

THE BOARD OF PHARMACY EXAMINERS

OF THE STATE OF IOWA

RE: PHARMACIST LICENSE OF : EMERGENCY ORDER:
JOHN MARK ROTH (16183) : LICENSE SUSPENSION

NOW on this 9th day of November 1984, the chairman of the Board of Pharmacy Examiners has reviewed the following evidence:

1. That John M. Roth was fired as the pharmacist-manager of Hartig Pharmacy and Home Care, 1690 JFK Road, Dubuque, Iowa, on October 22, 1984.

2. That the reason for the firing was based upon evidence that John M. Roth had diverted to his own use, monies which belonged to Hartig Drug Stores Corporation.

3. That on October 27, 1984, John M. Roth did admit, in a conversation with Alan J. Henricks, vice president and secretary of Hartig Drug Stores Corporation, to the diverting of quantities of the drugs, Cocaine, Dilaudid, and Morphine for his own personal use.

4. That John M. Roth admitted in his conversation with Alan Henricks on October 27, 1984, that the diversion of these drugs began approximately six months prior and that he was injecting between 16 and 20 mg of Dilaudid per day at the end of the period.

5. That John M. Roth admitted to Alan Henricks that he had a previous history of drug abuse and addiction and that he was fired from his previous employment for taking the drugs Dilaudid and Percodan without benefit of a prescription order.

6. That John M. Roth had contacted pharmacy Investigator E. Ray Shelden on October 29, 1984, with information that he had diverted drugs from Hartig Pharmacy and Home Care for his own personal use.

7. That John M. Roth told Investigator Shelden that he obtained the Dialudid by substituting a noncontrolled drug in its place on prescription orders. Specifically, Mr. Roth indicated that prescription orders calling for Dilaudid suspension 12 mg/5cc were dispensed using Naprosyn instead of Dilaudid.

8. That an audit of the records at Hartig Pharmacy and Home Care is being conducted and that a report of that audit is

forthcoming.

9. That samples of Schedule II drugs obtained from Hartig Pharmacy and Home Care, along with medications dispensed to patients of the pharmacy have been submitted to the Department of Public Safety, Criminalistic Laboratory, for analysis.

Based upon the above evidence, the chairman of the Iowa Board of Pharmacy Examiners, acting for the Board, finds that the public health and safety would be jeopardized if John Mark Roth were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. The chairman finds that the public health and safety therefore makes emergency summary license suspension imperative and so directs the executive secretary to issue such order.

IT IS HEREBY ORDERED, pursuant to the authority of Chapter 17A.18(3) Code of Iowa 1983, that the license of John Mark Roth to practice pharmacy be temporarily suspended until such time as a hearing can be conducted.

IT IS FURTHER ORDERED, that John Mark Roth appear before the Iowa Board of Pharmacy Examiners on February 12, 1985, at 9:30 a.m. in the State Board Conference Room, second floor, Grimes State Office Building, Capitol Complex, Des Moines, Iowa.

The order for temporary suspension and notice of hearing are issued pursuant to the authority granted the Iowa Board of Pharmacy Examiners under Chapters 17A, 155, 204 and 258A, Code of Iowa 1983.

November 9, 1984

Norman C. Johnson
Norman C. Johnson
Executive Secretary

BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the Complaint
and Statement of Charges Against

COMPLAINT AND

JOHN MARK ROTH, Pharmacist
Respondent

STATEMENT OF CHARGES

Comes now, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 10th day of April 1985, and files this Complaint and Statement of Charges against John M. Roth, a pharmacist licensed pursuant to Iowa Code Chapter 155, and alleges:

1. That John F. Rode, chairperson; Margo L. Underwood, vice chairperson; Rollin C. Bridge; Jerry M. Hartleip; Melba L. Scaglione; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.
2. That Respondent is a resident of Platteville, Wisconsin, and was issued license number 16183 to practice pharmacy in Iowa on August 10, 1982.
3. That Respondent was employed as pharmacist manager of Hartig Pharmacy and Home Care, 1690 JFK Road, Dubuque, Iowa, from April 25, 1983, to October 22, 1984.
4. That Hartig Pharmacy and Home Care was formerly licensed as Holscher's Apothecary, with the name change occurring on May 7, 1984.
5. That Respondent was fired from his position as pharmacist manager of Hartig Pharmacy and Home Health Care on October 22, 1984.
6. That Respondent's license to practice pharmacy was suspended by Emergency Order of the Board on November 9, 1984.
7. That Respondent admitted to having stolen \$1800 from Hartig Pharmacy and Home Health Care.
8. That Respondent has admitted to having a drug and alcohol problem prior to his employment at Hartig Pharmacy and Home Health Care, and during the time he was employed there.
9. That an audit of the records of Hartig Pharmacy and Home Health Care was conducted between October 30, 1984, and November 8, 1984, by E. Ray Shelden and Holger A. Christensen, who are duly authorized agents of the board.
10. That the audit covered the period April 23, 1983, through October 24, 1984.
11. That the results of that audit revealed the following:
 - a. Shortages of 27 Dilaudid 1mg tablets, a Schedule II controlled substance.
 - b. Shortages of 98 Dilaudid 2mg tablets, a Schedule II controlled substance.
 - c. Shortages of 100 Dilaudid 3mg tablets, a Schedule II controlled substance.
 - d. Shortages of 228 Dolophine 5mg tablets, a Schedule II controlled substance.
 - e. Shortages of 342 Dolophine 10mg tablets, a Schedule II controlled substance.
 - f. Shortages of 5.3 gms of Cocaine, a Schedule II controlled substance.

