

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of :
 :
 : **COMPLAINT**
 GAIL J. SWANSON : **AND**
 Lic. No. 14829 : **STATEMENT OF CHARGES**
 Respondent :

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 17th day of June, 1987, and files this Complaint and Statement of Charges against Gail J. Swanson, a pharmacist licensed pursuant to Iowa Code chapter 155, and alleges that:

1. Rollin C. Bridge, Chairperson; Jerry M. Hartleip, Vice Chairperson; John M. Rode; Melba Scaglione; Alan M. Shepley; Gale W. Stapp; and Donna J. Flower 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 is self-employed as the owner/pharmacist-manager of the Dispensary Pharmacy located at 101 North Grimmell Road in Jefferson, Iowa.

4. Respondent currently resides at 400 North Grimmell Road in Jefferson, Iowa.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1987.

6. On May 28, 1987, Respondent entered a plea of guilty in United States District Court for the Northern District of Iowa, Cedar Rapids, to one count of conspiracy to distribute and possess with intent to distribute cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, section 841(a)(1). See United States of America v. Gail John Swanson, No. CR 87-3007.

7. A transcript of Respondent's guilty plea hearing reveals that Respondent admits to participating in the illegal distribution of cocaine between about July 1982 and May 1986. See guilty plea transcript, page 3, lines 4 to 5.

8. A transcript of Respondent's guilty plea hearing also reveals that the United States Attorney alleges that Respondent willfully and knowingly participated in the following illegal cocaine transactions: the sale of one-quarter ounce of cocaine by Respondent from Respondent's home in Jefferson on March 8, 1986; the sale of one-quarter ounce of cocaine by Respondent from the Dispensary Pharmacy in Jefferson on March 13, 1986; the sale of three-quarters of an ounce of cocaine by Respondent from the Dispensary Pharmacy on March 26, 1986; the sale of three ounces of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll, Iowa, on April 2, 1986; and the sale of one-half ounce of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll on April 24, 1986. See guilty plea transcript, page 10, lines 23 to 25; page 11, lines 5 to 15 and 24 to 25; and page 12, lines 1 to 2.

9. Respondent accepts the allegations described in paragraph 7, above, as true and correct evidence of his involvement in the conspiracy to distribute and possess with intent to distribute cocaine. See guilty plea transcript, page 14, lines 16 to 25; and page 15, lines 1 to 2.

10. Iowa Code section 155.13 provides in part 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:....

2. Conviction of an offense, or where a penalty or fine has been invoked, for violation of chapter 147, chapter 203, chapter 203A, chapter 204, or the federal food, drug and cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.

3. Distributing on the premises of intoxicating liquors or drugs for any other than lawful purposes.

The Iowa Board of Pharmacy Examiners finds that paragraphs 6 through 9, above, constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent Gail J. Swanson's plea of guilty to conspiracy to distribute and possess with intent to

WHEREFORE, the undersigned charges that Respondent Gail J. Swanson's plea of guilty to conspiracy to distribute and possess with intent to distribute cocaine in violation of Title 21, United States Code, section 841(a)(1) is deemed to be a conviction within the meaning of Iowa Code section 155.13.

IT IS HEREBY ORDERED that Gail J. Swanson appear before the Iowa Board of Pharmacy Examiners on September 15, 1987, at 10:00 a.m. in second floor conference room "A", 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 Gail J. Swanson on July 1, 1976, and take whatever additional action that they may deem necessary and appropriate.

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF IOWA
3 CENTRAL DIVISION

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) No. CR 87-3007
6 vs.) PARTIAL TRANSCRIPT OF
7 GAIL JOHN SWANSON,) GUILTY PLEA HEARING
8 Defendant.)

9
10 Courtroom
11 United States Courthouse
12 Cedar Rapids, Iowa
13 May 28, 1987

14 The above-entitled matter came on for hearing
15 pursuant to assignment at 3:03 p.m.

16 BEFORE: HON. DAVID R. HANSEN, JUDGE.

17 APPEARANCES:

18 RICHARD L. MURPHY, Assistant United States
19 Attorney, Federal Building, Cedar Rapids, Iowa,
20 appearing for the Government.

21 GARY WENELL, Attorney at Law,
22 324 Commerce Building, Sioux City, Iowa
23 51101, appearing for the Defendant.

24 Reported by:
25 Daniel J. Shaw, C.S.R.
United States District Court Reporter
Cedar Rapids, Iowa

1 (Excerpt from guilty plea hearing)

2 THE COURT: Now, I want you to tell me exactly
3 what you did, Mr. Swanson, that makes you willing to come
4 into this court today and risk spending the next 15 years of
5 your life in a federal prison.

6 THE DEFENDANT: I worked in Florida one summer
7 when I was going to college and met some people while I
8 lived there, and so in later years, usually around holiday
9 time, if people I knew and myself wanted to purchase
10 cocaine -- it was always someone I knew. I didn't consider
11 myself a dealer -- but a group of friends would get together
12 and throw in a purchase.

13 THE COURT: And you would arrange that purchase?

14 THE DEFENDANT: The way that it worked was usually
15 they would just contact me Christmastime or 4th of July and
16 throw in \$500 for three or four people or two people and get
17 a half ounce or an ounce, and it was a connection that I had
18 or people that I knew.

19 THE COURT: Where were you living at this time?

20 THE DEFENDANT: In Jefferson.

21 THE COURT: And these people that asked you to
22 obtain cocaine for them, were they residents of Greene
23 County as well?

