

BEFORE THE BOARD OF PHARMACY EXAMINERS

OF THE STATE OF IOWA

In the Matter of the Complaint & :
Statement of Charges Against : COMPLAINT AND
: :
WALTER E. SCHIEL, JR. : STATEMENT OF CHARGES
Respondent :

COMES NOW Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 1st day of November 1984, and files this Complaint and Statement of Charges against Walter E. Schiel, Jr., 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 the Respondent was issued license number 11813 to practice pharmacy in the state of Iowa on January 16, 1951.

3. That Respondent's license to practice pharmacy is current until June 30, 1985.

4. That Respondent is the pharmacist/owner of Manchester Pharmacy.

5. That Manchester Pharmacy, 113 E. Main Street, Manchester, Iowa, was issued license number 187. Said license is current and active for the period ending December 31, 1984.

6. That Respondent has been and continues to be in violation of Iowa Code Sections 155.17 and 155.18. Evidence of those ongoing violations is supported by the following:

A. An investigative report submitted by J. W. Reardon dated February 12, 1975, states that, "I reminded Mr. Schiel that I had warned him to clean up his pharmacy a year ago and as far as I can see, it is in worse shape than ever. There is absolutely no walking space in any of his bays. If he weren't so tall and long-armed, he would not be able to get the meds off the shelves. The floor of each bay is piled with empty bottles, boxes, papers, magazines, etc. The Rx counter is heaped with junk, paperwork, outdated medications. In short, it is filthy, unsightly and a discredit to the profession of pharmacy."

B. An Administrative Warning issued to Manchester Pharmacy on June 8, 1976, indicates that, "Rx department not clean and sanitary. Very unprofessional appearance due to stacking, piling, and heaping newspapers, magazines, empty bottles, and other extraneous materials on the floor and counter working area, making the bay areas inaccessible by ordinary standards. Warnings to clean up this situation were issued 2-8-74 and 2-12-75."

C. The inspection and rating report on Manchester Pharmacy dated March 3-4, 1977, carried a statement signed by you which, among other statements, reads: "I will remove from the Rx Department all drugs that bear expiration dates that indicate the contents have reached an 'outdated' situation according to said date of expiration. Also, all old drugs that can be reasonably assumed to be outdated that have been on hand prior

to the company putting expiration dates on the package..." Another sentence in that statement reads as follows: "I agree to continue my efforts to bring the Rx Dept. into a clean, sanitary and professional appearing and uncluttered condition."

D. The inspection and rating report for Manchester Pharmacy dated July 7, 1978, contained a remark, "Clean up Rx counter and work area."

E. The inspection and rating report for Manchester Pharmacy dated September 4, 1979, contained a recommendation to, "Please clean up Rx counter of extraneous materials."

F. The inspection and rating report for Manchester Pharmacy dated July 17, 1980, contained the statement, "Clean and get Rx dept. into professionally acceptable condition by August 17, 1980."

G. The inspection and rating report for Manchester Pharmacy dated July 15, 1981, recommended, "Clean--Rx Dept.--cluttered and messy--unprofessional appearance--30 days to complete." A memorandum accompanying that report from Investigator J. W. Reardon reads, in part, as follows: "Inspection 7-15-81 showed this pharmacy to have accumulated dust, dirt, clutter and refuse in the prescription department since the 7-17-80 inspection. Mr. Schiel has had to be warned on each annual inspection on this problem."

H. The inspection and rating report for Manchester Pharmacy dated March 30, 1984, contained the following recommendations: (a) [obtain] a Class A Balance, (b) remove all outdated medications from the work area. Clean up clutter.

I. On June 29, 1984, Board Investigator E. Ray Shelden visited Manchester Pharmacy. His report dated June 30, 1984, included the following deficiencies: (a) No Class A Balance on the premises, (b) Lack of sanitary requirements, (c) Old and outdated drugs remained in the active dispensing areas of the pharmacy.

J. On August 6, 1984, Investigator Shelden and Board Member Alan Shepley visited Manchester Pharmacy. The investigative report of that visit filed by Investigator Shelden indicated the following:

"The Balance which is supposed to be sensitive to 10mg was tested by Walt Schiel and Al Shepley. The Balance was set to center and balanced, at which time a 10mg weight was added to the right side of the scale with no apparent change in the position of the balance.

The immediate work area where medications were stored still contained the clutter and outdated medications were still mixed among the in-date medications. During the inspection of the area, Mr. Shepley found outdated medications which ranged from no expiration date to 1978 outdates, to outdates from 1980-81 and through the present time period. It was apparent to Mr. Shepley and myself that no attempt had been made to clear any of the medication storage area of outdated medications.

At this time, Mr. Shepley and myself proceeded to the basement of Manchester Pharmacy. There was a space to the bathroom which was cleared. Mr. Shepley observed old paint stored in the wall area which was contained in aerosol and can-type packaging. In the center of the building, a large number of old and new boxes and shipping containers were stored. Mr. Shepley remarked that if a fire occurred in this area, the whole block would probably burn down. Behind one group of boxes were stored "old"

"whole herb drugs which had long ago lost their usefulness. One of these containers was marked, 'Hemp Seed.'