12. That an audit of the records at a residence for retired nuns, called Marian Hall, 1050 Carmel Drive, Dubuque, Iowa, revealed discrepancies between records of Hartig Pharmacy and Home Care and records of receipt at Marian Hall.
13. That the audit involved patient Sr. Marie St. James Montavon, and covered the period December 24, 1983, to July 11, 1984.
14. That the results of that audit revealed the following:
 - a. Shortages of 252 Dilaudid 2mg tablets, a Schedule II controlled substance.
 - b. Shortages of 110 Dilaudid 3mg tablets, a Schedule II controlled substance.
 - c. Shortages of 317 Dilaudid 4mg tablets, a Schedule II controlled substance.
15. That Respondent altered the signed receipts from Marian Hall for medications delivered to Sr. Montavon.
16. That chemicals and compounded drugs at Hartig Pharmacy and Home Care were adulterated by Respondent.
17. That laboratory analysis of these chemicals and compounded drugs revealed the following:
 - a. Rx N0475 dispensed by John Roth to patient Greta Hummel on October 19, 1984, called for a 240cc mixture of Morphine 10mg/5cc and Cocaine 10mg/5cc. Analysis showed Morphine 6.3mg/5cc and no Cocaine. Rx N0475 was shorted 177.6mg of Morphine and 480mg of Cocaine.
 - b. Rx N0461 dispensed by John Roth to patient Jeffrey Engelhardt on August 10, 1984, called for a 960cc suspension of Dilaudid 12mg/5cc. Analysis showed only 6mg of Dilaudid per 5cc. Rx N0461 was shorted 1152mg of Dilaudid.
 - c. A 120cc stock bottle labeled as containing Morphine Sulfate 10mg #12 (120mg) and Codeine Sulfate 120mg in aromatic elixir was found to contain 84mg of Codeine. A shortage of 36mg of Codeine.
 - d. A 120cc stock bottle of Dilaudid Solution 1mg/cc was found to contain no Dilaudid. Indicating a shortage of 120mg of Dilaudid.
 - e. A stock bottle of Cocaine Hydrochloride flakes which contained 7.6gm of a white powdery substance was found to be 100% lactose.
 - f. A 480cc stock bottle labeled as Dilaudid Suspension 12mg/5cc (1152mg) was analyzed as containing 0.745mg/cc of Dilaudid (357.6mg) plus an undetermined amount of Naproxen. A shortage of 794.4mg of Dilaudid.
 - g. A 960cc stock bottle labeled as Dilaudid Suspension 12mg/5cc (2304mg) was analyzed as containing 0.67mg/cc of Dilaudid (643.2mg) plus an undetermined amount of Naproxen. A shortage of 1660.8mg of Dilaudid.
 - h. A 480cc stock bottle labeled as Dilaudid Suspension 12mg/5cc (1152mg) was analyzed as containing 0.75mg/cc of Dilaudid (360mg) plus an undetermined amount of Naproxen. A shortage of 792mg of Dilaudid.
 - i. A stock bottle of Cocaine Hydrochloride powder which contained 2.1gms of a white powdery substance was found to be 100% lactose.
18. That Respondent admitted in a telephone conversation with Pharmacy Investigator E. Ray Sheldon on October 29, 1984, that he was responsible for the shortages of Dilaudid and Cocaine detailed in paragraph 17.

19. That Respondent has signed statements indicating that he diverted Cocaine, Dilaudid and Morphine from Hartig Pharmacy and Home Care for his personal use.
20. That Respondent is guilty of violations of Iowa Code Sections 155.13(3) and (8), 155.20, 155.30, 204.306, 204.401(1)"a" by virtue of the allegations in paragraphs 11, 14, 17, 18 and 19.

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

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

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

8. Violations of the provisions of this chapter."

Section 155.20 reads as follows:

"...nor shall any person licensed under this chapter sell or dispense any prescription drug to any person other than a licensed pharmacy or physician without prescription."

Section 155.30 reads as follows:

"...any person who violates a provision of Section 155.29 or who sells, gives away or administers to another person any prescription drug shall be guilty of a public offense...."

