policies and procedures whenever engaging in the practice of pharmacy.

...

e. During probation, Respondent shall report any dispensing errors and malpractice claims made against him

to the Board within ten (10) days of learning of the error or claim.

10. Respondent shall notify all present employers and prospective employers (no later than at the time of an interview), including the pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on the Respondent by this document. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.

(Testimony of Ray Shelden; State Exhibit 2)

4. The Respondent interviewed for a staff pharmacist position at ORHC on September 22, 1999. Susan Pankey, RN, BSN, was the Director of Pharmacy at the time and participated in the interview. Also participating in the interview was Mir Hakim, the pharmacist-in-charge. The Respondent did not give Ms. Pankey a copy of the Stipulation and Consent Order during his interview. Later that day, he apparently gave an unsigned copy of the Stipulation and Consent Order to Mr. Hakim. This would have been prior to the date that the Stipulation and Consent Order was executed by the Board. (Testimony of Susan Pankey)

5. The Respondent was hired as the staff pharmacist at ORHC. His general orientation was conducted on October 4 and October 5, 1999. His first day of work was October 6, 1999. Like all new employees, the Respondent was placed on a ninety day probation. His duties included dispensing medications, reviewing physician's orders, interacting with nursing staff, and some teaching of patients. (Testimony of Susan Pankey)

6. The Respondent did not cause his new employer and the pharmacist-in-charge to timely report to the Board, in writing, that they had read the Stipulation and Order and understood it. Ms. Pankey and Mr. Hakim did not receive a signed copy of the Stipulation and Consent Order until December 1999, when it was sent to them directly by the Board. Ms. Pankey and Mr. Hakim did not write to the Board acknowledging receipt and review of the document until December 13, 1999. (Testimony of Susan Pankey; Ray Shelden; State Exhibit 3)

7. Following receipt of the Stipulation and Consent Order, Ms. Pankey and Greg Burger, the new Director of Pharmacy, met with the Respondent to discuss his compliance with its terms, including the

requirements that he notify the Board of his medication errors and prepare typewritten policies and procedures for preventing dispensing errors. The Respondent had excessive dispensing errors while he was employed at ORHC. Examples of dispensing errors which had occurred between November 14 and November 18, 1999 were documented and discussed with the Respondent. The Respondent did not deny the errors nor did he offer any explanations. The Director of Pharmacy believed that all of the errors were discovered by other staff before the medications were given to patients. (Testimony of Susan Pankey; Greg Burger; State Exhibit 4)

8. At his ninety day review on December 15, 1999, the Respondent was terminated from his employment at ORHC because of his excessive number of dispensing errors in a short period of time. On December 17, 1999, ORHC filed a complaint with the Board and provided the Board with its documentation of the dispensing errors. The list of errors involved medications for eight patients whose names were documented and another seven errors for whom patient names were not documented. The errors included numerous instances where the Respondent dispensed the wrong strength of the drug. Other errors included a missed order, wrong drug, wrong method of administration, and wrong patient. The number and seriousness of the dispensing errors by the Respondent between November 14 and November 18, 1999 constitute repeated departures from or failures to conform to the minimum standard of acceptable and prevailing practice of pharmacy in the state of Iowa. (Testimony of Greg Burger; Ray Shelden; Susan Pankey; State Exhibit 4)

9. On December 22, 1999, the Board received a letter from the Respondent which notified the Board that he was no longer working at ORHC as of December 15, 1999. The Respondent attached a draft copy of his rules and policies for avoiding dispensing errors at ORHC, and further stated that he would submit a revised rules and policies prior to beginning any employment requiring him to dispense medications. (Testimony of Ray Shelden; State Exhibit 7)

10. The Board's investigator, Ray Shelden, met with the Respondent at his home on December 23, 1999. Mr. Shelden and the Respondent discussed the list of dispensing errors in detail. The Respondent stated that the errors were caused by a lack of concentration. The Respondent expressed a great deal of concern about his lack of concentration. The Respondent told Mr. Shelden that he was not comfortable dispensing medications and was looking for a job which did not require medication dispensing. The Respondent assured Mr. Shelden that he would not work at any pharmacy position requiring medication dispensing until after the Board's meeting in February. (Testimony of Ray Shelden; State Exhibit 5)

