

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

Re:)	Case No. 2002-13642
Pharmacist License of)	
MICHAEL H. SINNOTT)	STATEMENT OF CHARGES
License No. 13642)	
Respondent)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2001).
3. On September 4, 1969, the Board issued Respondent, Michael H. Sinnott, a license to engage in the practice of pharmacy by examination as evidenced by license number 13642, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 13642 is current and active until June 30, 2003.
5. Respondent's current address is 4233 Sunland Ct. SE, Cedar Rapids, Iowa 52403.
6. Upon information and belief, the Respondent is not currently employed as a pharmacist. The Respondent was employed as a pharmacist and part owner of Medicine Shoppe Pharmacy at 1911 First Avenue S.E., Cedar Rapids, Iowa 52402 at times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code § 147.55(5) (1993) (1995) (1997) (1999) & (2001) and 657 Iowa Administrative Code §§ 36.1(4)(e) & (u) with being convicted of a felony related to the profession or occupation of pharmacist.

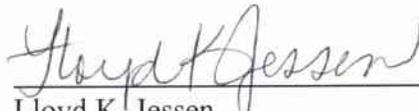
COUNT II

The Respondent is charged under Iowa Code § 155A.12(1) & (2) (1993) (1995) (1997) (1999) & (2001) and 657 Iowa Administrative Code §§ 8.5(1) & 36.1(4)(c) with knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy and engaging in unethical conduct.

THE CIRCUMSTANCES

1. The U.S. Attorney for the Northern District Iowa of filed a Criminal Indictment against the Respondent on February 23, 2001 alleging the Respondent had committed criminal violations of mail fraud.
2. The U.S. Attorney for the Northern District Iowa of filed a one count Information against the Respondent on March 13, 2002 alleging the Respondent had committed the criminal violation of misbranding drugs.
3. The Respondent pled guilty to Count 5 of the eight count Indictment filed by the U.S. Attorney on February 23, 2002 and to Count 1 of the one-count Information filed by the U.S. Attorney on March 13, 2002.
4. On October 4, 2002, the U.S. District Court, Northern District of Iowa, imposed its Judgement in a Criminal Case in the case captioned *United States of America v. Michael H. Sinnott, Case No. CR01-16CRW*. The federal court found that Respondent pled guilty to one count of mail fraud, in violation of 18 U.S.C. section 1341 and one count of misbranding drugs, in violation of 21 U.S.C. sections 331(k), 333(a)(1), and 352(a). The Court sentenced Respondent to 3 years of probation with six months' home detention, fined the Respondent \$1,000, and ordered the Respondent to pay \$36,702.39 in restitution.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.



Lloyd K. Jessen
Executive Secretary/Director

On this 4th day of Dec., 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: **Shauna Russell Shields**
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:) CASE NO. 2002-13642
) DIA NO: 03PHB018
Pharmacy License of:)
MICHAEL H. SINNOTT) **FINDINGS OF FACT,**
License No. 13642) **CONCLUSIONS OF LAW,**
Respondent) **DECISION AND ORDER**

TO: MICHAEL H. SINNOTT

On December 4, 2002, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Michael H. Sinnott (Respondent), a registered pharmacist. The Statement of Charges alleged that the Respondent violated Iowa Code section 147.55(5)(1993-2001) and 657 IAC 36.1(4)"e" and "u" by being convicted of a felony related to the profession or occupation of pharmacist. [Count I] The Statement of Charges further alleged that the Respondent violated Iowa Code section 155A.12(1) and (2)(1993-2001) and 657 IAC 8.5(1) and 36.1(4)"c" by knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy and engaging in unethical conduct.

The hearing on the Statement of Charges was held on April 23, 2003 at 10:20 a.m., in the conference room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Michael J. Seifert, Vice-Chairperson; Paul Abramowitz; Lemman Olson; Vernon H. Benjamin; Kay Bolton and Barbara E. O'Roake. The Respondent did not appear and was not represented by counsel. The state was represented by Scott Galenbeck, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003).

After hearing the testimony and examining the exhibits, the Board deliberated its decision and took a motion in open session revoking the Respondent's license. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the deliberations.

THE RECORD

The record includes the testimony of the witnesses and the following exhibits:

- State Exhibit A: Group exhibit with judgment and other materials from United States of America v. Michael H. Sinnott, case number CR 01-16-CRW, United States District Court for the Northern District of Iowa
- State Exhibit B: Statement of Charges, 12/4/02, Case No. 2002-13642
- State Exhibit C: Notice of Hearing
- State Exhibit D: Certified Mail Receipt

FINDINGS OF FACT

1. On September 4, 1969, the Board issued the Respondent pharmacy license number 13642 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. License number 13642 is active until June 30, 2003. The Respondent is not currently employed as a pharmacist and has told the Board's investigator that he intends to retire. (Testimony of Jackie Devine; State Exhibit B)
2. At times relevant to the Statement of Charges, the Respondent was employed as a pharmacist and part owner of Medicine Shoppe Pharmacy at 1911 First Avenue S.E., Cedar Rapids, Iowa 52402. (Testimony of Jackie Devine; State Exhibit A)
3. On February 23, 2001, the U. S. Attorney for the Northern District of Iowa filed an eight-count criminal indictment against the Respondent. The indictment alleged that on April 1, 1997, the Respondent misbranded various generic drugs as brand name drugs, in violation of 21 U.S.C. § 352(a) and 21 U.S.C. §§ 331(k) and 333(a)(2) (Counts 1-4). The indictment further alleged that from January 1992 through December 1997, the Respondent submitted false claims to the state of Iowa Medicaid program for payment when he knew that he had not dispensed the prescription drugs to customers as claimed for payment, in violation of 18 U.S.C. § 1341. (Counts 5-8)