Mr. Shepley and myself returned to the pharmacy area of the drug store and again the subject of outdated medications was discussed. When questioned about specific outdated medications, Mr. Schiel replied, 'Oh, I haven't used that item for years.' When questioned about outdated cough medications, Mr. Schiel's reply was the same.

In the front of the prescription shelves, Mr. Shepley found some outdated Mylanta II suspension. On questioning Mr. Schiel why it was there, Mr. Schiel replied that he took that item occasionally himself. Mr. Shepley cautioned Mr. Schiel about the chemical changes that occur during the aging process, and suggested that it might do Mr. Schiel more harm than good if he continued to take outdated medication.

On the shelves in front of the prescription department were over-the-counter vitamins, of which several were outdated. This was brought to the attention of Mr. Schiel. In the self-serve area of the drug store, Mr. Shepley observed a quantity of McKesson 'scratch and itch cream.' This item contains 0.5% Hexachlorophene. Mr. Shepley informed Mr. Schiel that this item had been recalled by the manufacturer several years prior and was now a prescription item and should not be sold over-the-counter."

7. That Manchester Pharmacy was subjected to an inspection by Deputy Fire Marshal Larry L. Knapp on August 27, 1984. The report of that inspection indicated that, "The entire basement full of empty and full boxes, paint and other combustibles. Comply as follows:

100.12 Code of Iowa. The entire basement area must be cleaned out by removing all empty boxes and all unnecessary combustibles to reduce the fuel load to an acceptable level."

The pharmacy was given 30 days in which to correct the above conditions.

8. That Respondent was issued a preliminary notice of hearing for the purpose of an informal conference with members of the Board on September 18, 1984, and again on October 24, 1984. The purpose for the informal conference was to resolve problems associated with the allegations in paragraph 6.

9. That Respondent failed to appear for that informal conference on either date.

10. That Respondent is guilty of violations of 1983 Iowa Code Sections 155.13(8); 155.17(1)(2)(3)(5); and 155.18(2) by virtue of the allegations contained in paragraphs 6 and 7.

155.13(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: (8) violations of the provisions of this chapter."

155.17(1),(2),(3) and (5) reads as follows:

"Sanitary requirements. The following sanitary regulations shall be complied with in every pharmacy licensed under this chapter:

(1) The floors, walls, ceilings, woodwork, windows, utensils, machinery and other equipment shall be kept in a thoroughly clean condition; (2) All parts of the interior of the premises shall be at all times adequately protected from dirt and contamination from any source; (3) Dirt, refuse, and waste products subject to decomposition or fermentation shall be removed daily; (5) All apparatus and equipment shall be kept in a thoroughly clean condition."

155.18(2) reads as follows:

"Prescription Department. The prescription department of a pharmacy shall contain the following:

(2) a prescription balance sensitive to ten milligrams."

11. That Respondent is guilty of violations of Board rules, Iowa Administrative Code §620--2.2(2) by virtue of the allegations in paragraphs 6 and 7.

Rule 2.2(2) reads as follows:

"Storage areas, restrooms, basement and all other areas in the pharmacy shall be kept in a thoroughly clean condition."

12. That Respondent is guilty of violation of Board rules, Iowa Administrative Code §620--10.1(4)"b"(3), (4)"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:

b. Professional incompetency. Professional incompetency includes but is not limited to:

(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 failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

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

13. That the allegations referred to in paragraphs 6 and 7 constitute a violation of 1983 Iowa Code Sections 155.13(8), 155.17, 155.18, and Board rule §620--10.1(4)"b"(3), (4) and "u."

14. That paragraphs 10, 11 and 12 constitute grounds for which Respondent's license to practice pharmacy and his license to operate Manchester Pharmacy can be suspended or revoked.

WHEREFORE, the undersigned charges that Walter E. Schiel, Jr. has violated Section 155.13(8), 155.17, 155.18 Code of Iowa 1983, and rule §620--10.1(4)"b"(3), (4) and "u" of the Iowa Administrative Code.

IT IS HEREBY ORDERED that Walter E. Schiel, Jr. appear before the Iowa Board of Pharmacy Examiners on December 12, 1984, at 9:30 a.m. in Conference Room #1, second floor (north), 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 Walter E. Schiel, Jr. on January 16, 1951, and the license to operate Manchester Pharmacy, 113 E. Main, Manchester, Iowa, issued on January 1, 1984, or take whatever additional steps they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS

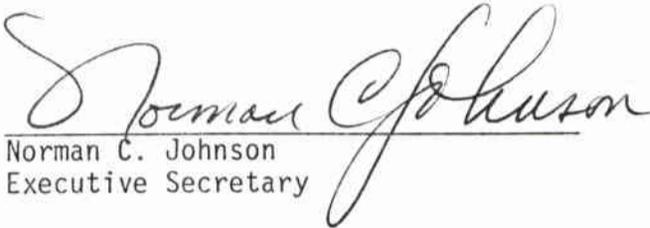

Norman C. Johnson
Executive Secretary

EXHIBIT "A"

BEFORE THE IOWA BOARD
OF
PHARMACY EXAMINERS

In the Matter of the Complaint & :
Statement of Charges Against : DECISION AND ORDER
WALTER E. SCHIEL, JR. :
Respondent :