11. The Statement of Charges and Notice of Hearing were served on the Respondent by certified mail, return receipt requested on

February 17, 2000. The Respondent did not appear for the hearing. (State Exhibit 6)

CONCLUSIONS OF LAW

657 IAC 35.5 provides that delivery of the notice of hearing constitutes commencement of the contested case proceeding. Delivery may be executed by...certified mail, return receipt requested. 657 IAC 35.5(1)"b". Notice of hearing shall be served no less than 30 days before the time set for hearing. 657 IAC 36.5(5). The Respondent was properly served with the statement of charges and notice of hearing by certified mail, return receipt requested, more than 30 days before the hearing.

657 IAC 35.21(1) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. The Respondent failed to appear after proper service of notice. The Board was authorized to proceed with the hearing and render a decision in the Respondent's absence.

COUNT I

Iowa Code section 155A.12(1)(1999) provides, in relevant part:

155A.12 Pharmacist license-grounds for discipline.

...The board...may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

657 IAC 36.1(4)"b"(4) provides:

657-36.1(147,155A,272C) Authority and grounds for discipline.

...
36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

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

...
(4) A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and

prevailing practice of pharmacy in the state of Iowa.

The preponderance of the evidence established that the Respondent violated Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4)"b"(4) when he repeatedly departed from or failed to conform to the minimal standard of acceptable and prevailing practice of pharmacy in the state of Iowa. The Respondent committed a very large number of serious dispensing errors in a very short period of time while employed at ORHC. The number and frequency of these serious errors was significantly below minimum standards of practice in Iowa, as noted by two licensed pharmacists at the hearing.

COUNT II

Count II charged the Respondent with failure to comply with the terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement. Paragraph 11 of the Stipulation and Consent Order provided:

11. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

Iowa Code section 272C.3(2)(a)(1999) specifically authorizes the Board to impose licensee discipline upon failure of the licensee to comply with a decision of the Board imposing licensee discipline.

The preponderance of the evidence established that the Respondent failed to comply with a decision of the Board imposing licensee discipline. While it appears that the Respondent did provide one of the interviewers at ORHC with an unsigned copy of the Stipulation and Consent Order, the Respondent failed to "cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing" within 15 days of accepting employment at ORHC. Such a written acknowledgment was not received by the Board until after the Board provided ORHC with a copy of the Stipulation and Order, which was more than 60 days after the Respondent began his employment. In addition, the Respondent did not report his dispensing errors to the Board within 10 days of learning of the errors. In fact, the Board did not learn of the Respondent's errors until it was notified of them by the Respondent's employer. The Respondent has failed to comply with the Stipulation and Order signed on October 13, 1999, in violation of Iowa Code sections 272C.3(2)(a), 155A.12(1) and 657 IAC 36.1(4).

DECISION AND ORDER

This is the second disciplinary action against the Respondent, who has only had a license to practice pharmacy in Iowa for less than two years. The Respondent's violations raise serious public safety concerns. A prior attempt by the Board to address the Respondent's dispensing errors through a period of probation with close practice monitoring was unsuccessful. Moreover, the Respondent failed to appear for the hearing to offer any explanations for his numerous serious dispensing errors or for his probation violations. Under these circumstances, the Board is unable to allow the Respondent to continue to practice pharmacy on probation. In addition, the number and seriousness of the dispensing errors and the Respondent's admitted inability to concentrate suggests that the Respondent may suffer from an underlying physical or mental condition.

IT IS THEREFORE ORDERED, that license no. 19016, issued to Paul Mosser, is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED, that before the Respondent may apply for reinstatement of his license, he must submit to complete physical and mental examinations at a facility approved by the Board, pursuant to 657 IAC 36.1(2)(h). The costs of the examinations shall be the responsibility of the Respondent. The Respondent must execute all necessary releases to afford the Board full access to the results and reports of the examinations.

IT IS FURTHER ORDERED, that any reinstatement request will be subject to the requirements of 657 IAC 36.13. The Respondent will be required to establish that the basis for the suspension no longer exists and it is in the public interest for the license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing.

Dated this 26th day of April , 2000.