24 THE DEFENDANT: No. They were mostly residents of
25 Crawford County.

1 THE COURT: Of Crawford County. Now, over how
2 long a period of time, how many different holidays did these
3 arrangements --

4 THE DEFENDANT: Like it mentioned in here, maybe
5 the last four years.

6 THE COURT: And how much each year?

7 THE DEFENDANT: I'd say one to three times.

8 THE COURT: How did you make the arrangements with
9 your Florida connections?

10 THE DEFENDANT: Your Honor, I would just call up
11 and say that, a couple weeks ahead of time, that we were
12 planning this for the holiday, and it would be sent through
13 the mail and I would pay for it the same way, usually paid
14 for ahead of time or sometimes afterwards.

15 THE COURT: Would you send cash or check, or what?

16 THE DEFENDANT: Cash, Your Honor.

17 THE COURT: And you would receive the cocaine back
18 from Florida in the United States mails?

19 THE DEFENDANT: Yes.

20 THE COURT: What was the maximum amount at any one
21 time that you purchased in that fashion?

22 THE DEFENDANT: Two ounces would be the most.

23 THE COURT: And what was the purchase price for
24 those two ounces?

25 THE DEFENDANT: Usually it was pretty constant

1 like 1800 or 2,000 per ounce, and sometimes would be a
2 quarter of an ounce or an eighth of an ounce. It wasn't
3 always that quantity. It was whatever --

4 THE COURT: What was the largest number of people
5 that you agreed to supply at any one time?

6 THE DEFENDANT: Usually three besides myself.

7 THE COURT: That was the maximum?

8 THE DEFENDANT: Yes.

9 THE COURT: So if there were four of you,
10 including yourself, each of you were in for half an ounce,
11 is that what you're telling me, at the maximum?

12 THE DEFENDANT: Normally a quarter of an ounce.
13 If it cost 2,000, then it was 500 per person, or 550. It's
14 enough to cover postage and messing around with it. I
15 didn't intend it to be a big profit-making thing. I think
16 that's why my IRS records looked in line.

17 THE COURT: Who were some of the people in
18 Crawford County that you conspired with in this conspiracy?

19 THE DEFENDANT: Judge, they would have been Tony
20 Mulinger, Jay Heiden, Dave Frazier. It was mainly that
21 group of friends.

22 THE COURT: How did you know them?

23 THE DEFENDANT: Just -- I grew up with them, went
24 to school. So when I was approached -- I'd look at it as
25 sort of a coincidence in March of '86 these Florida people

1 who had never been to Iowa, except for the one that lived
2 here, came to stay overnight. It was approximately the same
3 time I'd been approached by a friend named Brian Quirk that
4 said he knew of someone who would buy cocaine. So in March
5 of '86 I sold for the first time to this person that I was
6 introduced to.

7 THE COURT: That person turned out to be an
8 undercover agent, is that what you're telling us?

9 THE DEFENDANT: Yes. He liked it and several
10 other times that same month arrangements were made for
11 quarter or half of an ounce, and it was from the Florida
12 people, they came up a second time and my wife didn't want
13 them at the house. She was tired of them being there and
14 tried to get them to go to Omaha. They had been in Chicago
15 and Minneapolis.

16 THE COURT: Is there any doubt in your mind that
17 the substance you were distributing was in fact cocaine, a
18 narcotic drug?

19 THE DEFENDANT: No.

20 THE COURT: You indicated to me that you'd had
21 seven years of college, is that right?

22 THE DEFENDANT: Yes.

23 THE COURT: What degrees do you hold?

24 THE DEFENDANT: Bachelor of Science and a Bachelor
25 of Pharmacy.

1 THE COURT: Were you working as a pharmacist in
2 Jefferson?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: How long had you been employed there?

5 THE DEFENDANT: Pardon?

6 THE COURT: How long had you been employed in
7 Jefferson as a pharmacist?

8 THE DEFENDANT: I opened the pharmacy there in
9 February of '80.

10 MR. WENELL: Your Honor, if I might interrupt?

11 THE COURT: You may, Mr. Wenell.

12 MR. WENELL: When Mr. Swanson was being introduced
13 and working with those, with the undercover people, there
14 was a plan to purchase a larger quantity. You asked him at
15 one time about what was the largest, or whatever. He hadn't
16 really got to that yet, but there was a plan. In fact, he
17 went to Florida with one of those agents, and I want him to
18 have the opportunity so that that -- so that all that gets
19 told. I don't want to give you the wrong impression.

20 THE COURT: I appreciate that.

21 Why don't you tell me about that transaction.

22 THE DEFENDANT: Your Honor, without getting too
23 involved, I was trying to tell you how I got into this.

24 THE COURT: I understand.

25 THE DEFENDANT: So after the initial purchases in

1 March of '86, and these people were up from Florida and went
2 to Omaha, this Agent Shannon called me, was wanting
3 cocaine. These guys had it and didn't seem to want to leave
4 until they got rid of it. They had three ounces left.
5 Agent Shannon said he would take it. So I drove to Carroll,
6 and the transaction took place for the three ounces.

7 THE COURT: Where in Carroll did that transaction
8 take place?

9 THE DEFENDANT: It was at the Carrollton Inn. I
10 didn't think of it at the time that it was me selling the
11 three ounces, but, anyway, that took place, and when we were
12 in the car talking that night Agent Shannon and Agent
13 Henderson and this Florida person Paul -- they started
14 talking quantity, and he said he could get a lot, and I sat
15 there and listened to them and they talked back and forth
16 about sometime doing a larger deal. Maybe a month went by
17 and Agent Shannon contacted me and said he had \$200,000 if I
18 could get ahold of this guy and get something lined up, and
19 that was what happened in April of '86 was the attempt to
20 get a large quantity.

