

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	)	COMPLAINT
WENDELL W. SIMMONDS	)	AND
License No. 14823	)	STATEMENT
Respondent	)	OF CHARGES
	)	AND
	)	NOTICE OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 3rd day of September, 1992, and files this Complaint and Statement of Charges against Wendell W. Simmonds, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Alan M. Shepley, Chairperson; Marian L. Roberts, Vice Chairperson; Donna J. Flower; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; and Arlan D. Van Norman 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 1, 1976, by examination.

3. Respondent currently resides at 4304 46th St. Place, Sioux City, Iowa 51108.

4. Respondent is currently employed as the pharmacist in charge of Indian Hills Pharmacy, 1551 Indian Hills Drive, Sioux City, Iowa 51104.

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

6. An inspection of Indian Hills Pharmacy was conducted by Pharmacy Investigator Morrell A. Spencer on October 29, 1987. The results of that inspection as reported by Investigator Spencer's inspection report reveal that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP/NF; (2) the latest edition and supplements to the USP DI Volume I; (3) the latest edition and supplements to the USP DI Volume II; and (4) the current edition of the Iowa Pharmacy Law and Information Manual.

7. An inspection of Indian Hills Pharmacy was conducted by Pharmacy Investigator Holger A. Christensen on October 30, 1989. The results of that inspection as reported by Investigator

Christensen's inspection report reveal that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume I; (2) the latest edition and supplements to the USP DI Volume II; and (3) the current edition of the Iowa Pharmacy Law and Information Manual.

8. An inspection of Indian Hills Pharmacy was conducted by Pharmacy Investigator Morrell A. Spencer on January 30, 1991. The results of that inspection as reported by Investigator Spencer's inspection report reveal that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume I; and (2) the latest edition and supplements to the USP DI Volume II.

9. An inspection of Indian Hills Pharmacy was conducted by Pharmacy Investigator Morrell A. Spencer on April 7, 1992. The results of that inspection as reported by Investigator Spencer's inspection report reveal that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume IA and IB, Drug Information for the Health Care Provider; (2) the latest edition and supplements to the USP DI Volume II, Advice for the Patient; (3) the latest edition and supplements to the Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI Volume III; and (4) the current edition of the Iowa Pharmacy Law and Information Manual.

10. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1) and 155A.31 by virtue of the allegations in paragraphs 6, 7, 8, and 9.

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

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

1991 Iowa Code section 155A.31 provides the following:

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

11. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.3, 8.5(4), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations in paragraphs 6, 7, 8, and 9.

657 Iowa Administrative Code section 6.3 provides the following:

Reference library. Each pharmacy shall have, as a minimum, the following:

1. The latest edition and supplements to the USP DI, Advice for the Patient;
2. The latest edition and supplements to the USP DI, Drug Information for the Health Care Provider;
3. Current toxicology reference text or telephone number of a poison control center;
4. Current state pharmacy laws.
5. The latest edition and supplements to Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI, Volume III.

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

(4) Nonconformance with law. A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

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:...

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

....

(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.

....

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 10 and 11 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) and 155A.31 and 657 Iowa Administrative Code sections 6.3, 8.5(4), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u).

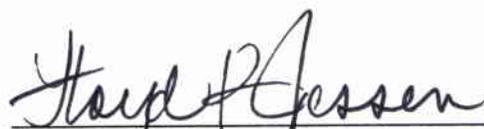
IT IS HEREBY ORDERED that Wendell W. Simmonds appear before the Iowa Board of Pharmacy Examiners on October 12, 1992, at 2:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

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 Wendell W. Simmonds on July 1, 1976, 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

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

Re: Pharmacist License of	)	DIA NO. 93PHB-1
)	
WENDELL W. SIMMONDS	)	PROPOSED FINDINGS OF FACT,
License No. 14823	)	CONCLUSIONS OF LAW,
	)	DECISION, AND ORDER
Respondent	)	OF THE PANEL

TO: WENDELL W. SIMMONDS

A Complaint and Statement of Charges and Notice of Hearing was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners (Board) on September 3, 1992. The Complaint alleged that the Respondent had violated a number of pharmacy-related statutes and rules. The Complaint and Statement of Charges included the Notice of Hearing, which set the hearing for October 12, 1992. The hearing, which was rescheduled, was held before a panel of the Board on March 2, 1993, at 9:00 a.m. at Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa. The panel included Alan M. Shepley, Chairperson; Phyllis A. Miller; and Arlan D. Van Norman. Lynette Donner, Assistant Attorney General, appeared on behalf of the state. The Respondent, Wendell W. Simmonds, appeared pro se. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. All of the testimony was recorded by a certified court reporter. The hearing was closed to the public at the Respondent's request pursuant to Iowa Code section 258A.6(1). After hearing the testimony and examining the exhibits, the panel convened to deliberate its decision, and instructed the administrative law judge to prepare their Proposed Decision.