To: Walter E. Schiel, Jr.:

A Complaint and Statement of Charges was filed by the Executive Secretary of the Iowa Board of Pharmacy Examiners on November 1, 1984, alleging that:

1. From 1974 through 1984, Mr. Schiel's pharmacy, the Manchester Pharmacy, consistently did not comply with Iowa Code Sections 155.13(8), 155.17 and 155.18, in that, (a) the floor of each bay was piled with empty bottles, boxes, papers, magazines, etc.; (b) the counter work area was heaped with junk, paperwork, and outdated medications; (c) old and outdated drugs were mixed in with the in-date drugs in the active dispensing area; and (d) the entire work area of the pharmacy was cluttered, messy, unsanitary and unprofessional.
2. In 1984, there was no working Class A balance in the pharmacy as required by Iowa Code Section 155.18(2).
3. In 1984, the basement of the pharmacy was filled with old paint, boxes, shipping containers, and old whole-herb drugs, including hemp seed, and the state fire marshal's office ordered Mr. Schiel to clean it out.
4. In 1984, Board Investigator E. Ray Shelden and Board Member Alan Shepley found, in front of the prescription department, over-the-counter outdated vitamins. In the self-service part of the store, they found a quantity of McKesson "scratch and itch cream" containing 0.5% Hexachlorophene, which was recalled by the manufacturer several years before and is no longer sold over-the-counter.

The Complaint and Statement of Charges alleged violations of Iowa Code Sections 155.13(8), 155.17(1), (2), (3) & (5) and 155.18(2)(1983), and Iowa Administrative Code Sections 620--2.2(2), 10.1(4)"b"(3) and (4), and "u."

A hearing on the above Complaint and Statement of Charges was held on February 13, 1985, at 10:00 a.m. in the State Board Conference Room, Grimes State Office Building, Des Moines, Iowa 50319. Present were the Board and its counsel, Thomas D. McGrane, Assistant Attorney General. The Respondent, Mr. Walter Schiel, Jr., was present and unrepresented by counsel. He was accompanied by his minister Rev. Richard Horn, who testified on his behalf. Present also were members of the staff of the Board and a court reporter. The undersigned, Administrative Hearing Officer for the State of Iowa, presided. At the request of Mr. Schiel, the hearing was ordered closed to the public pursuant to Iowa Code Section 258A.6(1983). Board Member Alan Shepley declined to participate in the hearing or deliberations because he had investigated the pharmacy on August 6, 1984.

After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code Section 28A.5(1)(f)(1983), to deliberate. The administrative hearing officer was instructed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Complaint and Statement of Charges, the recorded testimony of witnesses, and the following exhibits:

- Board Exhibit 1. Pharmacy Inspection and Rating Report 3-30-84.
- Board Exhibit 2. Investigative Report 6-29-84.
- Board Exhibit 3. Pictures of pharmacy taken 6-29-84.
- Board Exhibit 4. Two jars hemp seed taken from pharmacy 9-12-84.
- Board Exhibit 5. Investigative Report 8-6-84.
- Board Exhibit 6. Investigative Report 9-17-84.
- Board Exhibit 7. Investigative Report 1-5-85.
- Board Exhibit 8. Investigative Report 2-9-85 and attached packet of pictures.
- Board Exhibit 9. Cardboard box containing variety of outdated and old drugs taken from active dispensing area of pharmacy on June 28, 1984.
- Board Exhibit 10. September 6, 1984, letter from Wilbur Johnson, State Fire Marshal, to Norman C. Johnson and attached fire inspection report.
- Schiel's Exhibit A. Five envelopes containing letters of character reference about Mr. Schiel.

FINDINGS OF FACT

1. The Respondent, Walter E. Schiel, Jr., is a practicing pharmacist licensed under the State of Iowa and issued pharmacist's license number 11813. (official file; testimony of Mr. Schiel)
2. The Respondent, Walter E. Schiel, Jr., is the pharmacist/owner of Manchester Pharmacy, 113 E. Main Street, Manchester, Iowa, issued pharmacy license number 187. (official file; testimony of Mr. Shelden)
3. In 1974, 1975, 1977, 1978 and 1979, Board Investigator J. W. Reardon inspected the Manchester Pharmacy and made reports of his findings regarding the condition of the pharmacy. Mr. Schiel was aware of each investigation. (testimony of Mr. Reardon)
4. Investigator Reardon's report dated February 12, 1975, stated that the bay areas of the pharmacy were filled with empty boxes, bottles, and papers. The work counter was heaped with paper and outdated medications. Mr. Reardon reminded Mr. Schiel that he had been warned in 1974 to clean up his pharmacy, and the conditions were not improved by 1975 (testimony of Mr. Reardon)
5. In 1976, Mr. Schiel was issued an Administrative Warning because he failed to clean up his pharmacy as he had been told in 1974 and 1975. This Administrative Warning indicated that there were newspapers, magazines, empty bottles and other materials stacked on the floor and counter working area. (testimony of Mr. Reardon)
6. After inspection in 1977, Mr. Schiel was required to write his own report on the pharmacy, and he wrote, "I will remove from the Rx Department all drugs that bear expiration dates that indicate the contents have reached an 'outdated' situation according to said date of expiration. Also, all old drugs that can be reasonably assumed to be outdated that have been on hand prior to the company putting

expiration dates on the package...." He also wrote in the same report, "I agree to continue my efforts to bring the Rx Dept. into a clean, sanitary and professional appearing and uncluttered condition." (testimony of Mr. Reardon)