21 THE COURT: What sort of an attempt was made in
22 that respect?

23 THE DEFENDANT: I called the next day and asked,
24 told them that this guy had a lot of money.

25 THE COURT: You called your Florida connection?

1 THE DEFENDANT: Told him that this guy had a lot
2 of money and that I'd seen it, and I thought he was serious
3 about doing this.

4 THE COURT: So what arrangements were made?

5 THE DEFENDANT: The Florida person was -- said he
6 couldn't do that kind of quantity, but he could do some and
7 he would bring up what he could. It never came through.
8 They didn't trust the people up here, and the people up here
9 didn't trust them down there, and so that was it.

10 THE COURT: Mr. Wenell made reference to a trip.
11 Was it the trip to Carroll you were talking about?

12 THE DEFENDANT: No. The trip he made reference to
13 was the Florida people didn't trust the Iowa people and they
14 said they wanted to meet this guy, if I could bring him
15 down. So Agent Shannon and I went to Florida a year ago and
16 met and talked and still there wasn't the trust there to
17 make the deal happen.

18 THE COURT: Who paid for the trip to Florida?

19 THE DEFENDANT: It was set up where they would pay
20 for the Florida -- the Florida people would pay for the
21 trip.

22 THE COURT: Did that happen?

23 THE DEFENDANT: No.

24 THE COURT: Who ended up paying for it?

25 THE DEFENDANT: I'm not sure. I didn't.

1 THE COURT: What was the names of the people in
2 Florida with whom you were dealing?

3 THE DEFENDANT: Two people that came to Iowa, with
4 one from Iowa, Chum Kepford, and the person that came with
5 him was Paul -- I never did know his name -- Angelastro.

6 THE COURT: Do you want to spell that for the
7 reporter, please.

8 THE DEFENDANT: A-n-g-e-l-a-s-t-r-o.

9 THE COURT: Thank you.

10 THE DEFENDANT: And then the third guy was James
11 Kiernan.

12 THE COURT: Mr. Murphy, are those the same
13 individuals charged in 3001 that are set for trial on June
14 the 22nd?

15 MR. MURPHY: That's correct, Your Honor.

16 THE COURT: How much cocaine were you talking
17 about for \$200,000?

18 THE DEFENDANT: However, I mean, sounds stupid,
19 how much that would buy, I had never bought or sold any
20 quantities like that.

21 THE COURT: Was there any discussion with your
22 Florida suppliers as to how much cocaine that would amount
23 to?

24 THE DEFENDANT: I think they talked about 50,000
25 for a kilogram.

1 THE COURT: Now, I'm going to ask Mr. Murphy to
2 detail for me the evidence that the Government has that it
3 would be placing in front of a trial jury if you went to
4 trial on this conspiracy charge. I want you to listen
5 carefully to Mr. Murphy's version of the Government's case
6 because when he's through I'm going to ask you whether or
7 not I can rely upon his recitation as providing a factual
8 basis for this charge and a factual basis for your plea of
9 guilty.

10 Mr. Murphy.

11 MR. MURPHY: May it please the Court.

12 THE COURT: Mr. Murphy.

13 MR. MURPHY: Your Honor, the evidence in this case
14 would be essentially as Mr. Swanson has related to the
15 Court, that he began obtaining small quantities of cocaine
16 from his friends, this Mr. Kepford, and later Mr. Kiernan,
17 and shared cocaine with a number of people around the
18 Jefferson, Iowa, area in the early years. The transactions
19 that we are aware of were very sporadic up until March of
20 1986 when Special Agent Tim Shannon of the Iowa Division of
21 Criminal Investigation in an undercover capacity was
22 introduced to Mr. Swanson.

23 On March 8th, 1986, Agent Shannon purchased one-
24 quarter ounce of cocaine from Mr. Swanson at Mr. Swanson's
25 residence in Jefferson, Iowa. There were subsequent

1 transactions between Agent Shannon and Mr. Swanson, and
2 usually prior to the transactions there were telephone calls
3 and there were a number of telephone calls and tapes that
4 exist in this case between Mr. Swanson and Mr. Shannon.

5 The next transaction was on March 13th, 1986, when
6 Agent Shannon purchased one-quarter ounce of cocaine from
7 Mr. Swanson at the Dispensary Pharmacy in Jefferson, Iowa.
8 Again there were contacts between Agent Shannon and
9 Mr. Swanson on March 26, 1986. Agent Shannon produced --
10 excuse me, purchased three-quarters of an ounce of cocaine
11 from Mr. Swanson, once again at the Dispensary Pharmacy in
12 Jefferson, Iowa.

13 On April 2nd, 1986, Agent Shannon purchased three
14 ounces of cocaine from Gail Swanson and an unknown Latin
15 male as was -- who later was identified as Paul Angelastro.
16 The purchase of three ounces on April 2nd, 1986, took place
17 in a vehicle in the parking lot of the Carrollton Inn in
18 Carroll, Iowa. It was at this time there were further
19 discussions concerning larger transactions and the ability
20 to produce larger quantities and sell larger quantities in
21 Iowa. Most of this conversation was between Mr. Angelastro
22 and Agent Shannon. There was discussion that they would
23 contact one another through the Defendant, Mr. Swanson.