On March 13, 2002, the U.S. Attorney for the Northern District of Iowa filed a one-count information against the Respondent alleging that he had committed the crime of misbranding drugs. (Testimony of Jackie Devine; State Exhibit A)

4. On March 13, 2002, the Respondent pled guilty to Count 5 of the eight-count indictment filed on February 23, 2001 and to Count 1 of the one-count information filed on March 13, 2002. Both counts were felonies.

On October 4, 2002, the U.S. District Court for the Northern District of Iowa imposed Judgment in a Criminal Case in United States of America v. Michael H. Sinnott, Case No. CR01-16CRW. The Court found that the Respondent pled guilty to one count of Mail Fraud, in violation of 18 U.S.C. § 1341, and one count of misbranding drugs, in violation of 21 U.S.C. § 352(a) and 21 U.S.C. §§ 331(k) and 333(a)(2). The Court sentenced the Respondent to 3 years of probation with six months' home detention, fined him \$1,000, and ordered him to pay \$36,702.39 in restitution. (Testimony of Jackie Devine; State Exhibit A)

5. The Statement of Charges and Notice of Hearing were served on the Respondent by certified mail, return receipt requested on December 18, 2002. He failed to appear for the hearing. (Testimony of Debbie Jorgenson; State Exhibits B, C, D)

CONCLUSIONS OF LAW

Failure to Appear

657 IAC 35.5(1)"b" provides that the notice of hearing may be served by certified mail, return receipt requested. 657 IAC 36.5(5) provides that the notice shall be delivered at least 30 days before the time set for the hearing.

The notice of hearing was delivered to the Respondent's residence by certified mail, return receipt requested on December 12, 2002. (State Exhibit B) He was properly served with the notice of hearing but failed to appear for hearing or request a continuance.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 657 IAC 35.21 (1). When the Respondent failed to appear, the Board was authorized to proceed with the hearing.

Count I

Iowa Code section 147.55(5) (1993-2001) provides, in relevant part:

147.55 Grounds.

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

...

5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

657 IAC 36.1(4)"e" and "u" provide, in relevant part:

36.1(4) Grounds for discipline. The board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of any of the following acts or offenses:

...

e. Conviction of a felony related to the profession or occupation of the licensee or registrant, or a conviction of a felony that would affect the licensee's or registrant's ability to practice within the licensee's or registrant's profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

...

u. Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15 or any of the rules of the board.

The preponderance of the evidence established that the Respondent violated Iowa Code section 147.55(5) and 657 IAC 36.1(4)"e" and "u" when he was convicted of the federal crimes of Misbranding Drugs and Mail Fraud, both of which are felonies. The allegations underlying the convictions involved the Respondent's misbranding of generic drugs as brand name drugs and his submission of false claims for reimbursement to the Iowa Medicaid program, both occurring in the course of the Respondent's business as a pharmacist and in his operation of a

pharmacy in the state of Iowa. Both felonies were clearly related to the Respondent's practice of pharmacy.

Count II

Iowa Code section 155A.12(1) and (2) (1993 through 2001) provides, in relevant part:

155A.12 Pharmacist license-grounds for discipline.

...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. Engaged in unethical conduct as that term is defined by rules of the board.

657 IAC 8.5(1)(effective 2/5/97) provided:

657-8.5(147, 155A) Unethical conduct or practice.

The provisions of the rules apply to licensed pharmacies, licensed pharmacists and registered pharmacist-interns.

8.5(1) Misrepresentative deeds. A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

657 IAC 36.1(4)"c" provides:

36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

c. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

The preponderance of the evidence established that the Respondent violated Iowa Code section 155A.12(1) and (2) and 657

IAC 8.5(1) and 36.1(4)"c" when he misbranded drugs in his pharmacy practice and when he submitted false claims for payment to the Iowa Medicaid program. By these actions, the Respondent knowingly made misleading, deceptive, untrue, and fraudulent representations in the practice of pharmacy and engaged in unethical conduct.

Sanction

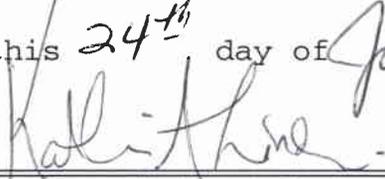
The Respondent's felony convictions for misbranding drugs and mail fraud are egregious violations of the trust placed in him as a licensed pharmacist. The Respondent's dishonest and fraudulent actions undermine public confidence in the pharmacy profession and merit the most severe disciplinary sanction that is available to the Board.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy license number 13642, issued to Michael H. Sinnott, is hereby REVOKED.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director 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 24th day of June, 2003.



Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General
Michael H. Sinnott

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