

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	)	COMPLAINT
THOMAS P. RYAN	)	AND
License No. 15756	)	STATEMENT
Respondent	)	OF CHARGES
	)	AND
	)	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 8th day of March, 1991, and files this Complaint and Statement of Charges against John M. Lichty, 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 John F. Rode are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on July 24, 1980, by examination.

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

4. Respondent is self-employed as a part-owner and the pharmacist-in-charge of the Family Pharmacy located at 44 First Avenue N.E., LeMars, Iowa 51031.

5. Respondent currently resides at 37 Sixth Avenue S.E. in LeMars, Iowa 51031.

6. On October 10, 1990, the Board received an investigative report from Pharmacy Investigator Morrell A. Spencer. That report alleges the following:

a. On February 19, 1990, Horst G. Blume, M.D., issued a written prescription for #100 Tylenol with Codeine #4, a schedule III controlled substance, for an adult male patient with instructions to take one tablet three times daily. The prescription authorized five refills and contained a notation that the prescription was "due 2-28-90." This prescription was filled at Family Pharmacy in LeMars and was assigned prescription number 444406. Respondent exceeded the prescriber's

directions by dispensing refills of prescription number 444406 with the generic product (#100 APAP with Codeine 300/60, a schedule III controlled substance) on March 5, 1990, and again on March 12, 1990.

b. On March 27, 1990, Horst G. Blume, M.D., issued another written prescription for #40 Tylenol with Codeine #4, a schedule III controlled substance, for the same adult male patient with instructions to take one tablet three times daily as needed for pain. The prescription did **not** authorize any refills. It was filled at Family Pharmacy in LeMars on March 30, 1990, and was assigned prescription number 446722. Respondent dispensed a refill of #40 tablets of the generic product (APAP with Codeine 300/60, a schedule III controlled substance) without prescriber authorization on April 14, 1990.

7. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(5), 204.308(3), and 204.402(1)(a) by virtue of the information and allegations contained in paragraph 6.

1991 Iowa Code section 155A.12 provides, in part, the following:

...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. 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 204.308 provides, in part, the following:

3. ...[A] controlled substance included in schedule III or IV, which is a prescription drug... shall not be dispensed without a written or oral prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:
a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the information and allegations contained in paragraph 6.

657 Iowa Administrative Code section 9.1 provides, in part, the following:

4. 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.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

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 7 and 8 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), 204.308(1), and 204.402(1)(a) and 657 Iowa Administrative Code sections 9.1(4)(b), 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 Thomas P. Ryan appear before the Iowa Board of Pharmacy Examiners on Tuesday, April 16, 1991, at 9:00 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 Thomas P. Ryan on July 24, 1980, 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 K. Jessen
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of :
THOMAS P. RYAN : **STIPULATION**
License No. 15756 :
Respondent :

WHEREAS, Thomas P. Ryan, 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, 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, through its representative Marian L. Roberts, and the Licensee 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.

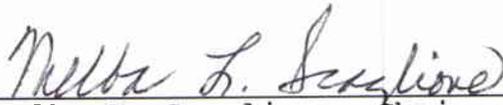
3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1991 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1991 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. Licensee is warned to dispense controlled substances in conformance with state and federal controlled substance law and to fill and refill prescriptions for controlled substances only as authorized by the prescriber.

b. Within thirty (30) days of the date that Licensee accepts and signs this Stipulation agreement and the accompanying Order and Consent to Order, Licensee shall remit a \$500.00 civil penalty to the Board office.

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



Melba L. Scaglione, Chairperson
Iowa Board of Pharmacy Examiners



Thomas P. Ryan

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of : **ORDER**
THOMAS P. RYAN : **AND**
License No. 15756 : **CONSENT TO ORDER**
Respondent :

The Iowa Board of Pharmacy Examiners, having been advised of the allegations that Thomas P. Ryan has conducted himself in a manner which could cause his license to practice pharmacy to be suspended, and the Board of Pharmacy Examiners through a Board Member and said Thomas P. Ryan, having entered into a Stipulation representing their mutual informed consent as to the waiver of the provisions found in the Iowa Administrative Code appearing at Chapter 17A, particularly Section 17A.12 and Section 17A.18, Code of Iowa 1991, in regards to Notice and Hearing, the parties to this action agree to an informal settlement of this matter, namely that the license of Thomas P. Ryan be disciplined according to the conditions attached hereto.

ORDER

IT IS THEREFORE ORDERED, subject to the consent of Thomas P. Ryan to be contained herein to this Order, that the license of Thomas P. Ryan to practice pharmacy be disciplined according to the conditions outlined in the Stipulation attached hereto and made part of this Order.