24 On April 24th, 1986, Agent Shannon again made an
25 undercover purchase of one-half ounce of cocaine from Gail

1 Swanson. This transaction took place in the parking lot of
2 the Carrollton Inn, and on May 6th, 1986, Agent Shannon,
3 acting in an undercover capacity, did travel to Miami,
4 Florida, along with Gail Swanson, for the purpose of meeting
5 with James Kiernan to arrange the possible transaction and
6 purchase of four kilograms of cocaine which was to be
7 delivered to Agent Shannon by Mr. Kiernan or by one of his
8 agents in Sioux City, Iowa.

9 This meeting took place in Florida. Agent Shannon
10 did in fact meet Mr. Kiernan, went for a ride with Mr.
11 Kiernan in a vehicle after they met at the Miami Airport.
12 Mr. Kiernan produced a quantity of cocaine which was a
13 purported sample of the four kilos later to be delivered,
14 and after this meeting Agent Shannon and Mr. Swanson flew
15 back to Omaha and returned to their respective homes.

16 There was surveillance conducted on all of these
17 transactions, both in Florida and in Iowa, by various agents
18 of the Iowa Division of Criminal Investigation, by the
19 Federal Drug Enforcement Administration, and by various
20 local law enforcement agents, and those agents would be
21 available and would testify at a trial in this matter.

22 It should be noted that the plans concerning the
23 delivery of the cocaine in Sioux City, Iowa, went so far as
24 to secure \$200,000 in cash and put together rather large law
25 enforcement contingent in preparation for the receipt of

1 four kilograms of cocaine. There was a problem with that,
2 in that the transaction never did happen, and in fact a
3 Mr. Angelastro was arrested in Georgia in possession of one
4 kilogram of cocaine, which on the same day -- which cocaine
5 was supposed to be delivered to Iowa, and it's our belief
6 and understanding from the evidence we have in the case that
7 that one kilogram of cocaine was intended to be brought to
8 Iowa from Mr. Kiernan as a result of negotiations conducted
9 by this Defendant, and that it was going to be delivered to
10 Agent Shannon. It never did happen because Mr. Angelastro
11 was arrested in Georgia.

12 . There are numerous --

13 THE COURT: Was he arrested there by design or
14 happenstance?

15 MR. MURPHY: By happenstance, Your Honor. I'm not
16 quite certain what the circumstances were, but he was pulled
17 over by the Georgia DCI before he could get here. So we
18 would have the narcotics evidence.

19 In addition, we would have the tape recordings,
20 not only between Agent Shannon and Mr. Swanson, but also
21 numerous tape recordings between Agent Shannon and
22 Mr. Kiernan following the last transaction, last narcotics
23 transaction that did take place, and up until the time of
24 Mr. Swanson's arrest in which Shannon and Kiernan are
25 discussing not only the prior transactions in which they've

1 in this conspiracy?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: If you went to a jury trial on this
4 conspiracy count and the Government presented its case to
5 the jury as you know it to be and you had an opportunity to
6 present any defense that you had to the charge to that same
7 jury and we asked the jury to go out and deliberate upon
8 your guilt or innocence of this conspiracy charge, what
9 verdict do you believe the jury would return?

10 THE DEFENDANT: Guilty, Your Honor.

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* * *

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C E R T I F I C A T E

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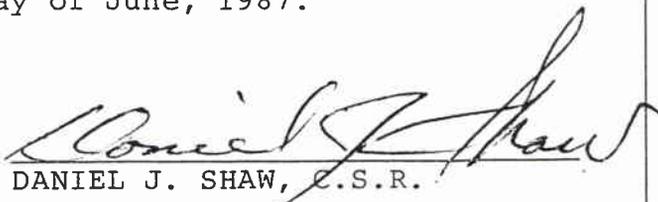
I, Daniel J. Shaw, hereby certify that I am the
Official Court Reporter of the United States District Court,
Northern District of Iowa; that I reported in shorthand the
foregoing matter and reduced the same to typewritten form;
that the foregoing pages are a true and complete transcript
of my shorthand notes so taken.

21

Dated this 4th day of June, 1987.

22

23


DANIEL J. SHAW, C.S.R.

24

25

1 gone through this Defendant, but also the future transaction
2 of four kilograms of cocaine, and it's evidence from those
3 recordings that there was agreement to conduct this
4 transaction if only the details could be worked out. The
5 details were never able to be worked out, but it does appear
6 from all of the tape recordings in this case that had the
7 logistics been able to be worked out that the transactions
8 would have gone through.

9 There are the tape recordings, the drugs, phone
10 records, and other documents that would be placed into
11 evidence, including the airline tickets for the trip to
12 Florida.

13 Your Honor, that would be essentially the
14 evidence, and the witnesses would be essentially those law
15 enforcement agents that I've referred to previously.

16 THE COURT: Mr. Swanson, if the Government's
17 witnesses were called into court today to give their sworn
18 testimony under oath concerning the facts and circumstances
19 surrounding this alleged conspiracy and your involvement in
20 it, do you believe their sworn testimony under oath would be
21 any different than what Mr. Murphy has indicated it would
22 be?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: May I rely upon Mr. Murphy's rendition
25 of the evidence as being true and correct as it involves you

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacy License of	}	
DISPENSARY PHARMACY	}	
License No. 340	}	
Jerry L. Swanson,	}	
Owner,	}	
Respondent	}	
		COMPLAINT AND STATEMENT OF CHARGES

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 26th day of October, 1990, and files this Complaint and Statement of Charges against Pharmacy, a pharmacy licensed pursuant to Iowa Code chapter 155A, and alleges that:

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

2. Respondent is licensed to operate a pharmacy at 101 North Grimmell Road in Jefferson, Iowa, and holds license number 340.