Arlan D. "Jack" VanNorman
Chairperson
Iowa Board of Pharmacy Examiners

cc: Christina Kuhn, Assistant Attorney General

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties. The motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. 657 IAC 35.21(3) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 657 IAC 35.21(4)

An aggrieved or adversely affected party can appeal a final decision of the Board by filing a petition for judicial review with the district court, in accordance with Iowa Code section 17A.19. If a party files an application for rehearing with the agency, pursuant to Iowa Code section 17A.16(2), the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application for rehearing, the petition for judicial review must be filed within thirty days after the agency's final decision in the contested case.

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re:	)	DIA NO: 00PHB001
Pharmacist License of	)	CASE NO: 2000-19016
PAUL MOSSER)	
License No. 19016	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

TO: PAUL MOSSER

On February 2, 2000, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Paul Mosser (Respondent). The Respondent was charged with professional incompetency, in violation of Iowa Code section 155A.12(1)(1999) and 657 IAC36.1(4)"b"(4) [Count I] and failure to comply with terms of probation, in violation of Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4). A Notice of Hearing was issued on February 15, 2000 and was served upon the Respondent by certified mail, return receipt requested.

The hearing on the Statement of Charges was held on April 11, 2000 at 3:20 p.m., at the Board office, 400 S.W. 8th Street, Suite E, Des Moines, Iowa. The following members of the Board presided at the hearing: Arlan D. Van Norman, R.Ph., Chairperson; Phyllis A. Olson, R.Ph., Matthew Osterhaus R.Ph.; Katherine Linder, R.Ph.; Matthew C. Osterhaus, R.Ph.; Michael Seifert, R.Ph., and G. Kay Bolton, public member. The Respondent did not appear for the hearing, nor was he represented by counsel. The state was represented by Christina Kuhn, Assistant Attorney General. The proceedings were recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public pursuant to Iowa Code Section 272C.6(1)(1999).

After hearing the testimony and reviewing the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(1999) to deliberate their decision. The Board asked the administrative law judge to draft their decision, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Statement of Charges, filed 7/16/99
- State Exhibit 2: Stipulation and Consent Order, approved 10/13/99

- State Exhibit 3: Acknowledgment of Stipulation and Consent Order by Ottumwa Regional Health Center (ORHC), 12/13/99
- State Exhibit 4: Complaint by ORHC, 12/17/99
- State Exhibit 5: Investigative Report, 12/23/99
- State Exhibit 6: Statement of Charges 2000-19016, approved 2/2/00
- State Exhibit 7: Correspondence dated 12/13/99 (Respondent to Board)

FINDINGS OF FACT

1. On July 10, 1998, the Board issued the Respondent license number 19016, by examination, to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. License number 19016 is current and active until June 30, 2000, but is on probation. (State Exhibits 1, 2, 6)

2. On July 16, 1999, the Board issued a Statement of Charges against the Respondent, charging him with professional incompetency, due to multiple dispensing errors which occurred between August 1998 and March 1999. The Statement of Charges alleged that at least two patients were harmed by the Respondent's dispensing errors. (Testimony of Ray Shelden; State Exhibit 1)

3. On October 13, 1999, the Board accepted a Stipulation and Informal Settlement of the Statement of Charges filed on July 16, 1999. Pursuant to the terms of the settlement, the Respondent's license to practice pharmacy was placed on probation for a period of three years, subject to numerous terms and conditions. Among the terms and conditions of probation were the following:

...

7. ...

a. Within sixty (60) days of approval of this Stipulation and Consent Order by the Board, the Respondent will provide his typewritten policies and procedures for preventing dispensing errors. The *typewritten* policies and procedures shall relate to Respondent's practice of pharmacy in his current work setting. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to these policies and procedures whenever engaging in the practice of pharmacy.

...

e. During probation, Respondent shall report any dispensing errors and malpractice claims made against him

to the Board within ten (10) days of learning of the error or claim.

10. Respondent shall notify all present employers and prospective employers (no later than at the time of an interview), including the pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on the Respondent by this document. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.