Date

May 13, 1991

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

CONSENT TO ORDER

I, Thomas P. Ryan, hereby consent to the Order set forth above, waive my right to a hearing in this matter, and thereby specifically waive a right to confrontation, cross-examination of witnesses, production of evidence, making of a record and judicial review.

Date

5-16-91

Thomas P. Ryan
Thomas P. Ryan

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	EMERGENCY ORDER
THOMAS P. RYAN	}	AND
License No. 15756	}	COMPLAINT AND
Respondent	}	STATEMENT OF CHARGES
	}	AND
	}	NOTICE OF HEARING

NOW on this 30th day of January 1992, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on July 24, 1980, by examination.

2. Respondent is the owner of Family Pharmacy located at 44 First Avenue N.E. in LeMars, Iowa, where he is currently self-employed as a pharmacist but not as the pharmacist in charge.

3. On January 29, 1992, the Board received a report from Pharmacy Investigator Morrell A. Spencer which alleges that the Respondent obtained, without authorization, significant amounts of various controlled substances including Acetaminophen with Codeine 60mg tablets, Diazepam 5mg tablets, Propoxyphene Hydrochloride 65mg capsules, Propoxyphene Compound-65 capsules, and Fiorinal with Codeine 30mg capsules from the Family Pharmacy in LeMars, Iowa, between May 3, 1991, and January 9, 1992, for his own personal use. The report also alleges that the Respondent obtained, without authorization, other prescription drugs (non-controlled substances) for his own personal use. It is also alleged that Respondent's unauthorized use of these drugs has impaired his ability to practice pharmacy with reasonable skill and safety. In addition, Respondent is alleged to have falsified prescription records at Family Pharmacy and to have diverted controlled substances to himself by dispensing less than the quantity called for by the prescription order and indicated on the label of the patient's prescription vial.

4. A complaint and statement of charges was previously issued to Respondent on March 8, 1991, in which it was alleged that he had dispensed several refills of Acetaminophen with Codeine 60mg tablets, a Schedule III controlled substance, without prescriber authorization or in excess of prescriber authorization. In an informal settlement agreement effective May 16, 1991, Respondent agreed to pay a civil penalty of \$500.

Respondent also received the following public warning:

Licensee is warned to dispense controlled substances in conformance with state and federal controlled substance law and to fill and refill prescriptions for controlled substances only as authorized by the prescriber.

5. Respondent currently resides at 37 Sixth Avenue S.E., LeMars, Iowa 51031.

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

7. The information contained in paragraphs 3 and 4, together with other confidential information in the possession of the Board, indicates that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa and thereby have access to controlled substances.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Thomas P. Ryan were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. Therefore, the Board finds that the public health, safety, and welfare makes emergency summary license suspension imperative, and so directs the Executive Secretary/Director to issue such order.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Thomas P. Ryan to practice pharmacy in Iowa be temporarily suspended until such time as a hearing before the Board of Pharmacy Examiners can be conducted.

With this notice, the Board also directs the Executive Secretary/Director of the Iowa Board of Pharmacy Examiners to file a Complaint and Statement of Charges against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges, the secretary/director alleges that:

8. 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.

9. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(3), 204.402(1)(a), and 204.403(1)(c) by virtue of the allegations in paragraphs 3 and 4.

Iowa Code section 155A.12 provides, in part, the following:

...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. 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.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 drug by:

a. Fraud, deceit, misrepresentation, or subterfuge....

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

3. ...[A] controlled substance included in schedule III or IV, which is a prescription drug ... shall not be dispensed without a written or oral prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations in paragraphs 3 and 4.

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.

....

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

...

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

...

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 9 and 10 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.23(1)(a), 204.308(3), 204.402(1)(a), and 204.403(1)(c), and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), 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 Thomas P. Ryan appear before the Iowa Board of Pharmacy Examiners on Tuesday, March 3, 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 Thomas P. Ryan on July 24, 1980, 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 K. Jessen
Executive Secretary/Director

Informal Settlement, and placed on probation subject to the following terms:

a. Through March 31, 1992, Respondent shall limit his practice as a pharmacist to no more than four (4) hours on any day, and to no more than twenty (20) hours during any week (Sunday through Saturday), with all employment to take place at the Family Pharmacy, Le Mars, Iowa.

b. Through March 31, 1992, Respondent shall provide to the Board by Tuesday of each week a report indicating the days and hours worked as a pharmacist during the preceding week. The report shall be signed by the Respondent and by the pharmacist-in-charge of the pharmacy.

c. Respondent shall continue with his Daytime Outpatient Treatment at St. Luke's Gordon Recovery Center, Sioux City, Iowa, until discharged.

