

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	COMPLAINT
CLAIR W. MULDER	}	AND
License No. 15199	}	STATEMENT
Respondent	}	OF CHARGES
	}	AND
	}	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 31st day of January, 1992, and files this Complaint and Statement of Charges against Clair W. Mulder, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Melba L. Scaglione, Chairperson; Alan M. Shepley, Vice Chairperson; Rollin C. Bridge; Donna J. Flower; Phyllis A. Olson; Marian L. Roberts; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on March 7, 1978, by examination.

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

4. Respondent currently resides at 204 North Beech, Box 532, Marcus, Iowa 51035.

5. Respondent is the owner and pharmacist in charge of Marcus Pharmacy, a licensed pharmacy located at 406 Main Street in Marcus, Iowa. Respondent has been the owner and pharmacist in charge of Marcus Pharmacy during all times relevant to this Complaint and Statement of Charges.

6. The Board has received an inspection report dated October 14, 1991, from Pharmacy Investigator Morrell A. Spencer which indicates the following:

a. Prescription number 15884 dated September 9, 1991, for 24 Belladonna and Opium Suppositories 60mg, a Schedule II controlled substance, was partially filled by Respondent on September 13, 1991, when Respondent dispensed 12 suppositories. Prescription number 15884 was again partially filled by Respondent on October 1, 1991, when Respondent dispensed 12 more suppositories.

b. Prescription number 15485 dated July 24, 1991, for 12 MS Contin 15mg, a Schedule II controlled substance, was filled by Respondent as follows:

- (1) 6 MS Contin 30mg on July 24, 1991
- (2) 6 MS Contin 30mg on August 1, 1991
- (3) 6 MS Contin 30mg on August 9, 1991
- (4) 6 MS Contin 30mg on August 15, 1991
- (5) 6 MS Contin 30mg on August 20, 1991
- (6) 12 MS Contin 15mg on August 24, 1991

A total of 30 MS Contin 30mg and 12 MS Contin 15mg were dispensed by the Respondent when only 12 MS Contin 15mg were authorized to be dispensed.

c. Respondent failed to record the complete address of the purchaser when dispensing Schedule V controlled substances without a prescription.

d. Respondent failed to take an inventory of all anabolic steroids (Schedule III controlled substances).

7. The Board has received an investigative report dated March 5, 1990, from Pharmacy Investigator Morrell A. Spencer which indicates the following:

a. On December 15, 1988, Respondent dispensed prescription number 7721. In this instance, Respondent dispensed Furosemide 40mg tablets in a prescription vial which had previously been used by another pharmacy for another prescription.

b. On December 28, 1988, Respondent dispensed prescription number 7848. In this instance, Sulfa-Trimethoprim DS tablets were dispensed labeled as "Generic Bactrim-DS." Respondent dispensed the tablets in a prescription vial which had previously been used by another pharmacy for another prescription.

c. On December 28, 1988, Respondent dispensed prescription number 7846. In this instance, Respondent dispensed Micro-K 10mEq capsules in a prescription vial which had previously been used by another pharmacy for another prescription.

d. On March 1, 1989, Respondent refilled prescription number 7846. In this instance, Respondent dispensed Klor-Con 10mEq in place of Micro-K 10mEq which had been prescribed. Respondent dispensed the Klor-Con 10mEq in a prescription vial which had previously been used by both Marcus Pharmacy and another pharmacy to dispense other prescriptions. The Klor-Con 10mEq was labeled as "same as Micro-K."

e. On or about February 27, 1990, Respondent prepared prescription number 11240. The prescription vial, as prepared by Respondent, contained 12 generic Propoxyphene Napsylate 100 +

APAP tablets labeled as "Generic Darvocet-N 100." The label did not include the patient name, the date of dispensing, or the initials of the dispensing pharmacist.

f. On or about February 27, 1990, Respondent prepared prescription number 11111. The label on the prescription vial, as prepared by Respondent, contained an incorrect patient name.

g. On or about February 27, 1990, Respondent prepared prescription number 10337. In this instance, Respondent attempted to dispense Cafergot Suppositories without a prescription vial and without a prescription label (except for the manufacturer's labeling on the foil wrap surrounding the suppositories).

h. Upon the recommendation of Pharmacy Investigator Morrell A. Spencer, Respondent corrected the labels on prescription numbers 11240, 11111, and 10337 prior to dispensing the prescriptions.

8. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.28, 155A.32, 204.308(1), and 204.308(2) by virtue of the allegations in paragraphs 6 & 7.

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.

....

5. Violated any provision of the controlled substances Act or rules relating to that Act.

Iowa Code section 155A.28 provides the following:

The label of any drug or device sold and dispensed on the prescription of a practitioner shall be in compliance with rules adopted by the board.

Iowa Code section 155A.32 provides, in part, the following:

Drug product selection -- restrictions.