7. Investigator Reardon testified that in 1977, for the first time since 1974, Mr. Schiel cleaned up the pharmacy and brought it up to the condition it should be in. However, this condition lasted only a short while. (testimony of Mr. Reardon)
8. In 1978, 1979, 1980, and 1981, Investigator Reardon inspected the Manchester Pharmacy and made reports on it. The reports told Mr. Schiel to clean up the Rx counter and work area. The prescription department was consistently filled with clutter and extraneous material. (testimony of Mr. Reardon)
9. In 1984, Board Investigator E. Ray Shelden made numerous inspections. The inspection and rating report for the pharmacy dated March 30, 1984, contained recommendations that the pharmacy obtain a Class A balance and that Mr. Schiel remove all out-dated medications from the work area and clean up the clutter. (testimony of Mr. Shelden; Board Exhibit No. 1)
10. On June 28, 1984, Investigator Shelden inspected the Manchester Pharmacy. He found there were: (a) no Class A balance sensitive to 10mg, (b) a lack of sanitary requirements, (c) old and outdated drugs in the active dispensing area, and (d) some expiration dates had been crossed out and some new dates were written in ball-point pen. On the March 30 visit, Investigator Shelden had taken the drug Nitro-Bid 2.5mg lot number M2750 with expiration date 2-84 off the shelf, showed it to Pharmacist Schiel, recommended that it be returned to the manufacturer for credit, and put it on the floor. On the June 28 visit, Mr. Shelden found it back on the shelf. Mr. Shelden took pictures during the June 28 visit, which are contained in Exhibit 3. He did not take pictures of only the bad areas, but tried to get pictures accurately showing the condition of the pharmacy. (testimony of Mr. Shelden; Board Exhibit Nos. 2, 3, 9)
11. On August 6, 1984, Investigator Shelden and Board Member Alan Shepley inspected the Manchester Pharmacy. They tested the pharmacy's balance, and found it not be sensitive to 10mg. The work area where medications were stored contained clutter. Outdated medications were mixed in with the in-date medications. Mr. Shepley found medications with no expiration date, to those with 1978 expiration dates, to those with 1980-81 expirations dates, to those with more recent expiration dates. It was apparent to Mr. Shepley and Mr. Shelden that no attempt had been made to clear out the outdated medications. The two found old paint in the basement, and a large number of boxes and shipping containers. They found two old large glass jars containing hemp seed, which Mr. Schiel testified had been in the pharmacy since he bought it. They questioned Mr. Schiel about specific outdated drugs, to which Mr. Schiel replied he hadn't used that item for years, or he took it himself. They found over-the-counter vitamins which were outdated. In the self-serve area of the store, they found a quantity of McKesson "scratch and itch cream," which contained 0.5% Hexachlorophene. Mr. Shepley told Mr. Schiel that this item had been recalled by the manufacturer several years before and was now a prescription item and should not be sold over-the-counter. (testimony of Mr. Shelden; Board Exhibit Nos. 4, 5)
12. After this August inspection, Board Executive Secretary Norman C. Johnson contacted the State Fire Marshal's office and asked that office to make an inspection of the Manchester Pharmacy. The State Fire Marshal's office inspected the pharmacy on August 27, 1984, and found the entire basement full of empty and full boxes, paint and other combustibles. They ordered Mr. Schiel to clean out the

- J
- basement "by removing all empty boxes and unnecessary combustibles to reduce the fuel load to an acceptable level." Mr. Schiel was given 30 days to correct the condition. (testimony of Mr. Johnson; Board Exhibit No. 10)
13. On September 12, 1984, Investigator Shelden went to the Manchester Pharmacy to pick up the hemp seed (Board Exhibit No. 4). He observed that the basement was in the same condition it had been in on August 6, and the pharmacy itself was in worse condition than it was on August 6. (testimony of Mr. Shelden; Board Exhibit No. 6)
 14. The Board issued a notice of hearing to Mr. Schiel to appear on September 18, 1984, and again on October 24, 1984, for the purpose of attempting to resolve the above problems in an informal conference. Mr. Schiel failed to appear for either informal conference. (testimony of Mr. Schiel; official file)
 15. On January 5, 1985, Inspector Shelden wrote a report of an inspection he made, in which he noted there was no change in the front of the pharmacy, where the old vitamins and ointments were still present, and the pharmacy counter was still cluttered with boxes, papers, empty bottles and receipts. He noted the first two bays of medication appeared improved, in that the floor could be seen. There was still no Class A balance which worked. The office area was still cluttered and the basement was unchanged. (testimony of Mr. Shelden; Board Exhibit No. 7)
 16. On February 7, 1985, Inspector Shelden again returned to the pharmacy. He took pictures showing the condition of the pharmacy. The pharmacy remained unchanged from the January 5 visit. There was still no working Class A balance. The prescription medication areas, except the first two bays, were in the same unsanitary condition. The basement was still filled with boxes, paint, display racks, and junk. The back room storage area and the prescription compounding area remained cluttered. The sink was still covered with lime and filled with various bottles. (testimony of Mr. Shelden; Board Exhibit No. 8)
 17. From 1974 through 1985, Mr. Schiel was aware of each inspection as it occurred, and was verbally warned at each inspection to correct the problems as detailed above. Mr. Schiel acknowledged at the hearing that he knew of the warnings. (testimony of Mr. Reardon, Mr. Shelden and Mr. Schiel)
 18. Mr. Schiel fills 35-40 prescriptions per day in his pharmacy. Mr. Schiel testified he works from 8:00 a.m. to 6:00 p.m., six days per week and every third Sunday morning. He has ample time to remove outdated drugs, prescription and non-prescription, from the shelves. He has ample time to clean up his store. (testimony of Mr. Schiel)
 19. Since 1977, despite repeated warnings, Mr. Schiel has never brought his pharmacy up to the condition required by Iowa law, as detailed below. (testimony of Mr. Reardon, Mr. Shelden and Mr. Schiel; Board Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10)