6. Effective April 1, 1992, the restrictions of paragraph 5 are lifted and Respondent's license shall be placed on probation for a period of five (5) years. During the probationary period the Respondent shall:

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

b. 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, information regarding compliance with paragraph "c", and

any further information deemed necessary by the Board from time to time.

c. Comply with after-care treatment recommendations of St. Luke's Gordon Recovery Center, Daytime Outpatient Treatment, Sioux City, Iowa, including any recommended attendance at Alcoholics Anonymous or Narcotics Anonymous.

d. Immediately submit to random biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.

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

f. Should Respondent cease to be self-employed, 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.

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

7. As an additional term of probation, on or before April 1, 1992, Respondent shall provide to the Board a favorable discharge report from St. Luke's Gordon Recovery Center, Daytime Outpatient Treatment, Sioux City, Iowa, which shall include specific and formal recommendations for after-care treatment.

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

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

9. Respondent shall take and successfully pass the Federal Drug Law Exam (FDLE) with a score of 75 within one (1) year after approval of this Stipulation and Informal Settlement. Failure to pass FDLE within the one year period is a probation violation.

10. Respondent is assessed a civil penalty in the amount of \$2500. Within thirty (30) days after approval of this Stipulation and Informal Settlement by the Board, Respondent shall pay at least a portion of the civil penalty, but not less than \$500, by delivering a check made payable to the Treasurer of Iowa to the Executive Secretary of the Board. Subsequent payments of not less than \$250 shall be similarly paid by delivering a check to the Board by the first day of each month, commencing May 1, 1992. The civil penalty shall be deposited into the general fund.

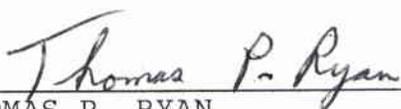
11. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may take further disciplinary action against Respondent. If a violation of probation is charged, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

13. 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.

14. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 5th day of March, 1992. (Original submitted in confirmation of faxed submission delivered March 4, 1992.)



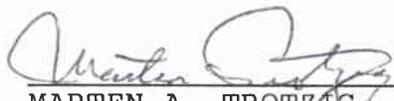
THOMAS P. RYAN
Respondent

Signed and sworn to before me this 5 day of March, 1992.



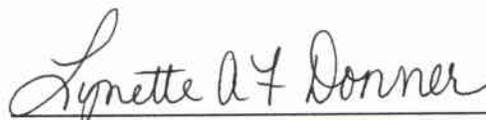
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

Approved as to form:



MARTEN A. TROTZIG
Bauerly, Hemmingson & Trotzic
Attorneys at Law
104 Central Ave., N.E.
Le Mars, Iowa 51031

ATTORNEY FOR RESPONDENT



LYNETTE A. F. DONNER
Assistant Attorney General
Iowa Department of Justice
Second Floor, Hoover Bldg.
Des Moines, Iowa 50319

ATTORNEY FOR THE
STATE INTEREST

15. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 4th day of March, 1992. (Date of formal Board acceptance pending receipt of original.)

Melba L. Scaglione

MELBA L. SCAGLIONE, Chairperson
Iowa Board of Pharmacy Examiners

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2008-65
Pharmacist License of	)	Case No. 2008-110
THOMAS P. RYAN	)	Case No. 2008-129
License No. 15756,)	
Respondent	)	STATEMENT OF CHARGES
)	

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

1. He is the Executive Director of the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 155A and 272C (2009).
3. Thomas P. Ryan (hereinafter, "Respondent") was originally licensed as a pharmacist in Iowa, following examination, on July 24, 1980, as evidenced by license number 15756.
4. Respondent's pharmacist license number 15756 is current and active until June 30, 2011 subject to the laws of the State of Iowa the rules of the Board.
5. Respondent's address of record is 311 Fourth Avenue SE, LeMars, Iowa 51031.
6. Respondent was, at all times material to this statement of charges, employed as a pharmacist at Hy-Vee Pharmacy 1382, located at 1201 12th Avenue SW, LeMars, Iowa 51031.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2009) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

COUNT II – CIRCUMVENTING COUNSELING REQUIREMENTS

Respondent is charged under Iowa Code § 155A.12(1) (2009) and 657 Iowa Administrative Code § 36.1(4)(w) with a attempting to circumvent patient counseling requirements.

B. CIRCUMSTANCES

On July 9, 2008 an investigation was commenced, revealing the following:

1. At all times material to the investigation, Respondent was employed a pharmacist at the Hy-Vee pharmacy in LeMars, Iowa.
2. On March 26, 2008, a patient was prescribed Toprol XL 200mg. On the same day, the patient was dispensed Topamax 200mg by the Hy-Vee pharmacy in LeMars. The medication was dispensed in a container labeled as Toprol XL 200mg.
3. A technician filled the prescription; Respondent was the verifying pharmacist. Respondent did not counsel the patient regarding Toprol, which was a new medication for the patient.