1. If an authorized prescriber prescribes, either in writing or orally, a drug by its brand or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale to the patient.

Iowa Code section 204.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. ...No prescription for a schedule II substance may be refilled.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.8(3), 8.14(1), 9.1(4)(b)(1), 9.1(4)(b)(2), 9.1(4)(j), 9.1(4)(u), 10.13(6)(a), and 10.13(13)(e) by virtue of the allegations in paragraphs 6 and 7.

657 Iowa Administrative Code section 6.8(3) provides the following:

A Schedule V nonprescription registry book shall be maintained in accordance with subrule 10.13(13).

657 Iowa Administrative Code section 8.14(1) provides, in part, the following:

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:

- a. Serial number (a unique identification number of the prescription);
- b. The name and address of the pharmacy;
- c. The name of the patient, or if such drug is prescribed for an animal, the species of the animal and the name of its owner;
- d. The name of the prescribing practitioner;
- e. The date the prescription is dispensed;
- f. The directions or instructions for use, including precautions to be observed;
- 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.
- h. The initials of the dispensing pharmacist.

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:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(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.

....

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 Iowa Code sections 147.55, 155A.12 and 155A.15.

657 Iowa Administrative Code section 10.13 provides, in part, the following:

10.13(6) The partial filling of a prescription for a controlled substance listed in schedule II is permissible only as follows:

a. If the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription), a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

....

10.13(13) Dispensing without prescription. A controlled substance listed in Schedule V which is not a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:...

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.

The Iowa Board of Pharmacy Examiners finds that paragraphs 8 and 9 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.28, 155A.32, 204.308(1), and 204.308(2) and 657 Iowa Administrative Code sections 6.8(3), 8.14(1), 9.1(4)(b)(1), 9.1(4)(b)(2), 9.1(4)(j), 9.1(4)(u), 10.13(6)(a), and 10.13(13)(e).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Clair M. Mulder appear before the Iowa Board of Pharmacy Examiners on Wednesday, March 4, 1992, 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 Clair M. Mulder on March 7, 1978, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his license.

The hearing will be presided over by the Board which will be assisted by an administrative law judge from the Iowa Department of Inspections and Appeals. The office of the Attorney General is responsible for the public interest in these proceedings. Information regarding the hearing may be obtained from Lynette A. F. Donner, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8760). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd R. Jessen
Executive Secretary/Director

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of : **STIPULATION**
CLAIR W. MULDER : **AND**
License No. 15199 : **INFORMAL SETTLEMENT**
Respondent :

COMES NOW the Iowa Board of Pharmacy Examiners (the Board) and Clair W. Mulder, R.Ph., (Respondent) and, pursuant to Iowa Code sections 17A.10 and 258A.3(4), enter into the following Stipulation of the contested case currently on file:

1. Respondent was issued a license to practice pharmacy in Iowa on March 7, 1978, by examination.

2. Respondent's license is current until June 30, 1993.

3. Respondent's current address is 204 North Beech, Box 532, Marcus, Iowa 51035.

4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on January 31, 1992.

5. The Board has jurisdiction of the parties and the subject matter.

6. Respondent does not contest the allegations set forth in the complaint and agrees that the Board may treat the allegations as true. The Respondent understands that there is no admission on his part of the truth of the allegations, but merely an agreement that the Board may treat

the allegations as true for the purpose of this Informal Settlement.

7. Respondent's license to practice pharmacy is suspended for a period of ninety (90) days. The suspension is stayed, however, and the Respondent's license is placed on probation for a period of one (1) year from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

a. 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.

b. Pay all required fees for renewal of his pharmacist license to prevent the license from lapsing during the period of probation.

c. Obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and all federal and state criminal laws.

d. Not supervise any registered intern and shall not perform any of the duties of a preceptor.

e. Submit a typewritten report to the Board once every six (6) months, beginning on July 1, 1992, stating truthfully whether or not he has complied with all terms and conditions of his probation.

f. Complete five (5) additional contact hours of continuing pharmacy education, in addition to the fifteen (15) hours required by law for renewal of his pharmacist

license, for a total of twenty (20) hours annually, beginning with the licensing period July 1, 1991, to June 30, 1993.

g. Take and successfully pass the Iowa Drug Law Exam (IDLE) with a score of 75 percent no later than June 30, 1993. Respondent may take the exam a maximum of three (3) times after approval of this Stipulation and Informal Settlement.

h. Shall, by June 1, 1992, submit for Board approval a typewritten policy and procedure manual for the operation of the prescription department including but not limited to prescription labeling, prescription packaging, drug inventories, and controlled substance requirements.

i. Provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing education (CE) as directed by the Board.

j. Notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after the approval of this Stipulation and Informal Settlement, and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read this document.