3. General pharmacy license number 340, issued in the name of the Dispensary Pharmacy, with Ruth Isaak as pharmacist in charge, and Jerry L. Swanson and Carol L. Swanson as corporate owners and officers, was renewed on December 21, 1989, and is current until December 31, 1990.

4. Respondent Dispensary Pharmacy was formerly owned by Gail J. Swanson. On September 14, 1987, a Judgment and Probation/Commitment Order was filed in the United States District Court, Northern District of Iowa, finding that Gail J. Swanson had been convicted of conspiracy to distribute cocaine, in violation of 21 USC section 846 and committing Gail J. Swanson to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years.

On October 13, 1987, an application for change of ownership of the Dispensary Pharmacy was filed with the Board. That application indicated that ownership of the Dispensary Pharmacy had been transferred from Gail J. Swanson, to his brother, Jerry L. Swanson, of Denison, Iowa.

Effective December 24, 1987, the license to practice pharmacy issued to Gail J. Swanson, pharmacist license number 14829, was revoked by the Board with no possibility of reinstatement for five (5) years.

Sometime prior to May 23, 1990, Gail J. Swanson was released from the custody of a federal correctional facility. On May 23, 1990, a letter was sent to Gail J. Swanson from the Board's Chief Investigator, James P. Theis, advising Gail J. Swanson of the Board's position in regard to his presence at the Dispensary Pharmacy. That letter informed Gail J. Swanson that he was not to enter the pharmacy (prescription department) area, or function as a pharmacy clerk, pharmacy technician, or in any other capacity in the pharmacy (prescription department).

On June 15, 1990, Gail J. Swanson sent a letter to the Board acknowledging receipt of Chief Investigator Theis' letter dated May 23, 1990. In his letter, Gail J. Swanson stated the following: "I do not pretend or portray myself as a pharmacist in any capacity. I have never stepped foot behind the pharmacy counter. My intentions are to follow the limitations imposed by the Board to the letter."

5. The Board has received an investigative report dated October 22, 1990, from Pharmacy Investigator Morrell A. Spencer. That report contains the following information and allegations:

a. During the month of June 1990 Gail J. Swanson worked in the Dispensary Pharmacy, entered the pharmacy (prescription department) area, and engaged in the following activities: (1) the unpacking, receiving, and handling of prescription drugs; (2) the taking of requests for refills of prescriptions over the pharmacy telephone; (3) the handling of prescription files to check for refill authorization on individual prescriptions; and (4) the handling of vials containing prescription drugs to check on pricing prior to when the drugs were dispensed.

b. On July 5, 6, and 7, 1990, Ruth Isaak, the pharmacist in charge of the Dispensary Pharmacy, was absent from the pharmacy. Gail J. Swanson arranged for a replacement pharmacist to work at the Dispensary on those days. The replacement pharmacist had a hearing impairment which prevented him from using the telephone.

c. On July 5 or 6, 1990, Gail J. Swanson entered the pharmacy (prescription department) area, affixed a typed label to a prescription vial, handled numerous containers of prescription drugs, and priced prescriptions.

d. On July 6, 1990, Gail J. Swanson entered the pharmacy (prescription department) area and compounded prescription number 92677 which called for hydrocortisone powder in aquaphilic ointment.

e. On July 6, 1990, Gail J. Swanson used the pharmacy telephone to speak with a patient in regard to his prescription medication. Gail J. Swanson later priced a prescription for this person.

f. On July 7, 1990, Gail J. Swanson entered the pharmacy (prescription department) area and priced prescription number 82693 which called for 100 tablets of Corgard 40mg.

g. On July 6, 1990, a male patient entered the Dispensary Pharmacy and stated that he wished to talk to the pharmacist whom he had spoken with over the telephone earlier that day. Gail J. Swanson then came out from a back office and spoke with the patient.

h. On July 7, 1990, a female patient entered the Dispensary Pharmacy to obtain prescription numbers 79663, 82573, and 92692. While in the Dispensary she observed Gail J. Swanson in the pharmacy (prescription department) area.

i. The November 1990-91 edition of the Jefferson Telephone Company Telephone Directory contains the following listing on page 60: Swanson, Gail J. R.Ph.

6. Respondent is guilty of violations of 1989 Iowa Code sections 155A.4(1), 155A.15(2)(c), 155A.15(2)(d), and 155A.15(2)(e) by virtue of the allegations in paragraph 5.

Iowa Code section 155A.4 provides, in part, the following:

1. A person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.

Iowa Code section 155A.15 provides, in part, the following:

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:

....

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

d. Delivered without legal authorization prescription drugs or devices to a person other than

one of the following:

- (1) A pharmacy licensed by the board.
- (2) A practitioner.
- (3) A person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale.
- (4) A manufacturer or wholesaler licensed by the board.

....

e. Allowed an employee who is not a licensed pharmacist to practice pharmacy.

7. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(f), 9.1(4)(j), 9.1(4)(l), 9.1(4)(u), and 9.1(4)(v) by virtue of the allegations in paragraph 5.

657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:

....

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

....

f. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability include, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services for which the pharmacist is not qualified to perform by virtue of training or experience.