THE RECORD

The record includes the Complaint and Statement of Charges and Notice of Hearing, the notice rescheduling the hearing, the recorded testimony of the witnesses, and the following exhibits:

- Exhibit A: Inspection report dated October 29, 1987.
- Exhibit B: Inspection report dated October 30, 1989.
- Exhibit C: Inspection report dated January 30, 1991
- Exhibit D: Complaint report dated June 4, 1991, with attached statement dated May 29, 1992.
- Exhibit E: Inspection report dated April 7, 1992, with attached statement.

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1976, by examination. Respondent's license to practice pharmacy is current until June 30, 1993. (official file)
2. Respondent is 20 percent owner and employed as pharmacist in charge of Indian Hills Pharmacy, 1551 Indian Hills Drive, Sioux City, Iowa 51104. (testimony of Morrell Spencer, Respondent)
3. On October 29, 1987, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that the Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable; (1) the latest edition and supplements to the USP/NF; (2) the latest edition and supplements to the USP DI Volume I; (3) the latest edition and supplements to the USP DI Volume II; and (4) the current edition of the Iowa Pharmacy Law and Information Manual. (testimony of Morrell Spencer; Exhibit A)
4. On October 30, 1989, Pharmacy Investigator Holger A. Christensen conducted an inspection of the Indian Hills Pharmacy and concluded that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume I; (2) the latest edition and supplements to the USP DI Volume II; and (3) the current edition of the Iowa Pharmacy Law and Information Manual. (testimony of Morrell Spencer; Exhibit B)
5. On May 29, 1991, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume I; and (2) the latest edition and supplements to the USP DI Volume II. (testimony of Morrell Spencer; Exhibit C)
6. Respondent was issued a report of deficiency correction and told to respond in writing within 60 days. Respondent was told that if the deficiencies were not corrected, his 1992 pharmacy renewal would not be issued. (testimony of Morrell Spencer; Exhibit D)
7. On April 7, 1992, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume IA and IB,

Drug Information for the Health Care Provider; (2) the latest edition and supplements to the USP DI Volume II, Advice for the Patient; (3) the latest edition and supplements to the Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI Volume III; and (4) the current edition of the Iowa Pharmacy Law and Information Manual. (testimony of Morrell Spencer; Exhibit E)

8. The Respondent explained that he does not control the checkbook or pay bills for Indian Hills Pharmacy. He apologized for the length of time this deficiency went uncorrected. Respondent was questioned concerning how he determines if generic drugs are equivalent and how he handles patient consultations without adequate reference materials. Respondent relies on his drug supplier to supply only AB rated generics and has used Facts and Comparisons and product leaflets and flyers to counsel patients. By failing to maintain an adequate reference library, as prescribed by law, Respondent has fallen below the minimum standard for the practice of pharmacy in Iowa. The resources he utilized to counsel patients and choose generics were inadequate. (testimony of Respondent)

CONCLUSIONS OF LAW

1. 1991 Iowa Code section 155A.12 provides, in part, the following:

. . . The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

2. 1991 Iowa Code section 155A.31 provides the following:

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

3. 657 Iowa Administrative Code section 6.3 provides the following:

Reference library. Each pharmacy shall have, as a minimum, the following:

1. The latest edition and supplements to the USP DI, Advice for the Patient;

2. The latest edition and supplements to the USP DI, Drug Information for the Health Care Provider;

3. Current toxicology reference text or telephone number of a poison control center;

4. Current state pharmacy laws.

5. The latest edition and supplements to Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI, Volume III.

4. The preponderance of the evidence established that the Respondent violated Iowa Code sections 155A.12, 155A.31 (1991) and 657 IAC 6.3 when he failed to maintain the required reference library at the Indian Hills Pharmacy in 1987, 1989, 1991, and 1992.

5. 657 Iowa Administrative Code section 8.5 provides, in part, the following:

(4) Nonconformance with law. A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

6. The preponderance of the evidence established that the licensee violated 657 IAC 8.5 when he continued to serve as pharmacist-in-charge at Indian Hills Pharmacy without correcting the deficiencies cited in the Inspections Reports dated October 29, 1987, October 30, 1989, January 30, 1991, June 4, 1991, and April 7, 1992.