CONCLUSIONS OF LAW, DECISION AND ORDER

Substantial evidence was presented to support paragraphs one through fourteen of the Complaint and Statement of Charges, and to show violations of Iowa Code Sections 155.13(8), 155.17(1),(2),(3),(5) and 155.18(2)(1983); and Iowa Administrative Code Sections 620--2.2(2), 620--10.1(4)"b"(3), (4) and "u." Mr. Schiel is therefore found to have violated the above Code sections and rules.

It is therefore the ORDER of the Iowa Board of Pharmacy Examiners that the license of the Manchester Pharmacy, license number 187, is hereby revoked

effective upon receipt by Mr. Schiel of this Decision and Order. Mr. Schiel may request Board reinstatement of license number 187 immediately upon successful completion of the suspension period of license number 11813 as ordered below.

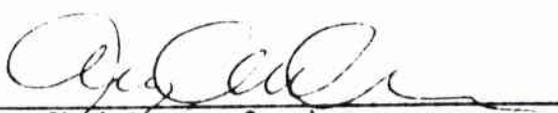
It is the further ORDER of the Board that the license to practice pharmacy issued to Walter E. Schiel, Jr., license number 11813, is hereby suspended for 60 days, effective upon receipt by Mr. Schiel of this Decision and Order. However, thirty days of the sixty-day suspension shall be stayed and it is further ORDERED that Mr. Schiel is placed on probation for a period of ten years following the completion of the above suspension, upon the following terms and conditions:

- a. During the suspension period, Mr. Schiel must adopt written policies and procedures with reference to outdated drugs. Such policies and procedures must include, among other things, a statement that Mr. Schiel will comply with all state and federal statutes and rules regarding packaging, labeling, and storing of drugs. These policies and procedures must be approved by the Board.
- b. Mr. Schiel may not employ interns or act as a preceptor during the period of probation.
- c. If Mr. Schiel violates probation in any respect, the Board, after giving Mr. Schiel notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Mr. Schiel 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.

It is the further ORDER of the Board that Mr. Schiel surrender license number 187 and 11813 to the Board at the beginning of the suspension.

It is the further ORDER of the Board that Mr. Schiel is fined the amount of \$1000.00.

This Decision and Order was prepared by me at the direction of the Iowa Board of Pharmacy Examiners on the 27th day of February, 1985.


Amy Christensen Couch
Administrative Hearing Officer
1916 38th Street
Des Moines, Iowa 50310

Ex 1

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License)	COMPLAINT
of)	AND
WALTER E. SCHIEL, JR.)	STATEMENT OF CHARGES
License No. 11813)	AND
Respondent)	PETITION TO REVOKE PROBATION

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 19th day of March, 1990, and files this Complaint and Statement of Charges and Petition to Revoke Probation against Walter E. Schiel, Jr., a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

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

2. Respondent was issued a license to practice pharmacy in Iowa on January 16, 1951, by examination.

3. Respondent currently resides at Rural Route 3, Manchester, Iowa, 52057.

4. Respondent's license to practice pharmacy in Iowa expired on June 30, 1987, and is delinquent. Since July 1, 1987, Respondent has practiced pharmacy without an active and current license.

5. In a complaint and statement of charges filed against Respondent on November 1, 1984, Respondent was charged with various violations of the Iowa Code and the Iowa Administrative Code relating to the practice of pharmacy.

6. Following the issuance of a Board decision and order dated February 27, 1985, Respondent's license to practice pharmacy in Iowa was suspended for thirty days (from June 10, 1985, to July 10, 1985). Although the order dated February 27, 1985, suspended Respondent's license for sixty days, thirty days of the suspension was stayed. Respondent was then placed on probation for ten years, from July 11, 1985, to July 10, 1995.

7. The decision and order of the Board dated February 27, 1985, also provided, in part, the following:

...Mr. Schiel is placed on probation for a period of ten years following the completion of the above suspension, upon the following terms and conditions:

a. ...Mr. Schiel will comply with all state and federal statutes and rules...

...

c. If Mr. Schiel violates probation in any respect, the Board, after giving Mr. Schiel notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Mr. Schiel 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.

