



62 or over by newspaper. For certain prescriptions, Respondents charged consumers who would otherwise qualify for the senior discount the same price as non-seniors. Respondents did not clearly and conspicuously disclose to senior consumers that they were charged the same prices as non-seniors for these prescriptions.

The Attorney General has concluded that Respondents' practice of offering senior prescription discounts, but failing to charge lesser prices to seniors for some prescriptions without disclosing this limitation, may be deceptive and may constitute the failure to disclose a material fact with intent that others rely on the omission, in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16. The Attorney General acknowledges that Respondents deny any violation of the Consumer Fraud Act or any other law, and that the execution of this Assurance by the Respondents does not constitute an admission of wrongdoing or liability.

**WHEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Upon signing this Assurance, Plencorp. d/b/a Remsen Pharmacy and Philip Hall will either:
  - a. for all merchandise, offer consumers covered by any senior discount a final purchase price which is less, by whatever percentage or amount of discount is advertised, than the price for consumers not covered by the senior discount; or,

- b. clearly and conspicuously disclose any and all limitations on senior discounts in all instances in which Respondents advertise senior discounts, including, but not limited to, the fact that for certain prescriptions consumers who qualify for a senior citizen's discount are charged the same prescription purchase prices as those who do not qualify for the discount, or that discounts are not available for prescriptions involving third party reimbursement, if applicable; or,
- c. cease advertising and representing senior discounts.

"Advertising" a discount includes all manner of disseminating the information, including statements by Respondents or their agents to prospective customers.

2. Respondents agree to pay \$1,000.00 to the Attorney General to be used for public education relating to consumer fraud and for enforcement of the Iowa Consumer Fraud Act. This payment shall be made upon the signing of this Assurance by Respondents.

3. Any violation of this Assurance shall be a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16.

4. The Attorney General reserves the right to bring administrative and/or legal action against Respondents in connection with the subject of this Assurance if the terms of this Assurance are violated. In the event Respondents fail to

comply with this Assurance of Voluntary Compliance, the Attorney General may enforce the provisions of this Assurance under the principles of contract and/or the Iowa Consumer Fraud Act, Iowa Code § 714.16.

5. Respondents must abide by the terms of this Assurance and acknowledge receipt of a copy of it. In addition, Philip Hall agrees to provide copies of this Assurance as soon as reasonably possible to all current and future employees and successors and assigns of Plencorp. d/b/a Remsen Pharmacy.

Philip Hall  
Philip Hall, personally

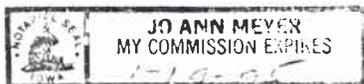
Executed before the undersigned Notary Public on this  
29<sup>th</sup> day of October, 1993, by  
Philip Hall.



Jo Ann Meyer  
Notary Public for the State of Iowa

Philip Hall  
President,  
Plencorp.  
d/b/a Remsen Pharmacy

Executed before the undersigned Notary Public on this  
29<sup>th</sup> day of October, 1993, by  
Philip Hall.



Jo Ann Meyer  
Notary Public for the State of Iowa

BONNIE J. CAMPBELL,  
ATTORNEY GENERAL OF IOWA

by: William L. Brauch  
WILLIAM L. BRAUCH  
Assistant Attorney General

Executed before the undersigned Notary Public on this  
8<sup>th</sup> day of November, 1993, by

William L. Brauch.

Maureen W. Rand  
Notary Public for the State of Iowa



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

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Re:	)	<b>COMPLAINT</b>
Pharmacy License of	)	<b>AND STATEMENT</b>
<b>REMSEN PHARMACY</b>	)	<b>OF CHARGES</b>
License No. 781	)	<b>AND</b>
Philip W. Hall, Jr.,	)	<b>NOTICE</b>
Pharmacist in charge,	)	<b>OF HEARING</b>
Respondent	)	

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*COMES NOW*, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 18th day of October, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against Remsen Pharmacy, a pharmacy licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent is licensed to operate a pharmacy at 111 South Washington Street, Remsen, Iowa 51050, and holds license number 781.

3. General pharmacy license number 781, issued in the name of Remsen Pharmacy, with Philip W. Hall, Jr., as pharmacist in charge, was renewed on December 15, 1993, and is current until December 31, 1994.

4. The Board has received a copy of a letter dated October 6, 1993, sent to Respondent by an Assistant Attorney General of the Iowa Department of Justice. The letter contains, in part, the following allegations:

...[I]t appears to us that your pharmacy engaged in a pricing practice relating to senior citizen discounts which constituted an unfair or deceptive practice under the Iowa Consumer Fraud Act. The objectionable practice consisted of offering a senior citizen discount but then charging seniors the same price as non-seniors were charged for items which would appear to be covered by the discount.

...

...[T]he Iowa Consumer Fraud Act authorizes this office to take legal action against sellers who engage in unfair or deceptive practices directed to consumers...

...

...[Y]our pharmacy continues to represent senior discounts on prescriptions without disclosing that, for certain prescriptions, seniors are charged the same prices as others. In May, 1993, one of our assistants posed as a consumer in making two calls to your pharmacy during which she was informed that your pharmacy has a ten percent discount on all prescription drugs, but was not told of any limitations on the discount. Thus, it appears your pharmacy still is not disclosing the limitations on senior discounts. In addition, your pharmacy advertised senior prescription discounts in the past without disclosing limitations...