7. 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: . . .

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

. . . (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.

The Respondent's repeated failure to correct the deficiencies in his reference library constitutes a failure to conform to the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa. The Respondent could not adequately counsel patients or determine generic substitutions without the aid of

these essential reference materials. The Respondent has violated 657 IAC 9.1(4)(b)(4).

DECISION AND ORDER

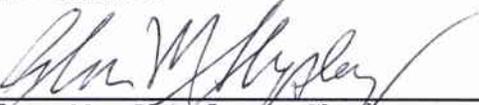
IT IS HEREBY ORDERED, that if this proposed decision becomes a final order, the Respondent's License No. 14823 shall be placed on probation for a period of five (5) years, subject to the following terms and conditions:

- 1) Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
- 2) Respondent shall submit annual written reports to the Board or its designee. The first report shall be due within one year of the date of receipt of this decision. Each written report must include a copy of Respondent's paid invoice for the most recent edition of USP DI and the Iowa Drug Law Manual.
- 3) Respondent shall submit to peer review as deemed necessary by the Board.
- 4) Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
- 5) During the period of probation, Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.
- 6) Should Respondent leave Iowa to reside or practice outside this state, 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.
- 7) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and impose further discipline. 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.

Finally, it is ORDERED, pursuant to Iowa Code section 258A.6 and 657 IAC 9.27, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary of the Board shall bill the Respondent for any transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 15th day of March, 1993

THE PANEL:



Alan M. Shepley, Chairperson
Iowa Board of Pharmacy Examiners



Phyllis A. Miller



Arlan D. Van Norman



Margaret LaMarche
Administrative Law Judge

ML/jmm

Copies to:

Lynette Donner, Assistant Attorney General

This proposed decision will become a final decision unless appealed to the Board by a party adversely affected by serving notice of appeal on the executive secretary of the Board within thirty (30) days after service of the proposed decision. The Board may also review this proposed decision on its own motion.

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

Re: Pharmacist License of	)	DIA NO. 93PHB-1
)	
WENDELL W. SIMMONDS	)	FINDINGS OF FACT,
License No. 14823)	CONCLUSIONS OF LAW,
)	DECISION, AND ORDER
Respondent)	

TO: WENDELL W. SIMMONDS

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On March 15, 1993, the panel issued its Proposed Findings of Fact, Conclusions of Law, Decision and Order.

The Respondent filed a timely appeal from the panel's decision. On April 28, 1993, the full Board heard the oral arguments of the parties. The following members of the Board were present: Alan M. Shepley, Chairperson; Marian Roberts, Vice Chairperson; Phyllis Olson; Phyllis Miller; and Arlan Van Norman. Lynette Donner, Assistant Attorney General, appeared for the state. The Respondent appeared pro se. In addition, Thomas Dodds, a partner in the Indian Hills Pharmacy, presented an oral argument on behalf of the pharmacy. After hearing the oral arguments and reviewing the record, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(1993), to deliberate their decision.

THE RECORD

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2. Respondent is 20 percent owner and employed as pharmacist in charge of Indian Hills Pharmacy, 1551 Indian Hills Drive, Sioux City, Iowa 51104. (testimony of Morrell Spencer, Respondent)
3. On October 29, 1987, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that the Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable; (1) the latest edition and supplements to the USP/NF; (2) the latest edition and supplements to the USP DI Volume I; (3) the latest edition and supplements to the USP DI Volume II; and (4) the current edition of the Iowa Pharmacy Law and Information Manual. (testimony of Morrell Spencer; Exhibit A)
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5. On May 29, 1991, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume I; and (2) the latest edition and supplements to the USP DI Volume II. (testimony of Morrell Spencer; Exhibit C)
6. Respondent was issued a report of deficiency correction and told to respond in writing within 60 days. Respondent was told

that if the deficiencies were not corrected, his 1992 pharmacy renewal would not be issued. (testimony of Morrell Spencer; Exhibit D)

7. On April 7, 1992, Pharmacy Investigator Morrell A. Spencer conducted an inspection of the Indian Hills Pharmacy and concluded that Respondent failed to maintain a current pharmacy library as required. The following library references were unavailable: (1) the latest edition and supplements to the USP DI Volume IA and IB, Drug Information for the Health Care Provider; (2) the latest edition and supplements to the USP DI Volume II, Advice for the Patient; (3) the latest edition and supplements to the Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI Volume III; and (4) the current edition of the Iowa Pharmacy Law and Information Manual. (testimony of Morrell Spencer; Exhibit E)