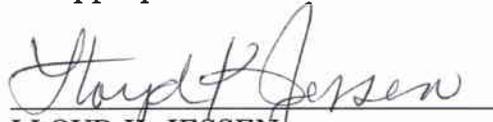
On October 21, 2008 an investigation (#2008-110) was commenced, revealing the following:

4. On October 15, 2008, a patient phoned the Hy-Vee pharmacy seeking an early refill of her prescription for hydrocodone APAP 500. The patient's prescriber had provided the pharmacy specific instructions with the prescription: "must last one month. Do not fill early."
5. Despite the prescriber instructions, 90 tablets were dispensed to the patient on October 15, 2008 – 13 days before the authorized refill date.
6. Respondent was the dispensing pharmacist.

On December 17, 2008 an investigation (#2008-129) was commenced, revealing the following:

7. A patient, who had received a prescription for 15 tablets of Tylenol 3, was dispensed 15 tablets of Furosemide 40 mg instead.
8. Respondent was the dispensing pharmacist.

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 1st day of June 2010, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


VERNON H. BENJAMIN, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

Ryan-SOC 5-10

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case Nos. 2008-96
Pharmacist License of	)	2008-110 and 2008-129
THOMAS P. RYAN)	
License No. 15756	)	STIPULATION
Respondent	)	AND
	)	CONSENT ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2009), the Iowa Board of Pharmacy (hereinafter, "Board") and Thomas P. Ryan (hereinafter, "Respondent"), enter into the following Stipulation and Consent Order settling a licensee disciplinary proceeding currently pending before the Board.

Allegations contained in a Statement of Charges against Respondent shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. Respondent was issued a license to practice pharmacy in Iowa on July 24, 1980, following examination, as evidenced by Pharmacist License Number 15756 which is recorded in the permanent records of the Board.
2. The Iowa pharmacist license issued to and held by Respondent is active and current until June 30, 2012.
3. The Board has jurisdiction over Respondent and jurisdiction over the subject matter of these proceedings.
4. A Statement of Charges was filed against Respondent by the Board on June 1, 2010.
5. Respondent was, at all times material to the Statement of Charges, employed as a pharmacist at Hy-Vee Pharmacy 1382, 1201 12th Avenue SW, LeMars, Iowa 51031.

6. Respondent has chosen not to contest the allegations set forth in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

7. Upon the Board's approval of this Stipulation and Consent Order, Respondent's Iowa pharmacist license shall be placed on probation. Probation is granted under the following conditions, which Respondent agrees to follow:

a. The period of probation shall be indefinite, provided, however, that after successful completion of five (5) years of probation, Respondent may petition the Board for termination of probation. Only those time periods during which Respondent is employed as a pharmacist shall count toward exhaustion of the probationary term.

b. Within nine (9) months after the date of the Board's approval of this Stipulation and Consent Order, Respondent must take and pass the NAPLEX examination and the Multi-State Pharmacy Jurisprudence Exam (MPJE), Iowa edition.

c. Respondent shall inform the Board, in writing, of any change of home address, place of employment, home telephone number, or work telephone number, within ten (10) days of such a change.

d. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer, and any pharmacist-in-charge he works under, to report to the Board in writing

acknowledging that the employer and the pharmacist-in-charge have read this document and understand it. It shall be Respondent's responsibility to assure that these reports are provided to the Board.

e. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing his performance as a pharmacist during Respondent's probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.

f. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy.

g. Respondent shall comply with such other reasonable terms as the Board may wish to impose.

8. Upon the Board's approval of this Stipulation and Consent Order, Respondent shall be assessed a civil penalty in the amount of \$10,000. This civil penalty shall be paid promptly after the Board's approval of this Stipulation and Consent Order, by check made payable to the Treasurer of Iowa and mailed to the executive director of the Board. All civil penalty payments shall be deposited into the State of Iowa general fund.

9. Should Respondent violate or fail to comply with any of the terms and conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2009), and 657 IAC § 36.

10. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all right to a

contested case hearing on the allegations contained in the Statement of Charges, and waives any objection to this Stipulation and Consent Order.

11. The State's legal counsel may present this Stipulation and Consent Order to the Board.

12. This Stipulation and Consent Order is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

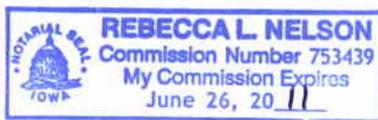
13. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board.

This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 17 day of January 2011.



THOMAS P. RYAN, R.Ph.
Respondent

Subscribed and sworn to before me by Thomas P. Ryan on this 17 day of January 2011.





NOTARY PUBLIC IN AND FOR
THE STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 8th day of March 2011.