Section 204.306 reads as follows:

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

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

Part 1304.03 reads, in part, as follows:

"Persons required to keep records and file reports.

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

Part 1304.04 reads, in part, as follows:

"Maintenance of records and inventories.

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

Part 1304.11 reads, in part, as follows:

"General requirements for inventories.

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

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

"...It is unlawful for any person to...deliver...a controlled substance...any person who violates this subsection with respect to...(a) a substance classified in...schedule...II which is a narcotic drug, is guilty of a Class "C" felony."

21. That Respondent is guilty of a violation of Rule §620--10.1(4)"d(2)," "h," "j," and "u."

Rule 10.1(4) reads as follows:

"10.1(4) The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1000.00, when the board determines that the licensee or registrant is guilty of the following acts or offenses:

d. Habitual...addiction to the use of drugs. Habitual...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.

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

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

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

22. That paragraphs 20 and 21 constitute grounds for which Respondent's license to practice pharmacy in the state of Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that John M. Roth has violated Section 155.13(3); 155.13(8); 155.20; 204.306; and 204.401(1)"a" of the Code of Iowa, and Rule 620--10.1(4) "d(2)," "h," "j," and "u" of the Iowa Administrative Code.

IT IS HEREBY ORDERED that John M. Roth appear before the Iowa Board of Pharmacy Examiners on May 14, 1985, at 10:00 a.m. in the State Board Conference Room, Second Floor, Grimes State Office Building, 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 John M. Roth on the 10th day of August 1982, or take whatever additional steps they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS


Norman C. Johnson
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of :
JOHN M. ROTH, Pharmacist : STIPULATION
License No. 16183 :

WHEREAS, John M. Roth, hereinafter referred to as the Licensee, has had certain allegations made against him by the Board of Pharmacy Examiners, hereinafter referred to as the Board, concerning his professional conduct as a pharmacist, and

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

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

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

1. That the Board, by and through its member, Margo L. Underwood, and the Licensee, by and through his attorney, John F. Hallanger, have entered into settlement discussions and have agreed upon a disposition of this matter.
2. That the Licensee desires to avoid the uncertainty and the expense of a trial and desires to consent to the disciplinary action to be taken by the Board as specified in paragraph 4, infra.
3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1985 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1985 Code of Iowa and the rules of the Board of Pharmacy Examiners promulgated in accordance and pursuant thereto, particularly Section 17A.12 as it relates to contested cases and provides notice of hearing and records, and Section 17A.18, as it relates to the requirements concerning notice of the suspension and revocation of licenses.
4. It is the understanding of both the Licensee and the Board that they will enter into an Order and Consent to Order which will provide for the following:
 - a. License #16183 issued to Licensee is suspended for a period of twenty-four (24) months retroactive to November 9, 1984, with the last nine (9) months stayed provided Licensee complies with all of the conditions of this stipulation agreement.

- b. Licensee to be placed on probation for a period of five (5) years beginning February 9, 1986.
- c. Licensee shall participate fully in the dePaul Impaired Professional Program for a period of two years beginning January 1, 1986, and ending January 1, 1988. Full participation includes:
 1. Regular weekly attendance at AA meetings;
 2. Group and/or individual therapy as needed and as determined by the program director;
 3. Weekly random urine screens at Licensee's cost;
 4. Quarterly reports to be submitted by the program director beginning April 1, 1986, and ending on January 1, 1988.
- d. Licensee shall submit written quarterly reports to the Board beginning May 1, 1986, and ending on February 1, 1991. Should the final report not be made as directed, the period of probation shall be extended until such time as the report is received.
- e. Licensee shall provide evidence of efforts to maintain his skill and knowledge as a pharmacist. Compliance with the Board's continuing education rule shall satisfy this requirement.
- f. Licensee shall notify the Board as to any change in employment or residence.
- g. Licensee shall notify all present and prospective employers of the decision in this matter and the terms, conditions and restrictions imposed upon him by this agreement. Within 30 days of the effective date of this agreement and within 15 days of his undertaking new employment, Licensee shall cause his employer to report to the Board in writing acknowledging that the employer has read the terms of this stipulation agreement.
- h. Should Licensee return to Iowa to practice pharmacy he shall not supervise any registered intern and shall not perform any of the duties of a preceptor during the course of his suspension and probation.
- i. Should Licensee violate any term of this agreement, the Board, after giving Licensee notice and an opportunity to be heard, may revoke probation and carry out the order for suspension which was stayed. If a petition to revoke probation is filed against Licensee during probation, the Board shall have continuing jurisdiction until the matter is final and the period of probation shall be extended until the matter is final.
- j. Upon successful completion of probation, Licensee's license to practice pharmacy in Iowa shall be fully restored.

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



John M. Roth, Licensee



John F. Rode, Chairperson
Iowa Board of Pharmacy Examiners