8. The Respondent explained that he does not control the checkbook or pay bills for Indian Hills Pharmacy. He apologized for the length of time this deficiency went uncorrected. Respondent was questioned concerning how he determines if generic drugs are equivalent and how he handles patient consultations without adequate reference materials. Respondent relies on his drug supplier to supply only AB rated generics and has used Facts and Comparisons and product leaflets and flyers to counsel patients. By failing to maintain an adequate reference library, as prescribed by law, Respondent has fallen below the minimum standard for the practice of pharmacy in Iowa. The resources he utilized to counsel patients and choose generics were inadequate. A pharmacist cannot determine whether a drug is therapeutically equivalent without consulting the USP-DI Volume III or another approved reference. Therefore the Respondent violated Iowa Drug Product Selection Law. All of the products handled by the drug wholesaler are not necessarily AB rated generics. (testimony of Respondent)

CONCLUSIONS OF LAW

1. 1991 Iowa Code section 155A.12 provides, in part, the following:

. . . The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

2. 1991 Iowa Code section 155A.31 provides the following:

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

3. 657 Iowa Administrative Code section 6.3 provides the following:

Reference library. Each pharmacy shall have, as a minimum, the following:

1. The latest edition and supplements to the USP DI, Advice for the Patient;
2. The latest edition and supplements to the USP DI, Drug Information for the Health Care Provider;
3. Current toxicology reference text or telephone number of a poison control center;
4. Current state pharmacy laws.
5. The latest edition and supplements to Approved Drug Products With Therapeutic Equivalence Evaluations or USP DI, Volume III.

4. The preponderance of the evidence established that the Respondent violated Iowa Code sections 155A.12, 155A.31 (1991) and 657 IAC 6.3 when he failed to maintain the required reference library at the Indian Hills Pharmacy in 1987, 1989, 1991, and 1992.

5. 657 Iowa Administrative Code section 8.5 provides, in part, the following:

(4) Nonconformance with law. A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

6. The preponderance of the evidence established that the licensee violated 657 IAC 8.5 when he continued to serve as pharmacist-in-charge at Indian Hills Pharmacy without correcting the deficiencies cited in the Inspections Reports dated October 29, 1987, October 30, 1989, January 30, 1991, June 4, 1991, and April 7, 1992.

7. 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: . . .

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

. . . (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.

The Respondent's repeated failure to correct the deficiencies in his reference library constitutes a failure to conform to the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa. The Respondent could not adequately counsel patients or determine generic substitutions without the aid of these essential reference materials. The Respondent has violated 657 IAC 9.1(4)(b)(4).

DECISION AND ORDER

IT IS HEREBY ORDERED, that if this proposed decision becomes a final order, the Respondent's License No. 14823 shall be placed on probation for a period of five (5) years, subject to the following terms and conditions:

- 1) Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
- 2) Respondent shall submit annual written reports to the Board or its designee. The first report shall be due within one year of the date of receipt of this decision. Each written report must include a copy of Respondent's paid invoice for the most recent edition of USP DI and the Iowa Drug Law Manual.
- 3) Respondent shall submit to peer review as deemed necessary by the Board.
- 4) Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
- 5) During the period of probation, Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.
- 6) Should Respondent leave Iowa to reside or practice outside this state, 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.
- 7) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and impose further discipline. 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.

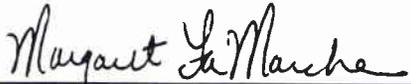
A five year probationary period was chosen because the Respondent neglected to purchase the required books for five years. The Respondent is therefore being required to confirm his purchase of the required books for five years.

Finally, it is ORDERED, pursuant to Iowa Code section 258A.6 and 657 IAC 9.27, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary of the Board shall bill the Respondent for any transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 14th day of May, 1993



Marian Roberts, Chairperson
Iowa Board of Pharmacy Examiners



Margaret LaMarche
Administrative Law Judge

ML/jmm

Copy to:

