

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	
DAVID L. PENNACCHIA	}	COMPLAINT
License No. 16377	}	AND
Respondent	}	STATEMENT
		OF CHARGES

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 28th day of August, 1989, and files this Complaint and Statement of Charges against David L. Pennacchia, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on November 15, 1983, by reciprocity.

3. Respondent was also issued a license to practice pharmacy in Arizona on or about June 25, 1980 (license number 8669).

4. Respondent currently resides at 125 East Guadalupe #137, Gilbert, Arizona 85234.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1991.

6. On July 31, 1989, the Board received information from the Arizona Board of Pharmacy which indicated that between the dates of December 16, 1986, and November 16, 1987, Respondent removed for his own use and without a prescription order the following schedule II controlled substances from M-D Pharmacy #75 located at 941 South Dobson Road in Mesa, Arizona: (1) 124.5 tablets of Demerol 50mg; (2) 170 tablets of Demerol 100mg; (3) 162 tablets of Demerol/APAP; (4) 17 ampoules of Demerol 50mg; (5) 10 ampoules of Demerol 100mg; (6) 5 vials of Demerol 20ml; (7) 3.5 pints of Demerol Syrup; (8) 230 tablets of Ritalin 5mg; (9) 271 tablets of Ritalin 10mg; (10) 240 tablets of Ritalin 20mg; and (11) 130 tablets of Ritalin-SR 20mg.

The information also indicated that between the dates of September 1, 1988, and February 8, 1989, Respondent removed for his own use and without a prescription order the following schedule II controlled substances from the Kingman Regional Medical Center Pharmacy located at 3269 Stockton Hill Road in Kingman, Arizona: (1) 6 tubexes of Meperidine 100mg; and (2) 14 tablets of Meperidine 50mg.

In addition, the information indicated that following a hearing before the Arizona Board of Pharmacy on April 18, 1989, Respondent's pharmacist license in Arizona was suspended for two years beginning on May 1, 1989, and ending on April 30, 1991, and thereafter placed on probation by order of the Arizona Board of Pharmacy dated April 21, 1989.

7. Respondent is guilty of violations of 1989 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), and 155A.23(1)(c) by virtue of the allegations in paragraph 6.

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.

....

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

Iowa Code section 155A.23 provides, in part, the following:

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

....

c. Concealment of a material fact.

8. Respondent is guilty of violations of 1989 Iowa Acts, House File 780, Section 11(1)(c)(6), by virtue of the allegations in paragraph 6.

1989 Iowa Acts, House File 780, Section 11 provides, in part, the following:

Section 204.401, subsections 1 and 2, [Iowa] Code 1989, are amended by striking the subsections and inserting in lieu thereof the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

...

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:...

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d)(2), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations in paragraph 6.

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:...

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.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:...

(2) The excessive use of drugs which may impair a pharmacist's ability to practice pharmacy with reasonable skill or safety.

....

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.

The Iowa Board of Pharmacy Examiners finds that paragraphs 7, 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 1989 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), and 155A.23(1)(c); 1989 Iowa Acts, House File 780, Section 11(1)(c)(6); and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d)(2), 9.1(4)(j), and 9.1(4)(u).

IT IS HEREBY ORDERED that David L. Pennacchia appear before the Iowa Board of Pharmacy Examiners on October 10, 1989, at 9:00 o'clock a.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to David L. Pennacchia on November 15, 1983, 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. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS

A handwritten signature in cursive script, appearing to read "Norman C. Johnson". The signature is written in dark ink and is positioned above a horizontal line.

Norman C. Johnson
Executive Secretary

a. Enroll in the Pharmacists Aiding Pharmacists in Iowa (PAP'I) program or the equivalent type of program as soon as such program is in place and continue in that program for the duration of the license or, if and when practicing and/or residing in the state of Arizona, shall comply with similar terms contained in the Amended Board Order entered by the Arizona State Board of Pharmacy in Arizona case number 89-5-H on June 18, 1990.

b. Abstain from the personal use or possession of alcohol or drugs other than those lawfully prescribed by a physician for a legitimate medical need for the duration of the probation.

c. Submit to the Board random biological fluid testing results, taken by a Board accepted testing facility and within three (3) hours of the time requested by the Board, at the Board's discretion, or, if and when practicing and/or residing in the state of Arizona, shall comply with similar terms contained in the Amended Board Order entered by the Arizona State Board of Pharmacy in Arizona case number 89-5-H on June 18, 1990.

d. Bear all costs of compliance with this Stipulation and Informal Settlement agreement.

e. Bear the responsibility for the release of information forms and reports as directed by the Order and shall "hold harmless" the provider of any required reports to the Board of Pharmacy.

f. Obey all federal and state laws and regulations substantially related to the practice of pharmacy.

g. Report to the Board or its designee quarterly. Said report shall be in person or in writing, as directed. The report shall include

the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

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

i. Notify all present and prospective Iowa 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 in Iowa, Respondent shall cause any Iowa employers to report to the Board in writing acknowledging that the employer has read this document.

j. Not supervise any registered Iowa intern and shall not perform any of the duties of an Iowa preceptor.

