

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	COMPLAINT
MICHAEL L. SIMS	}	AND
License No. 18173	}	STATEMENT
Respondent	}	OF CHARGES
	}	AND
	}	NOTICE OF HEARING

COMES NOW, the Complainant, Lloyd K. Jessen, Executive Secretary/Director for the Iowa Board of Pharmacy Examiners, on the 20th day of December, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against Michael L. Sims, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; 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 April 11, 1994, by reciprocity. Respondent was issued a license to practice pharmacy in Indiana (license number 26017049) on June 26, 1990, by examination.

3. Respondent currently resides at 3403 Parkwild Drive, Bettendorf, Iowa 52722.

4. Respondent was employed as a staff pharmacist at Osco Drug, 2828 West Locust, Davenport, Iowa, from July 1994 to September 14, 1994.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1995.

6. The board has received an investigative report from Board Investigator Lindy A. Pearson, dated November 23, 1994, which alleges that Respondent obtained for personal use, without prescriber authorization, an unspecified quantity of various Schedule III and IV controlled substances, including Valium, Xanax, and Vicodin, from his employer, Osco Drug, 2828 West Locust, Davenport, Iowa, between July 1994 and September 14, 1994. The report also alleges that Respondent consumed unspecified quantities of said controlled substances while dispensing prescriptions and while practicing pharmacy.

7. Respondent is guilty of violations of 1993 Iowa Code sections 124.308(3), 124.402(1)(a), 124.403(1)(c), 155A.12(1), 155A.12(5), 155A.23(1)(a), 272C.10(2), 272C.10(3) and 272C.10(4) by virtue of the allegations in paragraph 6.

Iowa Code section 124.308 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 124.402(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 124.308;...

Iowa Code section 124.403(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;...

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 272C.10 provides, in relevant part, the following:

...A licensing board...shall by rule include provisions for the revocation or suspension of a license which shall include...:

2. Professional incompetency.

3. ...[E]ngaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs...

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations in paragraph 6.

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:..

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

....

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, 124, and 126.

....

m. Inability to practice pharmacy with reasonable skill and safety by reason of...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 7 and 8 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent has violated 1993 Iowa Code sections 124.308(3), 124.402(1)(a), 124.403(1)(c), 155A.12(1), 155A.12(5), 155A.23(1)(a), 272C.10(2), 272C.10(3), and 272C.10(4) and 657 Iowa Administrative Code sections 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 Michael L. Sims appear before the Iowa Board of Pharmacy Examiners on Wednesday, February 8, 1995, 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 Michael L. Sims on April 11, 1994, 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 disciplinary action, including 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 representing the public interest in these proceedings. Information regarding the hearing may be obtained from Linny C. Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary/Director

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of : **STIPULATION**
MICHAEL L. SIMS : **AND**
License No. 18173 : **INFORMAL SETTLEMENT**
Respondent :

COMES NOW the Iowa Board of Pharmacy Examiners (the Board) and Michael L. Sims, R.Ph., (Respondent) and, pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into the following Stipulation of the contested case currently on file:

1. Respondent was issued a license to practice pharmacy in Iowa on April 11, 1994, by reciprocity.

2. Respondent's license is current until June 30, 1995.

3. Respondent's current address is 1306 S.E. Trilein Street, Ankeny, Iowa 50021.

4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on December 20, 1994.

5. The Board has jurisdiction of the parties and the subject matter.

6. Respondent does not contest the allegations set forth in the complaint and agrees that the Board may treat the allegations as true. The Respondent understands that there is no admission on his part of the truth of the allegations, but merely an agreement that the Board may treat

the allegations as true for the purpose of this Informal Settlement.

7. Respondent's license to practice pharmacy is placed on probation for a period of five (5) years from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

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

b. Pay all required fees for renewal of his pharmacist license to prevent the license from lapsing during the period of probation.

c. Obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and all federal and state criminal laws.

d. Not supervise any registered pharmacy intern or extern and shall not perform any of the duties of a preceptor.

e. Submit a written report to the Board once every three (3) months for two years, beginning on June 1, 1995, stating truthfully whether or not he has complied with all terms and conditions of his probation. Respondent shall continue to submit a similar written report to the Board once a year, beginning on June 1, 1997.

f. Comply with all after-care recommendations of his physician and his treatment center, including regular

attendance (at least once a week) at Alcoholics Anonymous or Narcotics Anonymous support group meetings, and compliance with all the terms of Respondent's recovery agreement with his treatment center, if any.

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

h. Not use any controlled substance or other prescription drug in any form unless prescribed for him by a licensed, treating physician. Respondent shall inform any treating physician of the terms of this Stipulation and Informal Settlement prior to accepting any prescription medication.

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

j. Notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after the approval of this Stipulation and Informal Settlement, and 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.

8. Should Respondent reside or practice outside of this State, Respondent shall notify the Board in writing of

the dates of departure and return. Periods of residency or practice outside of this State shall not apply to reduction of the probationary period.

9. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation. If a petition to revoke probation is filed against Licensee during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

11. 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.

12. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 8th day of February, 1995.



MICHAEL L. SIMS
Respondent

Signed and sworn to before me this 8th day of February, 1995.



NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

13. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 20th day of February, 1995.



MARIAN L. ROBERTS, Chairperson
Iowa Board of Pharmacy Examiners

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

Re: Pharmacist License of
MICHAEL L. SIMS
License No. 18173
Respondent

}
}
}
}
}
}
}

ORDER

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 15th day of July, 1997, and declares that:

1. On February 20, 1995, Respondent's pharmacist license number 18173 was placed on probation with conditions for five (5) years.

2. On July 15, 1997, the Respondent appeared before the Board at an informal conference and requested early termination of his probationary period. After considering Respondent's request, the Board agreed to modify the terms of Respondent's Stipulation and Informal Settlement dated February 20, 1995, by terminating Respondent's probationary status as of August 20, 1997.

WHEREFORE, it is hereby ordered that the probationary period of pharmacist license number 18173 issued to Respondent and the terms, restrictions, and conditions of Respondent's probation shall end on August 20, 1997, and that as of August 20, 1997, Respondent's Iowa pharmacist certificate is fully restored.



LLOYD K. JESSEN

Executive Secretary/Director
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

Seal