(Testimony of Ray Shelden; State Exhibit 2)

4. The Respondent interviewed for a staff pharmacist position at ORHC on September 22, 1999. Susan Pankey, RN, BSN, was the Director of Pharmacy at the time and participated in the interview. Also participating in the interview was Mir Hakim, the pharmacist-in-charge. The Respondent did not give Ms. Pankey a copy of the Stipulation and Consent Order during his interview. Later that day, he apparently gave an unsigned copy of the Stipulation and Consent Order to Mr. Hakim. This would have been prior to the date that the Stipulation and Consent Order was executed by the Board. (Testimony of Susan Pankey)

5. The Respondent was hired as the staff pharmacist at ORHC. His general orientation was conducted on October 4 and October 5, 1999. His first day of work was October 6, 1999. Like all new employees, the Respondent was placed on a ninety day probation. His duties included dispensing medications, reviewing physician's orders, interacting with nursing staff, and some teaching of patients. (Testimony of Susan Pankey)

6. The Respondent did not cause his new employer and the pharmacist-in-charge to timely report to the Board, in writing, that they had read the Stipulation and Order and understood it. Ms. Pankey and Mr. Hakim did not receive a signed copy of the Stipulation and Consent Order until December 1999, when it was sent to them directly by the Board. Ms. Pankey and Mr. Hakim did not write to the Board acknowledging receipt and review of the document until December 13, 1999. (Testimony of Susan Pankey; Ray Shelden; State Exhibit 3)

7. Following receipt of the Stipulation and Consent Order, Ms. Pankey and Greg Burger, the new Director of Pharmacy, met with the Respondent to discuss his compliance with its terms, including the

requirements that he notify the Board of his medication errors and prepare typewritten policies and procedures for preventing dispensing errors. The Respondent had excessive dispensing errors while he was employed at ORHC. Examples of dispensing errors which had occurred between November 14 and November 18, 1999 were documented and discussed with the Respondent. The Respondent did not deny the errors nor did he offer any explanations. The Director of Pharmacy believed that all of the errors were discovered by other staff before the medications were given to patients. (Testimony of Susan Pankey; Greg Burger; State Exhibit 4)

8. At his ninety day review on December 15, 1999, the Respondent was terminated from his employment at ORHC because of his excessive number of dispensing errors in a short period of time. On December 17, 1999, ORHC filed a complaint with the Board and provided the Board with its documentation of the dispensing errors. The list of errors involved medications for eight patients whose names were documented and another seven errors for whom patient names were not documented. The errors included numerous instances where the Respondent dispensed the wrong strength of the drug. Other errors included a missed order, wrong drug, wrong method of administration, and wrong patient. The number and seriousness of the dispensing errors by the Respondent between November 14 and November 18, 1999 constitute repeated departures from or failures to conform to the minimum standard of acceptable and prevailing practice of pharmacy in the state of Iowa. (Testimony of Greg Burger; Ray Shelden; Susan Pankey; State Exhibit 4)

9. On December 22, 1999, the Board received a letter from the Respondent which notified the Board that he was no longer working at ORHC as of December 15, 1999. The Respondent attached a draft copy of his rules and policies for avoiding dispensing errors at ORHC, and further stated that he would submit a revised rules and policies prior to beginning any employment requiring him to dispense medications. (Testimony of Ray Shelden; State Exhibit 7)

10. The Board's investigator, Ray Shelden, met with the Respondent at his home on December 23, 1999. Mr. Shelden and the Respondent discussed the list of dispensing errors in detail. The Respondent stated that the errors were caused by a lack of concentration. The Respondent expressed a great deal of concern about his lack of concentration. The Respondent told Mr. Shelden that he was not comfortable dispensing medications and was looking for a job which did not require medication dispensing. The Respondent assured Mr. Shelden that he would not work at any pharmacy position requiring medication dispensing until after the Board's meeting in February. (Testimony of Ray Shelden; State Exhibit 5)

11. The Statement of Charges and Notice of Hearing were served on the Respondent by certified mail, return receipt requested on

February 17, 2000. The Respondent did not appear for the hearing.
(State Exhibit 6)

CONCLUSIONS OF LAW

657 IAC 35.5 provides that delivery of the notice of hearing constitutes commencement of the contested case proceeding. Delivery may be executed by...certified mail, return receipt requested. 657 IAC 35.5(1)"b". Notice of hearing shall be served no less than 30 days before the time set for hearing. 657 IAC 36.5(5). The Respondent was properly served with the statement of charges and notice of hearing by certified mail, return receipt requested, more than 30 days before the hearing.