7. 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 revocation. If a petition to revoke probation is filed against Respondent during the duration of the license, the Board shall have continuing jurisdiction until the matter is final.

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

9. This Informal Settlement is voluntarily submitted by the

Respondent to the Board for its consideration on the 30 day of
August, 1991.

David L. Pennacchia
DAVID L. PENNACCHIA
Respondent

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

My Commission Expires Dec. 31, 1994

Donald E. Meighan
NOTARY PUBLIC IN AND FOR THE
STATE OF ARIZONA

10. This Informal Settlement is accepted by the Iowa Board of
Pharmacy Examiners on the 11th day of Sept, 1991.

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

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

Re:)	AMENDED
Pharmacist License of)	STIPULATION
DAVID L. PENNACCHIA)	AND
License No. 16377)	INFORMAL SETTLEMENT
<u>Respondent</u>		

COMES NOW, Marian L. Roberts, Chairperson of the Iowa Board of Pharmacy Examiners, on the 19th day of April, 1994, and declares that:

1. On March 18, 1994, David L. Pennacchia, R.Ph., (hereafter the Respondent) filed an application with the Iowa Board of Pharmacy Examiners (hereafter the Board), seeking termination of his probationary status in Iowa.

2. On April 19, 1994, the Board considered the Respondent's application and voted to reduce Respondent's probation from "duration of the license" to a date ending the 20th day of June, 1994.

THEREFORE IT IS AGREED that Respondent's probation shall be terminated on the 20th day of June, 1994. Further, the conditions of probation expire with the ending of the probation.

DATED this 19th day of April, 1994.

IOWA BOARD OF PHARMACY EXAMINERS



Marian L. Roberts, Chairperson

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

Re:)	
Pharmacist License of)	
DAVID L. PENNACCHIA)	STATEMENT OF CHARGES
License No. 16377)	
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 November 15, 1983, David L. Pennacchia, the Respondent, was issued license number 16377 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.

4. License number 16377 is current and active until June 30, 1999.

5. Respondent currently resides at 7800 Ittis Drive # D40, Urbandale, Iowa 50322.

6. Respondent is employed part-time as a staff pharmacist at Broadlawns Medical Center in Des Moines, Iowa. Respondent is also enrolled in the doctor of pharmacy program at Drake University.

7. Respondent's license to practice pharmacy in Iowa was disciplined by the Iowa Board of Pharmacy Examiners in 1991, based on the disciplinary action taken by the Arizona Board of Pharmacy. In the Arizona action, it was alleged that Respondent had diverted oral and injectable Schedule II controlled substances to his own use without prescriber authorization. Respondent and the Iowa Board reached an informal settlement on September 11, 1991, in which Respondent's license was revoked. The revocation was stayed and his license was placed on probation with conditions. On June 20, 1994, the probation was terminated and Respondent's license was restored to good standing.

COUNT I

The Respondent is charged with the inability to practice pharmacy with reasonable skill and safety by reason of chemical dependency in violation of 1997 Iowa Code §§ 147.55(4) and 155A.12(1) and 657 Iowa Administrative Code Sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(j), 9.1(4)(m), and 9.1(4)(u).

THE CIRCUMSTANCES

1. The Board has received information which alleges that since mid-1997 Respondent has experienced performance problems as a pharmacist and has exhibited characteristics of substance abuse.

2 Between May 23, 1997, and February 3, 1998, Respondent used increasing amounts of hydrocodone, a Schedule III controlled substance, and carisoprodol. The active metabolite of carisoprodol is meprobamate, a Schedule IV controlled substance.

3 On February 4, 1998, the Board received a report which alleged that Respondent was experiencing withdrawal symptoms from discontinuing the use of hydrocodone.

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 3rd day of March, 1998, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Phyllis A. Olson, Chairperson
Iowa Board of Pharmacy Examiners
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
Assistant 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
DAVID L. PENNACCHIA
License No. 16377
Respondent

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}

**STIPULATION
AND
INFORMAL SETTLEMENT**

COMES NOW the Iowa Board of Pharmacy Examiners (the Board) and David L. Pennacchia, R.Ph. (Respondent) and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (1997), enter into the following Stipulation and Informal Settlement of the contested case currently on file:

1. Respondent was issued a license to practice pharmacy on the 15th day of November, 1983, by reciprocity, as evidenced by license number 16377, which is recorded in the permanent records of the Board. The license was disciplined on September 11, 1991, and placed on probation with conditions as a result of Respondent's chemical dependency. The probation ended on June 20, 1994.