....

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.

....

l. Knowingly aiding, assisting, procuring or advising another person to unlawfully practice 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.

v. Practicing pharmacy without an active and current license.

The Iowa Board of Pharmacy Examiners finds that paragraphs 6 and 7 constitute grounds for which Respondent's license to operate a pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent Dispensary Pharmacy has violated 1989 Iowa Code sections 155A.4(1), 155A.15(2)(c), 155A.15(2)(d), and 155A.15(2)(e) and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(f), 9.1(4)(j), 9.1(4)(l), 9.1(4)(u), and 9.1(4)(v).

IT IS HEREBY ORDERED that Jerry L. Swanson appear on behalf of the Dispensary Pharmacy before the Iowa Board of Pharmacy Examiners on Tuesday, December 4, 1990, at 2:00 o'clock 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, revoke, or not renew the license to operate a pharmacy issued to the Dispensary Pharmacy on December 21, 1989, 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 its own. The failure of Respondent to appear could result in the permanent suspension or revocation of its 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 R. Jessen
Executive Secretary

BEFORE THE IOWA BOARD
OF
PHARMACY EXAMINERS
DES MOINES, IOWA

IN THE MATTER OF THE COMPLAINT)	
AND STATEMENT OF CHARGES AGAINST:)	
GAIL J. SWANSON)	DECISION AND ORDER
)	
LIC. NO. 14829)	
RESPONDENT)	

To: Gail J. Swanson

A Complaint and Statement of Charges was filed by the Executive Secretary of the Iowa Board of Pharmacy Examiners on June 26, 1987, alleging that:

1. On May 28, 1987, Respondent entered a plea of guilty in United States District Court for the Northern District of Iowa, Cedar Rapids, to one count of conspiracy to distribute and possess with intent to distribute cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, section 841(a)(1). See United States of America v. Gail John Swanson, No. CR 87-3007.

2. A transcript of Respondent's guilty plea hearing reveals that Respondent admits to participating in the illegal distribution of cocaine between about July 1982 and May 1986. See guilty plea transcript, page 3, lines 4 to 5.

3. A transcript of Respondent's guilty plea hearing also reveals that the United States Attorney alleges that Respondent willfully and knowingly participated in the following illegal cocaine transactions: the sale of one-quarter ounce of cocaine by Respondent from Respondent's home in Jefferson on March 8, 1986; the sale of one-quarter ounce of cocaine by Respondent from Respondent's home in Jefferson on March 8, 1986; the sale of one-quarter ounce of cocaine by Respondent from the Dispensary Pharmacy in Jefferson on March 13, 1986; the sale of three-quarters of an ounce of cocaine by Respondent from the Dispensary Pharmacy on March 26, 1986; the sale of three ounces of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll, Iowa, on April 2, 1986; and the sale of one-half ounce of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll on April 24, 1986. See guilty plea transcript, page 10, lines 23 to 25; page 11, lines 5 to 15 and 24 to 25; and page 12, lines 1 to 2.

4. Respondent accepts the allegations described in paragraph 7, above, as true and correct evidence of his involvement in the

conspiracy to distribute and possess with intent to distribute cocaine. See guilty plea transcript, page 14, lines 16 to 25; and page 15, lines 1 to 2.

The Complaint and Statement of Charges alleged violations of Iowa Code Section 153.13.

A hearing on the above Complaint and Statement of Charges was held on December 9, 1987 at 10:15 a.m. in second floor conference room "A", 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa 50319. Present were the Board, with the exception of Gale W. Stapp, and its counsel, Thomas D. McGrane, Assistant Attorney General. The respondent, Gail J. Swanson was not present, nor was his counsel, Lawrence Scalise. Mr. Scalise was notified by certified letter dated November 20, 1987 that the hearing would be held on December 9, 1987 at 10:00 a.m. The return receipt indicates the notice was received by Mr. Scalise's Law Office on November 23, 1987. The Board waited for Mr. Scalise until 10:15 a.m. and then proceeded in his absence.

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.

After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code Section 21.5(1)(f)(1987), 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 letter dated September 18, 1987 from the Executive Secretary to Respondent, the Notice of Hearing dated November 20, 1987 and the attached return receipt, the recorded testimony of the witness, and the following exhibits:

- Exhibit-1. Partial Transcript of Guilty Plea, No. CR87-3007, United States District Court, Northern District of Iowa .
- Exhibit 2. Certified copy of Information, No. CR87-3007, U. S. District Court, Northern District of Iowa, filed May 28, 1987.
- Exhibit 3. Judgement and Probation Commitment Order filed September 14, 1987 in U.S. District Court, Northern District of Iowa.