VERNON H. BENJAMIN, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

W.E. Collins
38 First Avenue NW,
P.O. Box 526
Le Mars, Iowa 51030

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BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2008-96
Pharmacist License of)	2008-110 and 2008-129
THOMAS P. RYAN)	
License No. 15756,	)	STATEMENT OF CHARGES
Respondent.)	

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

1. He is the Executive Director for the Iowa Board of Pharmacy (hereinafter, "Board") 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 (2011).
3. On July 24, 2008 the Board issued Thomas P. Ryan ("Respondent"), after examination, a license to engage in the practice of pharmacy as evidenced by license number 15756, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2013.
5. Respondent's address of record is 311 Fourth Avenue Southeast, LeMars, Iowa 51031.
6. At all times material to this statement of charges, Respondent was employed as a pharmacist at LeMars Family Pharmacy, 44 First Avenue NE, LeMars, Iowa 51031.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2011) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by Respondent's substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

COUNT II – FAILURE TO COMPLY WITH BOARD ORDER

Respondent is charged under Iowa Code § 272C.3(2)(a) (2011) with a failure to comply with terms found in the Stipulation and Consent Order entered into by Respondent and the Iowa Board of Pharmacy on March 8, 2011, which terms required Respondent to,

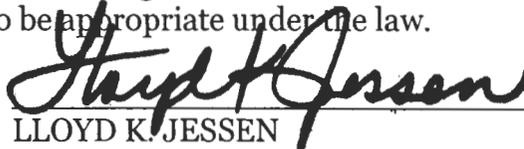
among other things, take and pass the NAPLEX exam within 9 months of the Board's approval of the order.

B. CIRCUMSTANCES

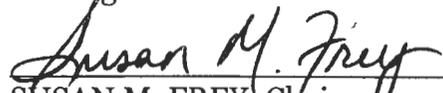
An investigation was commenced on March 5, 2012, which revealed the following:

1. At all times material to this Statement of Charges, Respondent was employed as a pharmacist at LeMars Family Pharmacy, LeMars, Iowa 51031.
2. On March 8, 2011 the Board approved a Stipulation and Consent Order executed by Respondent on January 17, 2011. The Stipulation and Consent Order provided that Respondent's pharmacist license would be placed on probation, and subject to a series of conditions. One such probationary condition was that Respondent would take and pass the NAPLEX pharmacist examination within 9 months of the Board's approval of the Stipulation.
3. At Respondent's request, he was subsequently granted an additional three months to take and pass the NAPLEX examination. As of March 12, 2012, Respondent had not passed the NAPLEX examination.
4. Respondent took the NAPLEX exam on March 5, 2012. Respondent scored 53 of a possible 150 on the exam. The minimum passing score is 75.
5. Respondent's score would place him among the 4th percentile of persons who took the NAPLEX exam in 2011.

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 Director

On this 9th day of March 2012, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.


SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

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BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2008-96
Pharmacist License of)	2008-110 and 2008-129
THOMAS P. RYAN)	
License No. 15756,	)	EMERGENCY ORDER
Respondent.)	

I. JURISDICTION

The Iowa Board of Pharmacy (hereinafter, "Board") has jurisdiction over pharmacy licensees pursuant to Iowa Code Chapters 155A and 272C (2011). Thomas P. Ryan (hereinafter, "Respondent") possesses pharmacist license number 15756 issued by the Board. A Statement of Charges was filed against Respondent on March 12, 2012. After receipt and review of the Statement of Charges, and careful review of evidence relating to the Statement of Charges, the Board has adopted the following Findings of Fact, Conclusions of Law and Emergency Order.

II. FINDINGS OF FACT

1. On July 24, 1980, the Board issued Respondent a license to engage in the practice of pharmacy as evidenced by license number 15756, subject to the laws of the State of Iowa and the rules of the Board.
2. Respondent's pharmacist license is currently on probation pursuant to a Board order dated March 8, 2011.
3. Respondent is employed as a pharmacist at LeMars Family Pharmacy, 44 First Avenue NE, LeMars, Iowa 51031

4. On or about March 5, 2012, an investigation was commenced which revealed the following:
 - a. At all times material to this Statement of Charges, Respondent has been employed as a pharmacist at LeMars Family Pharmacy, 44 First Avenue NE, LeMars, Iowa 51031.
 - b. Respondent has a history of licensee discipline by the Board. Respondent consented to discipline on May 16, 1991. Respondent also consented to discipline on March 5, 1992, following emergency action by the Board.
 - c. Most recently, on March 8, 2011, the Board accepted a Stipulation and Consent Order to resolve a Statement of Charges pending against Respondent. The Stipulation and Consent Order was executed by Respondent on January 17, 2011. The Order provided that Respondent's pharmacist license would be placed on probation for an indefinite period, subject to a series of conditions. One such probationary condition was that Respondent would take and pass the NAPLEX pharmacist examination within nine months of the Board's approval of the Stipulation.
 - d. At his request, Respondent was subsequently granted an additional 3 months to take and pass the NAPLEX examination. As of March 12, 2012, Respondent had not passed the NAPLEX examination.
 - e. Respondent took the NAPLEX exam on March 5, 2012. Respondent scored 53 of a possible 150 points on the exam. The minimum passing score is 75.
 - f. Had he taken the exam during 2011, Respondent's score would have placed him among the 4th percentile of persons who took the NAPLEX exam that year.