8. Should Respondent reside or practice outside of this State, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or

practice outside of this State shall not apply to reduction of the probationary period.

9. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the stayed suspension. If a petition to revoke probation is filed against 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.

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

11. Stipulation and Informal Settlement is subject to approval of the Board. If the Board approves this Stipulation and Informal Settlement, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Informal Settlement, it shall be of no force or effect to either party.

* * * * *

12. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 3 day of MARCH, 1992.

[Handwritten signature of Clair W. Mulder]

CLAIR W. MULDER
Respondent

Signed and sworn to before me this 3rd day of March, 1992.



Judith A. Letsche
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

13. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 4th day of March, 1992.

Melba L. Scaglione
MELBA L. SCAGLIONE, Chairperson
Iowa Board of Pharmacy Examiners

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

Re:)
Pharmacist License of)
CLAIR W. MULDER) **STATEMENT OF CHARGES**
License No. 15199)
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 (1997).

3. On March 7, 1978, Clair W. Mulder, the Respondent, was issued license number 15199 by the Board to engage in the practice of pharmacy, subject to the laws of the State of Iowa and the rules of the Board. Respondent was also licensed as a pharmacist in the State of Minnesota where he was issued license number 13151.

4. License number 15199 is current and active until June 30, 1999.

5. Respondent's current address is 204 North Beech, Marcus, Iowa 51035.

6. Respondent is currently self-employed as the owner and pharmacist-in-charge at Marcus Pharmacy, 406 Main Street, Marcus, Iowa 51035.

7. Respondent's license to practice pharmacy in Minnesota was suspended indefinitely by the Minnesota State Board of Pharmacy on March 10, 1987, following allegations of chemical dependency. The license was reinstated on August 12, 1987, and was placed on probation with conditions for two years.

8. Respondent's license to practice pharmacy in Iowa was disciplined by the Iowa Board of Pharmacy Examiners in 1992. In an informal settlement effective March 4, 1992, the Board suspended Respondent's pharmacist license for 90 days. The suspension was stayed and his license was placed on probation with conditions for one year.

COUNT I

The Respondent is charged with failing to comply with the minimum standards for the practice of pharmacy in Iowa in violation of 1997 Iowa Code § 155A.12(1).

THE CIRCUMSTANCES

On June 24, 1998, Board Investigator E. Ray Shelden conducted a routine inspection of Marcus Pharmacy. The results of the inspection indicate that Respondent has failed to comply with the minimum standards for the practice of pharmacy, the requirements for general pharmacies, and controlled substance requirements. Investigator Shelden's report also indicates that Respondent has made medication 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 14th day of July, 1998, 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: Linny Emrich
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: Pharmacist License of CLAIR W. MULDER License No. 15199 Respondent	} } } } } } }	STIPULATION AND CONSENT ORDER
---	---------------------------------	--

On this 19th day of NOVEMBER, 1998, the Iowa Board of Pharmacy Examiners and Clair W. Mulder, of 204 North Beech, Marcus, Iowa, each hereby agree with the other and stipulate as follows:

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on July 14, 1998, 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 7th day of March, 1978, by examination as evidenced by Pharmacist License Number 15199, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 15199 issued to Respondent is active and current until June 30, 1999.
3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
4. A Statement of Charges was filed against Respondent on July 14, 1998.

5. This Stipulation and Consent Order is entered into in order to resolve disputed claims and constitutes no admission on the part of the Respondent.

6. Respondent shall surrender his license to practice pharmacy in Iowa on or before March 31, 1999.

7. Until such time as Respondent surrenders his Iowa pharmacist license, the license shall be placed on probation with the following conditions, beginning on the date this Stipulation and Consent Order is accepted by the Board:

a. Respondent shall report to the board or its designee monthly. Said report shall be in writing and shall be filed no later than January 5, 1999; February 5, 1999; and March 5, 1999. The report shall include Respondent's progress in liquidating, selling and/or closing Marcus Pharmacy on or before March 31, 1999.

b. 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.

c. Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

d. Respondent shall report to the Board any judgment or settlement of a malpractice claim or action and any dispensing errors brought to his attention by consumers, health care professionals, or others within ten (10) days of such occurrence.

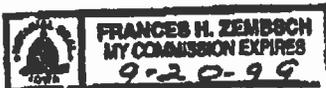
e. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and the receipt, distribution, and handling of controlled substances.

8. This proposed settlement is subject to approval of a majority of the full Board. If the Board fails to approve this proposed 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.

9. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 19 day of November, 1998.

Clair W. Mulder
Clair W. Mulder, R.Ph.
Respondent

Subscribed and Sworn to before me on this 19 day of November, 1998.



Frances H. Zembsch
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

10. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 24 day of November, 1998.