2. Iowa Pharmacist License Number 16377 issued to and held by Respondent is current until June 30, 1999.

3. Respondent was employed part-time as a staff pharmacist at Broadlawns Medical Center in Des Moines, Iowa. Respondent is currently not working as a pharmacist. Respondent is also enrolled in the doctor of pharmacy program at Drake University.

4. A Statement of Charges and Notice of Hearing was filed against Respondent on March 3, 1998.

5. The Board has jurisdiction over the parties and the subject matter herein.

6. Respondent's license shall be placed on probation for a period of five (5) years. If Respondent is employed as a pharmacist during the first six months of probation, Respondent shall work under the immediate supervision of another licensed pharmacist and shall not work unless the supervising pharmacist is present. During the entire period of probation, the following terms, conditions, and restrictions shall apply:

a. Respondent shall not consume alcohol.

b. Respondent shall not use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider. The Respondent shall inform any treating physician or other treating health care provider of his history of chemical dependency.

c. Respondent shall provide witnessed blood or urine specimens on demand by an agent of the Board. The specimens shall be used for alcohol and drug screening and to verify Respondent's compliance with any drug therapy ordered by Respondent's physician, all costs of which shall be paid by the Respondent.

d. Respondent shall comply with all recommendations of his physician, addictionist, and/or counselor.

e. Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Stipulation and Informal Settlement. The reports shall be filed not later than September 5, December 5, March 5, and June 5 of each year of the Respondent's probation. The quarterly reports shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time. Respondent's first quarterly report shall be filed with the Board not later than June 5, 1998.

f. Respondent shall attend meetings of support groups such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or other organized groups related to chemical dependency as recommended by his physician, addictionist, and/or counselor. If the Respondent does attend such meetings, he shall append to each quarterly report referred to in subparagraph 6-e above, statements signed or initialed by another person in attendance at the meetings attesting to the Respondent's attendance and continuing participation. The statement shall include the time, date, and location of the meetings attended.

g. Respondent shall make personal appearances before the Board or a Board committee upon request. The Respondent shall be given reasonable notice of the date, time, and location for any such appearances. Respondent's first appearance before the Board shall be at the Hotel Fort Des Moines in Des Moines, Iowa, on October 21, 1998.

h. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy and the distribution of controlled substances, and all state and federal criminal laws.

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

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

k. Respondent shall not be an owner of a pharmacy nor serve as the pharmacist in charge of a pharmacy.

l. Respondent shall actively participate in the Iowa Pharmacy Recovery Network (IPRN) program under the direct support of a pharmacist advocate.

m. Respondent shall 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 approval of this Stipulation and Informal Settlement by the Board, and within fifteen (15) days of undertaking new employment as

a pharmacist, Respondent shall cause his pharmacy employer to report to the Board in writing acknowledging that the employer has read this document and understands it.

7. In the event the Respondent leaves Iowa to reside or to practice outside the state, the Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside Iowa will not apply to the duration of this Informal Settlement. However, evidence that the Respondent has failed to abide by the terms of subparagraphs 6-a or 6-b of this Informal Settlement while outside the state shall constitute a violation of this Informal Settlement.

8. Should Respondent violate or fail to comply with any of the terms of conditions of this Informal Settlement, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized in Iowa Code chapters 272C and 155A and 657 IAC 9.1.

9. Upon full compliance with the terms and conditions of this Stipulation and Informal Settlement and upon expiration of the period of probation, the Respondent's Iowa pharmacist license shall be restored to its full privileges free and clear of the terms of probation.

10. This Stipulation and Informal Settlement is subject to approval of a majority of the full Board. If the Board fails to approve this Stipulation and Informal Settlement, it shall be of no force or effect to either party.

11. The Board's approval of this Stipulation and Informal Settlement shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

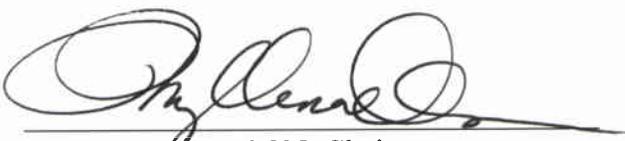
12. This Stipulation and Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 9th day of April, 1998.


DAVID L. PENNACCHIA, R.Ph.
Respondent

Subscribed and Sworn to before me on this 7th day of April, 1998.


NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

13. This Stipulation and Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 30th day of April, 1998.


PHYLLIS A. OLSON, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
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