5. The Board finds that the evidence assembled during the investigation of Respondent supports the March 12, 2012 Statement of Charges against Respondent. The Board also finds that Respondent (a) has a long history of discipline with the Board, (b) was placed on probation on March 8, 2011 for an indefinite period, (c) had a full year to prepare for and take, successfully, the NAPLEX exam, (d) failed to pass the exam and (e) achieved such a low score on the exam as to indicate a seriously deficient knowledge of pharmacy. Respondent is in violation of the Stipulation and Consent Order he offered to the Board on January 17, 2011. Finally, it appears Respondent waited until March 5, 2012 to take the exam in order to conceal his deficient knowledge of pharmacy.
6. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:
 - a. NAPLEX is a nationally recognized examination used to assess knowledge of pharmacy. The Board utilizes the NAPLEX exam in its pharmacist licensure process. Respondent would have to score at least 75 on the NAPLEX exam to achieve initial licensure in Iowa. The minimum passing score is 75.
 - b. Respondent did not come close to a NAPLEX passing score, after having had a year to prepare for the exam. Respondent's score of 53 indicates his general knowledge of pharmacy falls well below the minimum standard needed to support licensure.
 - c. Respondent is currently employed as a pharmacist. Fundamental knowledge of pharmacy is a day to day requirement for a person practicing pharmacy.

Respondent's apparent lack of pharmacy knowledge is certain to impact his ability to function as a pharmacist, and may result in illness or injury to pharmacy patients.

7. The Board finds that immediate, emergency action must be taken for the reason that if Respondent is allowed to continue to work as a pharmacist, the public health, safety and welfare will be threatened by his lack of pharmacy skill and knowledge. Respondent's pharmacy knowledge has fallen below minimum standards. Given this finding, the Board must act in the interest of the public to suspend Respondent's license to practice pharmacy until he can demonstrate his knowledge and skill by achieving a passing score on the NAPLEX examination.
8. The Board finds that the minimum emergency action needed to protect the public health, safety and welfare is as follows:
 - a. Immediate suspension of Respondent's pharmacist license.
 - b. Issuance of an order directing that Respondent's license shall remain suspended until satisfactory evidence of Respondent's ability to resume the practice of pharmacy has been provided to the Board by Respondent achieving a passing score on the NAPLEX exam.

III. CONCLUSIONS OF LAW

1. Respondent's pharmacist license is on probation, subject to conditions. One condition allowed Respondent a full year to study for and successfully complete the NAPLEX pharmacist examination following the Board's approval of a stipulated order on March 8, 2011. Respondent did not simply fail to pass the NAPLEX exam,

he delayed taking the exam until March 5, 2012, at which time the results indicated serious deficiencies in Respondent's knowledge of pharmacy. In light of these facts, the Board concludes that it is unlikely Respondent is working safely as a pharmacist.

2. The provisions of Iowa Code § 17A.18A (2011) permit the Iowa Board of Pharmacy to take emergency action to protect the health, safety and welfare of the public. A basis for emergency action against Respondent, pursuant to the provisions of the Iowa Code and the Iowa Administrative Code, has been established by the findings of fact adopted above.

IV. EMERGENCY ORDER

The Board ORDERS as follows:

- a. Pursuant to Iowa Code § 17A.18A, chapter 155A (2011) and 657 Iowa Administrative Code § 36.1(4)(b), the pharmacist license of Thomas P. Ryan is suspended indefinitely. This suspension is effective immediately upon issuance of this order and shall remain in effect until Respondent has demonstrated pharmacist competency by taking and passing the NAPLEX examination.
- b. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).
- c. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on April 26, 2012. The hearing will commence at 1:00 P.M. and be held at the office of the Iowa Board of Pharmacy, 400 Southwest 8th Street, Suite E, Des Moines, Iowa 50309.

DATED this 12th day of March 2012.


SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NOS. 2008-96, 2008-110
2008-129

DIA NO. 12PHB026

THOMAS P. RYAN
License No. 15756

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On March 9, 2012, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Thomas P. Ryan (Respondent), alleging two counts:

Count I: Lack of professional competency, as demonstrated by Respondent's lack of substantial knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice, in violation of Iowa Code section 155A.12(1) and 657 IAC 36.1(4)(b).