8. The Board has received an investigative report from Pharmacy Investigator Gary D. Ebeling. That report indicates that during a routine inspection of the Corner Drug Store located at 201 First Avenue East in Dyersville, Iowa, it was discovered by Investigator Ebeling on March 7, 1990, that Respondent had failed to renew his pharmacist license number 11813 when it expired on June 30, 1987. Respondent was nevertheless found to be practicing pharmacy at the Corner Drug Store in Dyersville on March 7, 1990.

9. Respondent is guilty of violations of 1989 Iowa Code sections 155A.7 and 155A.12(1) by virtue of the information contained in paragraphs 4 and 8.

Iowa Code section 155A.7 provides the following:

A person shall not engage in the practice of pharmacy in this state without a license. The license shall be identified as a pharmacist license.

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.

10. Respondent is guilty of violating 657 Iowa Administrative Code section 9.1(4)(v) by virtue of the information contained in paragraphs 4 and 8.

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)...when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

v. Practicing pharmacy without an active and current license.

11. Respondent is guilty of violating the conditions of probation contained in the Board decision and order dated February 27, 1985, by virtue of the information contained in paragraphs 4 and 8.

The Iowa Board of Pharmacy Examiners finds that paragraphs 9, 10, and 11 constitute grounds for which Respondent's probation can be revoked and for which his license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated the conditions of probation contained in the Board decision and order dated February 27, 1985; 1989 Iowa Code sections 155A.7 and 155A.12(1); and 657 Iowa Administrative Code section 9.1(4)(v).

IT IS HEREBY ORDERED that Walter E. Schiel Jr. appear before the Iowa Board of Pharmacy Examiners on May 8, 1990, at 3:00 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 revoke Respondent's probation and to suspend or revoke the license to practice pharmacy issued to Walter E. Schiel Jr. on January 16, 1951, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS


Lloyd W. Jessen
Executive Secretary

RECEIVED

APR 30 1990

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

IOWA PHARMACY EXAMINERS

RE: PHARMACIST'S LICENSE OF)	
)	DIA NO. 90PHB-5
WALTER E. SCHIEL, JR.)	
)	FINDINGS OF FACT,
License Number 11813)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Respondent)	

TO: Walter E. Schiel, Jr.:

A Complaint and Statement of Charges was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, (the Board) on the 19th day of March 1990. The Complaint alleged that the Respondent had violated terms of probation, and a pharmacy related statute and rule. The Complaint set hearing for May 8, 1990. The Respondent requested that the hearing be moved back, and therefore the hearing was held on April 10, 1990, at 10:00 a.m. in the second floor conference room, Iowa Board of Pharmacy Examiners, Executive Hills West, Des Moines, Iowa. Present were the following members of the Board: Rollin Bridge, Chairperson; Melba Scaglione, Vice-Chairperson; Donna Flower; Marian Roberts; John Rode; and Gale Stapp. Board member Alan Shepley recused himself and did not participate in the hearing or the decisionmaking in this case. Thomas D. McGrane, Assistant Attorney General, appeared on behalf of the State. The Respondent, Walter E. Schiel, Jr., was present and was represented by his attorney, David Tracey. Present also were members of the staff of the Board and a court reporter. Amy Christensen Couch, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code section 21.5(1)(f) (1989) to deliberate. The undersigned Administrative Law Judge was instructed to prepare this Board's Decision and Order.

The decision in this case was based upon a four to two vote. Two Board members dissent in this decision to the extent that they believe the appropriate administrative penalty is \$1,000.00 rather than \$500.00. The reason for the dissenting opinion is that the dissenters believe that a \$500.00 administrative penalty is not sufficiently punitive due to the length of time the Respondent has been practicing pharmacy without a license. In all other respects, the dissenters agree with this Findings of Fact, Conclusions of Law, and Decision and Order.

THE RECORD

The evidentiary record in this case includes the Complaint and Statement of Charges, the recorded testimony of the witnesses, and the following exhibits:

- Exhibit 1: Complaint and Statement of Charges and Petition to Revoke Probation with attached return receipt card.
- Exhibit 2: Decision and Order of the Iowa Board of Pharmacy Examiners dated February 27, 1985.
- Exhibit 3: Investigative report dated January 20, 1986.

FINDINGS OF FACT

1. The Respondent, Walter E. Schiel, Jr., was issued Iowa Pharmacist License Number 11813 on January 16, 1951, by examination. (testimony of Lloyd Jessen; Exhibit 1).

2. On February 27, 1985, the Iowa Board of Pharmacy Examiners issued a Decision and Order to the Respondent, Walter E. Schiel, Jr. The decision found the Respondent guilty of several violations of pharmacy related statutes and rules. The Board revoked the license of the pharmacy owned by Mr. Schiel, suspended Mr. Schiel's pharmacist license for a period of 60 days, and stayed 30 days of the 60-day suspension. The Board also placed Mr. Schiel's pharmacist license on probation for a period of ten years following the completion of the 30-day suspension upon the following terms and conditions:

A. During the suspension period, Mr. Schiel must adopt written policies and procedures with reference to outdated drugs. Such policies and procedures must include, among other things, a statement that Mr. Schiel will comply with all State and Federal statutes and rules regarding packaging, labeling, and storing of drugs. These policies and procedures must be approved by the Board.