Lynette Donner, Assistant Attorney General

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	CASE NO. 2015-66
Pharmacist License of)	
WENDELL SIMMONDS	)	NOTICE OF HEARING AND
License No. 14823	)	STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing and Statement of Charges against Wendell Simmonds pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 272C.3(1)(e), and Iowa Administrative Code rules 657—35.5 and 36.5. Respondent's Iowa pharmacist license number 14823 is currently active through June 30, 2017.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on June 29, 2016, before the Board. The hearing shall be held during the morning session beginning at 9:00 a.m. and shall be located in the Board conference room located at the Iowa Board of Pharmacy Office, 400 S.W. 8th Street, Suite E, Des Moines, Iowa, 50309-4688.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to Iowa Administrative Code rule 657—35.11. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Filing of Pleadings. Pleadings shall be filed with the Board at the following address: Iowa Board of Pharmacy, 400 S.W. 8th Street, Suite E, Des Moines, Iowa, 50309-4688.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

Pre-hearing Conference. Any party may request a prehearing conference in accordance with Iowa Administrative Code rule 657—35.15 to discuss issues related to the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at Iowa Administrative Code chapter 657—35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. If you need to request an alternative time or date for the hearing, you must comply with the requirements in Iowa Administrative Code rule 657—35.16. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The Office of Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address:

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Ms. Gavin can also be reached by phone at (515) 281-6736 or by e-mail at Meghan.Gavin@iowa.gov.

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2015).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 147, 155A, and 272C, and Iowa Administrative Code chapter 657—36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and Iowa Administrative Code rule 657—35.21.

C. CHARGES

COUNT I

FAILURE TO PROPERLY VERIFY A PRESCRIPTION

Respondent is charged with failing to provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative in violation Iowa Code sections 147.55(9), 155A.12(1), (3), and (4), and Iowa Administrative Code rules 657—8.3(3)¹ and 657—36.1(4)(u).

¹ This citation is to the administrative rule in effect at the time of the alleged violation. The rule at issue has since been renumbered to Iowa Administrative Code rule 657—8.3(7).

D. FACTUAL CIRCUMSTANCES

1. At the time relevant, Respondent worked as a staff pharmacist at Leeds Pharmacy in Sioux City, Iowa.
2. On March 26, 2013 a patient was dispensed Gemfibrozil 600mg instead of the prescribed Gabapentin 600mg.
3. The patient experienced adverse health consequences due to taking the incorrect medication for one week.
4. Respondent was responsible for the final verification of the prescription.
5. Leeds Pharmacy did not have any bar code verification technology at the time of the misfill.
6. Respondent admitted he did not and routinely does not check the NDC number of the product used to fill a prescription against the NDC number on the prescription label.
7. The Board received notification of the incident by Mutual Insurance Company on April 4, 2015.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at Iowa Administrative Code rule 657—36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Meghan Gavin at (515) 281-6736.

F. FINDING OF PROBABLE CAUSE

On this ^{May}~~4th~~ day of ~~April~~, 2016, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



Chairperson
Iowa Board of Pharmacy

Copy to:

Meghan Gavin
Assistant Attorney General
Hoover Building, 2nd Floor
1305 E. Walnut St.
Des Moines, IA 50319

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

BEFORE THE IOWA BOARD OF PHARMACY

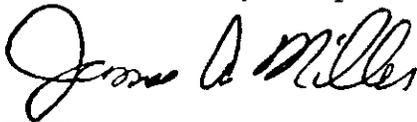
Re:) Case No. 2015-66
Pharmacist License of:)
WENDELL SIMMONDS) **ORDER GRANTING STATE'S**
License no. 14823) **MOTION TO DISMISS**
Respondent)

On May 4, 2016, the Iowa Board of Pharmacy (Board) issued a Notice of Hearing and Statement of Charges to Wendell Simmonds (Respondent), which alleged one count of failure to properly verify a prescription prior to the delivery of the prescription to the patient or the patient's representative, in violation of Iowa Code sections 147.55(9), 155A.12(1), (3), and (4), and 657 IAC 8.3(3) and 36.1(4)(u). The hearing was initially scheduled for June 29, 2016 but was continued to August 30, 2016. The parties appeared with counsel at the time scheduled for hearing. At that time, the state moved to dismiss the Notice of Hearing and Statement of Charges because further investigation had revealed that Respondent was not the pharmacist responsible for the prescription error. Respondent was not working in the pharmacy on the day the error was made. Respondent's attorney joined in the Motion to Dismiss. The Board unanimously approved a motion granting the state's motion and dismissing the charges.

ORDER

IT IS THEREFORE ORDERED that the Notice of Hearing and Statement of Charges filed against Respondent Wendell Simmonds on May 4, 2016 is hereby DISMISSED.

Dated this 1st day of September, 2016.



James Miller
Chairperson, Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General
Kellen B. Bubach, Attorney for Respondent