Count II: Failing to comply with the terms of a Stipulation and Consent Order entered into by Respondent and the Board on March 8, 2011, in violation of Iowa Code section 272C.3(2)(a)(2011).

On March 12, 2012, the Board issued an Emergency Order, pursuant to Iowa Code section 17A.18A, chapter 155A, and 657 IAC 36.1(4)(b), which suspended Respondent's pharmacist license indefinitely, effective immediately upon issuance of the Emergency Order. The Emergency Order stated that a hearing would be held on the Statement of Charges and Emergency Order on April 26, 2012 at 1:00 p.m. On March 12, 2012, the Statement of Charges and the Emergency Order were personally served on Respondent. (State Exhibit 6).

The hearing was held on April 26, 2012 at 1:10 p.m. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Mark Anliker; James Miller; DeeAnn Wedemeyer Oleson; LaDonna Gratias and Margaret Whitworth. Respondent failed to appear for the hearing.¹ Assistant Attorney General Scott

¹ On April 27, 2012, Respondent sent an email to the Board's Executive Director. Respondent apologized for not being present for the hearing on April 26, 2012. Respondent stated that he did not understand that he was required to appear, and he asked the Board to reconsider its action. The Executive Director provided a copy of the email to

Galenbeck represented the state. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1) and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the testimony of Jean Rhodes, State Exhibits 1-6, and Respondent's Email to the Board's Executive Director dated April 27, 2012.

FINDINGS OF FACT

1. On July 24, 1980, Respondent was issued license number 15756 to practice pharmacy in the state of Iowa, subject to state statutes and rules of the Board. (State Exhibit 1) Respondent has a past history of license discipline. He consented to discipline on May 16, 1991 and again on March 5, 1992, following an emergency action by the Board. At all times relevant to this Decision and Order, Respondent was employed as a pharmacist at LeMars Family Pharmacy in LeMars, Iowa. (State Exhibit 5)
2. On June 1, 2010, the Board filed a Statement of Charges against Respondent. On January 17, 2011, Respondent voluntarily submitted a Stipulation and Consent Order to the Board for its consideration. By signing the Stipulation and Consent Order, Respondent waived his right to a hearing on the Statement of Charges. The Board approved the Stipulation and Consent Order on March 8, 2011. The Stipulation and Consent Order placed Respondent's pharmacist license on probation for an indefinite period, subject to a number of terms and conditions. One of the probationary conditions required Respondent to take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multi-State Pharmacy Jurisprudence Exam (MPJE), within nine (9) months after the Board's approval of the Stipulation and Order. The deadline for taking and passing the examinations was December 8, 2011. The Stipulation and Consent Order specifically provided that the Board may initiate action to revoke or suspend Respondent's pharmacist license if Respondent failed to comply with any of its terms and conditions. (State Exhibit 1)

the Assistant Attorney General and to the members of the Board before the Board adjourned its meeting on April 27, 2012. The Board reviewed and considered the email prior to approving this Decision and Order.

3. The Board granted Respondent's request for an extension of time to take and pass the two required examinations. Respondent was given an additional three months to take and pass the examinations. The new deadline for taking and passing the examinations was March 8, 2012. (State Exhibit 4)
4. Respondent took the MPJE on February 25, 2012 and obtained a passing score. (State Exhibit 2)
5. Respondent took the NAPLEX on March 5, 2012, just three days prior to the deadline. Respondent failed the exam and obtained a total scaled score of 53. A total scaled score of at least 75 was required for passing. Respondent's score would place him among the 4th percentile of persons taking the NAPLEX in 2011. In addition, Respondent's three scaled competency area scores were all in the "low" or "very low" range. (State Exhibits 3, 4)
6. On March 9, 2012, the Board found probable cause to charge Respondent with lack of professional competency and failure to comply with a Board Order. (State Exhibit 4)

On March 12, 2012, the Board issued an Emergency Order suspending Respondent's pharmacist license. The Board found that Respondent:

- (a) has a long history of discipline with the Board,
- (b) was placed on probation on March 8, 2011 for an indefinite period,
- (c) had a full year to prepare for and successfully take the NAPLEX exam,
- (d) failed to pass the exam, and
- (e) achieved such a low score on the exam as to indicate a seriously deficient knowledge of pharmacy.

The Board further found that Respondent was in violation of the Stipulation and Consent Order and that it appeared Respondent waited until March 5, 2012 to take the exam to conceal his deficient knowledge of pharmacy. The Board concluded that Respondent is an immediate danger to the public health, safety and welfare and provided reasons for this finding. (State Exhibit 5).