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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:) DIA NO: 99PHB001
Pharmacist License of)
CLAIR W MULDER) FINDINGS OF FACT,
License No. 15199) CONCLUSIONS OF LAW,
Respondent) DECISION AND ORDER

TO: CLAIR W MULDER

On November 19, 1998, the Iowa Board of Pharmacy Examiners (Board) issued a Stipulation and Consent Order accepting the surrender of license to practice pharmacy signed by Clair W. Mulder (Respondent). On February 20, 2001, the Board scheduled a formal reinstatement conference, at the Respondent's request, for March 6, 2001.

The hearing was held on March 6, 2001, at 2:00 p.m., in the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Des Moines, Iowa. The following members of the Board were present: Matthew C. Osterhaus, Chairperson; Paul Aromowitz; Katherine A. Linder; Michael J. Seifert; and G. Kay Bolton. The Respondent appeared. The state was represented by Shauna Russell Shields, Assistant Attorney General. The hearing was recorded by a certified court reporter. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was open to the public, at the request of the Respondent, pursuant to Iowa Code Section 272C.6(1)(1999).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes; the Notice of Hearing; the testimony of the witness; and the following exhibits:

State Exhibit A: Respondent's request for reinstatement;

State Exhibit B: Statement of Charges, 7/14/98;
State Exhibit C: Stipulation and Consent Order 11/19/98;
State Exhibit D: Complaint and Statement of Charges and
Notice of Hearing,
1/31/92;
State Exhibit E: Stipulation and Informal Settlement,
3/4/92.

FINDINGS OF FACT

1. On March 7, 1978, the Respondent was issued license number 15199 by the Board to engage in the practice pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. (Testimony of Respondent; State Exhibit D)

2. The Board filed a Complaint and Statement of Charges and Notice of Hearing against the Respondent on January 31, 1992. On March 4, 1992, the Respondent entered into a Stipulation and Informal Settlement whereby his license was placed on probation for six months and a plan of corrective action was drafted by the Respondent to avoid the problems listed in the statement of charges. (State Exhibits D, E)

3. The Board again filed a Statement of Charges against the Respondent on July 14, 1998. The Respondent entered into a Stipulation and Consent Order whereby he surrendered his pharmaceutical license. (Testimony of Respondent, State Exhibits B, C)

4. The Respondent testified extensively concerning the circumstances surrounding the two prior statement of charges filed against him. Much of the testimony surrounded the difficulties a pharmacist in a small town in Iowa faces. The pressures of health maintenance organizations cutting costs, problems with his computer generating bills and other problems associated with running a pharmacy in a town of 700-800 people all culminated in a state of depression.

The Respondent stated that he was overwhelmed and exhausted. He began to gain weight and lose interest in the day to day processes needed to run his pharmacy. All of these pressures culminated in his decision to surrender his license through the Stipulation on November 19, 1998.

Since the Respondent gave up his license he has obtained glasses, lost some weight and is trying to relax to get over his exhaustion. He has not taken any continuing education course related to the field of pharmacy in the two years he has been without his license. The Respondent testified that he is contemplating furthering his education by obtaining a Doctor of Pharmacy degree or a degree to be a physician's assistant. (Testimony of Respondent)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13 (17A, 124B, 147, 155A, 272C) Reinstatement. Any person whose license to practice pharmacy...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 or conditions upon which reinstatement might occur, or if the license, registration, 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 or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Exam (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

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, registration, or permit 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 settlement conference before the board...

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... no longer exists and that it will be in the public interest for the license... 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 fact 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.

Based on the testimony and evidence in this record, the Board is not convinced that the reasons for the voluntary surrender of the Respondent's license to practice pharmacy have been sufficiently addressed or that it is in the public interest for his license to be reinstated.

Based on the Respondent's testimony, the Board is uncomfortable with reinstating the pharmacy license at this time. The Respondent has not taken any steps to address the problems that led to his surrendering his license. The Respondent has shown a consistent pattern of problems while practicing pharmacy. To come before the Board without any steps to show how these problems will be avoided fails to carry his required burden of proof.

Before the Respondent contemplates applying for reinstatement he should examine why he surrendered his license, review all of the disciplinary actions against him, and take positive steps to show that the problems will not be repeated in the future.

DECISION AND ORDER

The Respondent has failed to establish, by a preponderance of the evidence, that the basis for the revocation of his license no longer exists or that it is in the public interest for his

DIA No. 01PHB001

Page 5

license to be reinstated. 657 IAC 36.13(4).

IT IS THEREFORE ORDERED that the Respondent's request for reinstatement of ~~her~~ license to practice pharmacy in the state of Iowa is DENIED. ^{his} _{mco}

Dated this 17th day of April, 2001.



Matthew Osterhaus, R.Ph.

Chairperson

Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields
Assistant Attorney General

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act (Iowa Code chapter 17A), from the date of the board's decision.