FINDINGS OF FACT

1. The Respondent, Gail J. Swanson, is a pharmacist licensed under the State of Iowa and issued pharmacist's license number 14829. (official file)

2. On May 28, 1987, Respondent entered a plea of guilty in United States District Court for the Northern District of Iowa, Cedar Rapids, to one count of conspiracy to distribute and possess with intent to distribute cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, section 841(a)(1). (Exhibit 1)

3. A transcript of Respondent's guilty plea hearing established that Respondent admits to participating in the illegal distribution of cocaine between about July 1982 and May 1986. (Exhibit 1, page 3, lines 4 to 5)

4. A transcript of Respondent's guilty plea hearing also establishes that the United States Attorney alleges that Respondent willfully and knowingly participated in the following illegal cocaine transactions: the sale of one-quarter ounce of cocaine by Respondent from Respondent's home in Jefferson on March 8, 1986; the sale of one-quarter ounce of cocaine by Respondent from the Dispensary Pharmacy in Jefferson on March 13, 1986; the sale of three-quarters of an ounce of cocaine by Respondent from the Dispensary Pharmacy on March 26, 1986; the sale of three ounces of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll, Iowa, on April 2, 1986; and the sale of one-half ounce of cocaine by Respondent from the parking lot of the Carrollton Inn in Carroll on April 24, 1986. (Exhibit 1, P.10-12)

5. Respondent accepts the allegations described above, as true and correct evidence of his involvement in the conspiracy to distribute and possess with intent to distribute cocaine. (Exhibit 1, P. 14-15)

6. On September 14, 1987 a Judgement and Probation/Commitment Order was filed in the United States District Court, Northern District of Iowa, finding that Respondent has been convicted of conspiracy to distribute cocaine, in violation of 21 USC §846 and committing Respondent to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years and assessing a special assessment of \$50.00. (Exhibit 3)

CONCLUSIONS OF LAW, DECISION AND ORDER

Substantial evidence was presented to support paragraphs one through ten of the Complaint and Statement of Charges, and to establish violation of Iowa Code section 155.13. Mr. Swanson is therefore found to have violated Iowa Code section 155.13.

The Board recognizes that the diversion of controlled substances by a health care professional is the ultimate disservice to his profession as well as the public safety.

It is therefore the ORDER of the Iowa Board of Pharmacy Examiners that the license to practice pharmacy issued to Gail J.

Swanson, license number 14829, is revoked, effective upon receipt by Mr. Swanson of this Decision and Order. It is further ORDERED that Mr. Swanson may make no application for reinstatement of his license for five (5) years from the date of receipt of this Decision and Order by Mr. Swanson.

It is further ORDERED that Mr. Swanson pay an administrative fine of \$1000.00, within sixty (60) days of receipt of this order.

It is further ORDERED that prior to reinstatement of his license Mr. Swanson must successfully pass NABPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE) and the Iowa Drug Law Examination and comply with all the other requirements of 620 Iowa Administrative Code 9.3.

This Decision and Order was prepared by me at the direction of Iowa Board of Pharmacy Examiners on the 23rd day of December, 1987.

Margaret LeMarche
Margaret LaMarche
Hearing Officer
Iowa Department of
Inspections and Appeals
Lucas Building - 2nd floor
Des Moines, Iowa 50319

ML/nlh

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the)	
)	
REQUEST FOR LICENSE)	FINDINGS OF FACT,
REINSTATEMENT OF)	CONCLUSIONS OF LAW,
GAIL J. SWANSON)	DECISION AND ORDER
)	
)	
Lic. No. 14829)	DIA NO. 93PHB-6
Respondent)	

On February 25, 1993, Gail J. Swanson, (Respondent) appealed from an order of the Iowa Board of Pharmacy Examiners (Board) denying him reinstatement of his license to practice pharmacy in the State of Iowa. A Notice of Hearing was issued setting the hearing for April 8, 1993, at 2:00 p.m.

The hearing was continued to September 14, 1993, at 2:00 p.m. It was held in the second floor conference room, 1209 East Court Ave., Executive Hills West, Des Moines, Iowa. The following members of the Board were present: Marian Roberts, Chairperson; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus, and Arlan D. Van Norman. Lynette Donner, Assistant Attorney General, appeared on behalf of the state. The Respondent appeared in person and was represented by his counsel, James R. Bowers. Present also were members of the staff of the Board, Mrs. Swanson, and a court reporter. Margaret LaMarche, Administrative Law Judge from the Department of Inspections and Appeals, presided. The hearing was closed to the public at the request of the Respondent, pursuant to Iowa Code Section 272C.6(1). After hearing the testimony and examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code section 21.5(1)"f"(1993) to deliberate. The undersigned administrative law judge was instructed to prepare this Board's order.

THE RECORD

The record in this case includes the notice of appeal, notice of hearing, the testimony of the witnesses, and the following exhibits:

- Respondent's Exhibit 1: Letter dated December 14, 1992, from Richard M. Brunner to Iowa Pharmacy Examiners.

- Respondent's Exhibit 2: Letter dated December 14, 1992, from Rev. Roger J. Linnan, Pastor, St. Joseph's Church to Lloyd Jessen, Iowa Board of Pharmacy Examiners.

- Respondent's Exhibit 3: Letter dated December 14, 1992, from Mrs. Mary F. Lane to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 4: Letter dated December 14, 1992, from Faye McClurg to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 5: Letter dated December 15, 1992, from Becky L. Piepel to President, Lloyd Jessen, Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 6: Letter received by Iowa Pharmacy Examiners. on December 15, 1992, from Bernice Zimmer.
- Respondent's Exhibit 7: Letter dated December 16, 1992, from Catherine Phillips to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 8: Letter dated December 16, 1992, from Regina Murphy to Lloyd Jessen.
- Respondent's Exhibit 9: Letter dated December 16, 1992, from Jim North to Lloyd Jessen.
- Respondent's Exhibit 10: Letter dated December 16, 1992, from Paul A. Klodd to Pharmacy Board.
- Respondent's Exhibit 11: Letter dated December 16, 1992, from Dorothy Deal to Lloyd Jessen.
- Respondent's Exhibit 12: Letter dated December 17, 1992, from Ann Grace Krieger to Lloyd Jessen.
- Respondent's Exhibit 13: Letter received by Iowa Pharmacy Examiners on December 17, 1992, from Helen Gustin.
- Respondent's Exhibit 14: Letter dated December 17, 1992, from Franklin H. Davis to President Lloyd Jessen.
- Respondent's Exhibit 15: Letter dated December 18, 1992, from Lawrence L. Marshall, M.D., to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 16: Letter dated December 18, 1992, from Scott Brandt received by Iowa Pharmacy Examiners.