5. The Board has received a copy of an "Assurance of Voluntary Compliance" which was signed by Respondent on October 29, 1993. The "Assurance of Voluntary Compliance" provides, in part, the following:

...Remsen Pharmacy has advertised or represented a senior citizen's discount program to consumers aged 62 or over by newspaper. For certain prescriptions, Respondents charged consumers who would otherwise qualify for the senior discount the same price as non-seniors. Respondents did not clearly and conspicuously disclose to senior consumers that they were charged the same prices as non-seniors for these prescriptions.

The Attorney General has concluded that Respondents' practice of offering senior prescription discounts, but failing to charge lesser prices to seniors for some prescriptions without disclosing this limitation, may be deceptive and may constitute the failure to disclose a material fact with intent that others rely on the omission, in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16. The Attorney General acknowledges that Respondents deny any violation of the Consumer Fraud Act or any other law, and that the execution of this Assurance by the Respondents does not constitute an admission of wrongdoing or liability.

Wherefore, the parties agree as follows:

1. Upon signing this Assurance, Plencorp. d/b/a Remsen Pharmacy and Philip Hall will either:

a. for all merchandise, offer consumers covered by any senior discount a final purchase price which is less, by whatever percentage or amount of discount is advertised, than the price for consumers not covered by the senior discount; or,

b. clearly and conspicuously disclose any and all limitations on senior discounts in all instances in which Respondents advertise senior discounts, including, but not limited to, the fact that for certain prescriptions consumers who qualify for a senior citizen's discount are charged the same prescription purchase prices as those who do not qualify for the discount, or that discounts are not available for prescriptions involving third party reimbursement, if applicable; or,

c. cease advertising and representing senior discounts.

"Advertising" a discount includes all manner of disseminating the information, including statements by Respondents or their agents to prospective customers.

2. Respondents agree to pay \$1,000.00 to the Attorney General to be used for public education relating to consumer fraud and for enforcement of the Iowa Consumer Fraud Act. This payment shall be made upon the signing of this Assurance by Respondents.

3. Any violation of this Assurance shall be a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16.

...

5. Respondents must abide by the terms of this Assurance and acknowledge receipt of a copy of it. In addition, Philip Hall agrees to provide copies of this Assurance as soon as reasonably possible to all current and future employees and successors and assigns of Plencorp. d/b/a Remsen Pharmacy.

6. Respondent is guilty of violations of 1993 Iowa Code sections 155A.15(2)(b) and 155A.15(2)(c) by virtue of the allegations contained in paragraphs 4 and 5.

1993 Iowa Code section 155A.15 provides, in part, the following:

2. ...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:...

b. Advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner.

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

7. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.5(1), 8.6, 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations contained in paragraphs 4 and 5.

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

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

8.5(1) Misrepresentative deeds. A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

657 Iowa Administrative Code section 8.6 provides the following:

Advertising. Prescription drug price and nonprice information may be provided to the public by a pharmacy so long as it is not false or misleading and not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer must be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy examiners.

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.

...

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 6 and 7 constitute grounds for which Respondent's license to operate a pharmacy in Iowa can be disciplined.

**WHEREFORE**, the undersigned charges that Respondent has violated 1993 Iowa Code sections 155A.15(2)(b) and 155A.15(2)(c) and 657 Iowa Administrative Code sections 8.5(1), 8.6, 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u).

**IT IS HEREBY ORDERED**, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Philip W. Hall, Jr., appear on behalf of Remsen Pharmacy before the Iowa Board of Pharmacy Examiners on Tuesday, January 24, 1995, at 1:00 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 discipline the license to operate a pharmacy issued to Remsen Pharmacy on December 15, 1993, 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 its 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 disciplinary action.

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 representing the public interest in these proceedings. Information regarding the hearing may be obtained from Linny C. Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). Copies of all filings with the Board should also be served on counsel.

**IOWA BOARD OF PHARMACY EXAMINERS**



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Lloyd K. Jessen  
Executive Secretary/Director

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

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Re: Pharmacy License of	}	
<b>REMSEN PHARMACY</b>	}	<b>STIPULATION</b>
License No. 781	}	<b>AND</b>
Philip W. Hall, Jr.,	}	<b>CONSENT ORDER</b>
Pharmacist in charge	}	
Respondent	}	

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On this 16th day of November, 1994, the Iowa Board of Pharmacy Examiners and Philip W. Hall, Jr., on behalf of Remsen Pharmacy, 111 South Washington Street, Remsen, 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 Complaint and Statement of Charges and Notice of Hearing filed against Respondent on October 18, 1994, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That Respondent was issued a license to operate a pharmacy on the 15th day of December, 1993, as evidenced by Pharmacy License Number 781, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.

2. That Iowa Pharmacy License Number 781 issued to and currently held by Respondent is current and in full force until December 31, 1994.

3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on October 18, 1994.

5. Respondent does not admit the allegations set forth in the complaint. The Respondent agrees that the Board may treat the allegations as true solely for the purpose of this Stipulation and Consent Order.

6. Respondent agrees to accept a citation and warning for the alleged advertising violations and deceptive practices set forth in the complaint.

7. Respondent agrees to fully comply with the provisions of 657 Iowa Administrative Code sections 8.5(1) and 8.6, or successor rules as may be adopted by the Board. Respondent also agrees to comply with all of the terms of the Iowa Attorney General's "Assurance of Voluntary Compliance" which Respondent signed on October 29, 1993.

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.

9. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 22 day of Oct, 19994.



PHILIP W. HALL, JR.,  
Pharmacist in charge,  
Remsen Pharmacy  
Respondent

Subscribed and Sworn to before me on this 22<sup>nd</sup>-day of October, 1997.



Jo Ann Meyer  
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 16 day of November, 1997.

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

cc: Linny Emrich  
Assistant Attorney General