B. Mr. Schiel may not employ interns or act as a preceptor during the period of probation.

C. If Mr. Schiel violates probation in any respect, the Board, after giving Mr. Schiel notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Mr. Schiel 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.

The Board further ordered Mr. Schiel to surrender his license to the Board at the beginning of the suspension, and ordered Mr. Schiel to pay an administrative penalty in the amount of \$1,000.00. (testimony of Mr. Jessen; Exhibit 2).

3. Mr. Schiel served his 30-day suspension in 1985. Following the serving of his suspension, Mr. Schiel acquired a current

active pharmacist license which was due to expire on June 30, 1987. (testimony of Mr. Jessen; Exhibit 3).

4. Mr. Schiel has not renewed his pharmacist license since it expired on June 30, 1987. (testimony of Mr. Jessen, Mr. Schiel).

5. Mr. Schiel's ten year term of probation began on July 11, 1985. (testimony of Mr. Jessen).

6. Mr. Schiel is currently working for the Corner Drug Store in Dyersville. On March 7, 1990, Board investigator Gary Ebeling performed a routine inspection of the Corner Drug Store in Dyersville, Iowa. Board investigator Ebeling discovered that Mr. Schiel had failed to renew his pharmacist license number 11813 when it expired on June 30, 1987. However, Mr. Schiel was practicing pharmacy at the Corner Drug Store in Dyersville on March 7, 1990. Mr. Schiel had been working at the Corner Drug Store for several years. (testimony of Mr. Jessen, Mr. Schiel)

7. Pharmacist licenses are renewable every two years. Normal office procedure for the Iowa Board of Pharmacy Examiners is to send notice to a pharmacist before his or her license expires. The initial notice to renew is normally sent approximately 60 days in advance of the expiration date of a pharmacist license. The renewal notice is computer generated, and every pharmacist on the computer record is sent a renewal notice. The pharmacist is supposed to fill out the form and return it to the Board office with a fee. If a pharmacist does not return the form with a renewal fee, a follow-up reminder is sent. (testimony of Mr. Jessen; Exhibit 3).

8. Mr. Schiel received his renewal form in 1985. Mr. Schiel did not renew his pharmacist license in 1987. Mr. Schiel also did not renew his pharmacist license in 1989. Mr. Schiel was current in the computer records of the Board in 1987 because his license had become active again in 1985. Mr. Schiel's home address has not changed from 1985 to the present. Therefore, the Board logically assumes that the renewal notices and reminder notices for 1987 and 1989 were generated and sent to Mr. Schiel at his current home address. (testimony of Mr. Jessen, Mr. Schiel; Exhibit 3)

9. At the hearing, Mr. Schiel testified that he did not receive the renewal notices nor the second reminder notices sent out by the Board in 1987 and 1989. Mr. Schiel's wife also testified that she did not remember receiving such a renewal notice in 1987. (testimony of Mr. Schiel, Mrs. Schiel).

10. Mr. Schiel has taken the correct number of continuing education hours for each renewal period since 1985. (testimony of Mr. Schiel).

11. The Respondent testified at the hearing that he was not aware that he was on probation for a period of ten years. He testified

he thought that when he closed his store his problems were over. Mr. Schiel testified he could not remember receiving the 1985 Decision and Order of the Board, but he could not state that he had not received it. (testimony of Mr. Schiel).

12. Mr. Schiel testified that although he had renewed his pharmacist license every two years for over 35 years, he depended on the Board sending him the renewal notice and did not realize that he needed to renew his license. The Board finds this testimony to be not credible for several reasons: (1) the length of time Respondent has practiced pharmacy; (2) that Respondent failed to renew for two periods, not just one; and (3) that the Respondent was aware that he needed to maintain his continuing education credits, did in fact maintain those continuing education credits for each period of renewal, and maintenance of continuing education credits is tied to the two-year renewal periods and knowledge of one requirement cannot be done without knowledge of both requirements. (testimony of Mr. Schiel)

13. Mr. Schiel has practiced pharmacy without an active and current license since July 1, 1987. (testimony of Mr. Jessen, Mr. Schiel).

14. The Board is concerned that the Respondent testified that he was not even aware that he was still under his ten-year term of probation.

CONCLUSIONS OF LAW

1. "A person shall not engage in the practice of pharmacy without a license. The license shall be identified as a pharmacist license." Iowa Code section 155A.7 (1989).

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: (1) violated any provision of this chapter or any rules of the Board adopted under this chapter." Iowa Code section 155A.12 (1989).

3. 657 Iowa Administrative Code section 9.1(4)(B) provides 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: . . . (v) practicing pharmacy without an active and current license."

4. The Respondent is guilty of violating the terms of probation previously imposed on his license by the Board when he failed to renew his pharmacist license as required by statute and rule, and practiced pharmacy without a current, active license.

The Respondent is also guilty of practicing pharmacy without an active and current license. Therefore, the Respondent is guilty of violating Iowa Code sections 155A.7 and 155A.12(1) (1989) and is guilty of violating 657 Iowa Administrative Code section 9.1(4)(v).