7. On March 12, 2012, Compliance Officer Jean Rhodes personally served Respondent with the March 8, 2012 Statement of Charges and with the March 12, 2012 Emergency Order. Respondent surrendered his wall license and his renewal card to

Ms. Rhodes. Ms. Rhodes advised Respondent that he was no longer authorized to practice pharmacy. (Testimony of Jean Rhodes; State Exhibit 6)

CONCLUSIONS OF LAW

Emergency Order

The Board is authorized to take emergency action, including action to suspend a license, to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare.² An emergency adjudicative order is required to contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger.³ Before issuing an emergency adjudicative order, the board shall consider factors that include, but are not limited to:

- a. Whether there has been sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public, health, safety and welfare;
- d. Whether the imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety and welfare;
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.⁴

The written emergency order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures: (1) Personal delivery⁵

The preponderance of the evidence supports the Board's decision to issue an Emergency Order suspending Respondent's license to practice pharmacy. The Board followed all required procedures in issuing and serving the Emergency Order. The NAPLEX is a nationally recognized examination used to assess knowledge in

² Iowa Code §17A.18A; 657 IAC 35.30(1).

³ Iowa Code §17A.18A(3); 657 IAC 35.30(2)(a).

⁴ 657 IAC 35.30(1).

⁵ Iowa Code § 17A.18A(4); 657 IAC 35.30(2)(b).

pharmacy, and it is used by the Board in its pharmacist licensure process. Respondent would be required to score at least a 75 on the exam to be licensed in Iowa. Respondent did not come close to a passing score, even after being given a year to prepare for and take the exam. Indeed, Respondent had longer than a year to prepare because he signed the Stipulation and Consent Order in January 2011. Respondent's score strongly indicates that his general knowledge of pharmacy falls well below the minimum standard needed for licensure. Moreover, Respondent was employed as a pharmacist at the time he failed the NAPLEX. Fundamental pharmacy knowledge is a day to day requirement for a person practicing pharmacy. Respondent's lack of pharmacy knowledge is certain to impact his ability to function as a pharmacist, and may well result in injury or illness to his pharmacy patients. These circumstances justified the Board's determination that it was necessary to take emergency action to suspend Respondent's license to protect the public health, safety and welfare.

Failure to Appear

Delivery of the notice of hearing may be executed by personal service.⁶ If a party fails to appear or participate in a contested case proceeding after proper service of notice, the Board may proceed with the hearing and render a decision in the absence of the party.⁷ Respondent was properly served with the Emergency Order, Statement of Charges and Notice of Hearing by personal service but failed to appear for hearing or to request that the hearing be rescheduled.

Count I – Lack of Professional Competency

The Board may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a pharmacist license, or place a license on probation if the Board finds that a licensee has violated any provision of Iowa Code chapter 155A or any rules of the Board adopted under chapter 155A.⁸

The Board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when it determines that a licensee is guilty of professional incompetency. Professional incompetency includes a substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.⁹ Respondent's score on the NAPLEX examination establishes a substantial lack of knowledge or

⁶ 657 IAC 35.5(1)"a."

⁷ 657 IAC 35.21(1).

⁸ Iowa Code §155A.12(1)(2011).

⁹ 657 IAC 36.1(4)(b)(1).

ability to discharge his professional obligations as a pharmacist. Respondent's pharmacy knowledge has fallen below minimum standards. This constitutes professional incompetency, in violation of Iowa Code section 155A.12(1)(2011) and 657 IAC 36.1(4)(b)(1).

Count II-Failure to Comply With Board Order

The Board is authorized to discipline a licensee for failure to comply with a Board decision imposing license discipline.¹⁰ The preponderance of the evidence established that Respondent violated Iowa Code §272C.3(2)(a)(2011) by failing to take and pass the NAPLEX within the required timeframe. By executing the Stipulation and Consent Order, Respondent agreed to take and pass the NAPLEX by December 8, 2011. The Board gave Respondent a three month extension to March 8, 2012, but he failed to timely complete this requirement.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 15756, issued to Respondent Thomas P. Ryan, shall be REVOKED, effective upon service of this Decision and Order. Prior to any reinstatement, Respondent must meet all requirements of 657 IAC 36.13, including the examination requirements of 36.13(2) that apply to all persons with a revoked pharmacist license.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this th 27 day of June, 2012.


Susan Frey, Chairperson
Iowa Board of Pharmacy

¹⁰ Iowa Code §272C.3(2)(a)(2011).

cc: Scott Galenbeck, Assistant Attorney General

A default decision or decision rendered on the merits after a party has failed to appear or participate in a contested case hearing shall become final board action unless within 15 days after the date of notification or mailing of the decision a motion to vacate is filed and served on all parties or unless an appeal of a decision is timely initiated within the time provided by rule 35.26. A motion to vacate must state all facts relied upon by the moving party which establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated shall be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) shall be attached to the motion. 657 IAC 35.21. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 657 IAC 35.21(4).

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.