657 IAC 35.21(1) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. The Respondent failed to appear after proper service of notice. The Board was authorized to proceed with the hearing and render a decision in the Respondent's absence.

COUNT I

Iowa Code section 155A.12(1) (1999) provides, in relevant part:

155A.12 Pharmacist license-grounds for discipline.

...The board...may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

657 IAC 36.1(4) "b"(4) provides:

657-36.1(147,155A,272C) Authority and grounds for discipline.

...
36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

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

...
(4) A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and

prevailing practice of pharmacy in the state of Iowa.

The preponderance of the evidence established that the Respondent violated Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4) "b" (4) when he repeatedly departed from or failed to conform to the minimal standard of acceptable and prevailing practice of pharmacy in the state of Iowa. The Respondent committed a very large number of serious dispensing errors in a very short period of time while employed at ORHC. The number and frequency of these serious errors was significantly below minimum standards of practice in Iowa, as noted by two licensed pharmacists at the hearing.

COUNT II

Count II charged the Respondent with failure to comply with the terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement. Paragraph 11 of the Stipulation and Consent Order provided:

11. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

Iowa Code section 272C.3(2)(a)(1999) specifically authorizes the Board to impose licensee discipline upon failure of the licensee to comply with a decision of the Board imposing licensee discipline.

The preponderance of the evidence established that the Respondent failed to comply with a decision of the Board imposing licensee discipline. While it appears that the Respondent did provide one of the interviewers at ORHC with an unsigned copy of the Stipulation and Consent Order, the Respondent failed to "cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing" within 15 days of accepting employment at ORHC. Such a written acknowledgment was not received by the Board until after the Board provided ORHC with a copy of the Stipulation and Order, which was more than 60 days after the Respondent began his employment. In addition, the Respondent did not report his dispensing errors to the Board within 10 days of learning of the errors. In fact, the Board did not learn of the Respondent's errors until it was notified of them by the Respondent's employer. The Respondent has failed to comply with the Stipulation and Order signed on October 13, 1999, in violation of Iowa Code sections 272C.3(2)(a), 155A.12(1) and 657 IAC 36.1(4).

DECISION AND ORDER

This is the second disciplinary action against the Respondent, who has only had a license to practice pharmacy in Iowa for less than two years. The Respondent's violations raise serious public safety concerns. A prior attempt by the Board to address the Respondent's dispensing errors through a period of probation with close practice monitoring was unsuccessful. Moreover, the Respondent failed to appear for the hearing to offer any explanations for his numerous serious dispensing errors or for his probation violations. Under these circumstances, the Board is unable to allow the Respondent to continue to practice pharmacy on probation. In addition, the number and seriousness of the dispensing errors and the Respondent's admitted inability to concentrate suggests that the Respondent may suffer from an underlying physical or mental condition.

IT IS THEREFORE ORDERED, that license no. 19016, issued to Paul Mosser, is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED, that before the Respondent may apply for reinstatement of his license, he must submit to complete physical and mental examinations at a facility approved by the Board, pursuant to 657 IAC 36.1(2)(h). The costs of the examinations shall be the responsibility of the Respondent. The Respondent must execute all necessary releases to afford the Board full access to the results and reports of the examinations.

IT IS FURTHER ORDERED, that any reinstatement request will be subject to the requirements of 657 IAC 36.13. The Respondent will be required to establish that the basis for the suspension no longer exists and it is in the public interest for the license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing.

Dated this 26th day of April , 2000.



Arlan D. "Jack" VanNorman
Chairperson
Iowa Board of Pharmacy Examiners

cc: Christina Kuhn, Assistant Attorney General

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties. The motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. 657 IAC 35.21(3) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 657 IAC 35.21(4)

An aggrieved or adversely affected party can appeal a final decision of the Board by filing a petition for judicial review with the district court, in accordance with Iowa Code section 17A.19. If a party files an application for rehearing with the agency, pursuant to Iowa Code section 17A.16(2), the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application for rehearing, the petition for judicial review must be filed within thirty days after the agency's final decision in the contested case.