5. 657 Iowa Administrative Code section 3.1 states the following in part: "A license to practice pharmacy shall expire on the second 30th day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a \$100.00 fee. Failure to renew the license before August 1 following expiration shall require a renewal fee of \$200.00. Failure to renew the license before September 1 following expiration shall require a renewal fee of \$300.00. Failure to renew the license before October 1 following expiration shall require a renewal fee of 400.00. Failure to renew the license before November 1 following expiration shall require an appearance before the Board and a renewal fee of \$500.00. In no event shall the fee for late renewal of the license exceed \$500.00. The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within six months of the expiration date."

Iowa Code section 147.11 (1989) provides the following: "Any licensee who allows the license to lapse by failing to renew the same, as provided in section 147.10, may be reinstated without examination upon recommendation of the examining board for the licensee's profession and upon payment of the renewal fees then due." Mr. Schiel allowed his license to lapse by failing to renew it for a period of almost three years, from July 1, 1987 through March 1990. The Board recommends that the Respondent's license be reinstated without having to sit for the National Association of Boards of Pharmacy Licensure Examination (NABPLEX) and the Federal Drug Law Examination (FDLE). However, the Respondent must take the Iowa Drug Law Examination (IDLE) as provided below.

DECISION AND ORDER

The Respondent violated terms of probation which were imposed on him in 1985. The Respondent's license became current after his period of suspension in 1985. The Respondent has kept current on his continuing education. Although the Respondent testified that he depended on the pharmacy board to send him renewal notices, and that he did not receive those renewal notices, the Board finds his testimony to be not credible. The Board assumes that since the Respondent was in the computer data bank in 1985, and that his address did not change in 1987 and 1989, the Board office sent him his renewal notices and reminder notices as was done for many years prior to the disciplinary action in 1985. The Respondent was also aware of his continuing education requirements and testified that he has kept current in his continuing education. Therefore, the Board assumes that since the Respondent was aware of his continuing education requirements and

kept current on those requirements, he would also have been aware of the renewal rule which is part and parcel of the continuing education rule of the Board. See 657 Iowa Admin. Code 8.7(2).

The Board is concerned that the Respondent testified he relies completely on the Board sending him a renewal notice in order for him to renew his pharmacist license. The responsibility to renew a professional pharmacist license is ultimately on the pharmacist himself. The Board sent Mr. Schiel his renewal notice as it did for thousands of other pharmacists. It is Mr. Schiel's obligation to ensure that his license is kept current. It is Mr. Schiel's responsibility to renew his pharmacist license when it expires. This is true whether or not the Board office sends him a renewal notice. The law clearly states that Mr. Schiel's license is a two year license. Mr. Schiel has an obligation to know the pharmacy laws and rules of the Board and to follow them. Mr. Schiel has been a pharmacist for over 35 years, and has had to renew his license every two years during that period of time. Mr. Schiel failed to renew his license for two periods, in 1987 and 1989. Standard practice of the Board office showed that notices were sent in 1987 and 1989. In any event, the burden is on Mr. Schiel as a licensed pharmacist to keep his license active and current.

Mr. Schiel violated his terms of probation. Mr. Schiel has practiced pharmacy without a current and active license since July 1, 1987 in violation of pharmacy statutes and rules.

It is clear that Mr. Schiel has inadequate knowledge of the Iowa drug laws.

It is therefore the ORDER of the Iowa Board of Pharmacy Examiners that license number 11813 issued to Walter E. Schiel, Jr. is hereby placed on probation for a period of ten years from the date of the issuance of this decision under the following terms and conditions:

1. The prior probationary period entered in 1985 is null and void.
2. Mr. Schiel shall obey all Federal and State laws and regulations substantially related to the practice of pharmacy.
3. The Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board. The Respondent must provide the Board with proof of all continuing education he has taken up to this time and in the future during the period of probation.
4. Mr. Schiel shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

5. Should the Respondent leave Iowa to practice or reside outside the State, the Respondent must 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.

6. The Respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on Respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, the Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the Decision in this case.

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

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

It is the further ORDER of the Iowa Board of Pharmacy Examiners that the Respondent must pay the \$500.00 late renewal fee which is ordinarily assessed prior to the Respondent receiving his license.

In addition, it is the further ORDER of the Iowa Board of Pharmacy Examiners that the Respondent must pay a \$500.00 administrative penalty to the Iowa Board of Pharmacy Examiners within 30 days of the issuance of this decision.

It is the further ORDER of the Iowa Board of Pharmacy Examiners that the Respondent must take the Iowa Drug Law Examination (IDLE) and pass this examination with a passing score of at least 65 percent within six months of the issuance of this decision. If the Respondent does not pass IDLE with a passing score of at least 65 percent within six months of the issuance of this decision, the Respondent's pharmacist license will be indefinitely suspended until the Respondent does pass IDLE with a passing score of at least 65 percent. It is the Respondent's responsibility to make arrangements with the Board office to take IDLE.

Dated this 27th day of *April*, 1990.

Rollin C. Bridge
Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners

Amy Christensen Couch
Amy Christensen Couch
Administrative Law Judge
Iowa Department of Inspections and Appeals

ACC/jmm