- Respondent's Exhibit 17: Letter dated December 21, 1992, from Louis and Delite Monahan to Lloyd Jessen.
- Respondent's Exhibit 18: Letter dated December 21, 1992, from Phillip Siglin to Lloyd Jessen, President Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 19: Letter dated December 21, 1992, from Ginny Destival to Lloyd Jessen, President Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 20: Letter dated December 21, 1992, from Martha P. Kearney to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 21: Letter dated December 22, 1992, from Todd C. Linden, Administrator of Greene County Medical Center to Lloyd Jessen, President, Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 22: Letter dated December 22, 1992, from Ed Lawler, R.Ph. to Lloyd Jessen, Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 23: Letter dated December 22, 1992, from Roger L. Davis to Lloyd Jessen and Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 24: Letter dated December 26, 1992, from Richard D. Watson to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 25: Letter dated January 7, 1993, from Jane Parker to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 26: Letter dated January 11, 1993, from Jane H. Martino, Jefferson Park and Recreation Department, to Lloyd Jessen, Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 27: Letter dated January 12, 1993, from George Meinecke to Iowa Board of Pharmacy Examiners.

- Respondent's Exhibit 28: Letter dated February 9, 1993, from Jeff Schmidt, CAC III, Certified Addictions Counselor, Trinity Regional Hospital, to Gail Swanson.
- Respondent's Exhibit 29: Letter dated March 4, 1993, from Leanne L. Moore, U.S. Probation Officer, United States District Court, to Gail Swanson.
- Respondent's Exhibit 30: Letter dated March 5, 1993, from David Gaskill, Curt Forbes Residential Center, to Iowa Pharmacy Board.
- Respondent's Exhibit 31: Letter dated July 1, 1993, from William Deets to Iowa Board of Pharmacy Examiners.
- Respondent's Exhibit 32: Letter dated July 6, 1993, from Judy Brodersen to Iowa Board of Pharmacy Examiners.
- State's Exhibit A: June 26, 1987, Complaint and Statement of Charges, with attached Partial Transcript of Guilty Plea Hearing.
- State's Exhibit B: September 14, 1987, Judgment and Probation/Commitment Order.
- State's Exhibit C: December 23, 1987, Decision and Order.
- State's Exhibit D: Extracts from DCI Report case 8601158.
- State's Exhibit E; Board Investigative Report dated July 9, 1987, with attached July 8, 1987, statement from Gail Swanson, and DCI Application for Search Warrant.
- State's Exhibit F. Not admitted.
- State's Exhibit G: Transcript of comments from Bill Deets, January 6, 1993.

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1976, by examination. Respondent's license was revoked by an order of the Board issued on December 23, 1987. (Exhibit A, C)
2. On May 28, 1987, the Respondent had entered a plea of guilty in the United States District Court for the Northern District of Iowa, Cedar Rapids, to one count of conspiracy to distribute and possess with intent to distribute cocaine, a schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1). (Testimony of Respondent, Exhibit C)
3. The Respondent admitted to participating in the illegal distribution of cocaine between July 1982 and May 1986. During this time, the Respondent owned and operated The Dispensary Pharmacy in Jefferson, Iowa. According to Respondent, he initially contacted a friend in Florida and arranged purchases of cocaine two to four times a year for himself and three of his friends. The group would use the cocaine together on fishing or hunting trips or holidays. (Testimony of Respondent, Exhibit C)
4. Respondent admits that on one occasion he took pharmaceutical cocaine from his own pharmacy. He replaced the cocaine that he took with Vitamin C crystals, to avoid detection. According to Respondent, he stopped using and purchasing cocaine in 1984. (Testimony of Respondent).
5. In late 1985, or early 1986, the Respondent was approached by a person he knew who asked if he had access to cocaine. Initially, the Respondent said no. In March 1986, the Respondent's drug supplier in Florida visited him at his home in Jefferson, Iowa. The drug supplier explained that he was taking cocaine from Florida to Minneapolis. The Respondent asked him if he would leave some cocaine with him for his friend and his supplier agreed. (Testimony of Respondent)
6. The Respondent's acquaintance in Jefferson was associated with an undercover agent for the Iowa Division of Criminal Investigation (DCI). The Respondent subsequently sold them one-quarter ounce of cocaine at his home in Jefferson, Iowa, on March 8, 1986; one-quarter ounce of cocaine at The Dispensary Pharmacy on March 13, 1986; three quarters ounce of cocaine at The Dispensary Pharmacy on March 26, 1986; three ounces of cocaine at the parking lot of The Carrollton Inn in Carroll, Iowa, on April 2, 1986, and one-half ounce cocaine at the parking lot of the Carrollton Inn on April 24, 1986. (Testimony of Respondent, Exhibits A, C and D)
7. In addition, the Respondent travelled to Florida with the DCI agent to assist in arranging a direct purchase from the drug

supplier of a large amount of cocaine for a price of \$200,000. This sale never occurred due to a lack of trust between the seller and purchaser. (Testimony of Respondents; Exhibit A and D)

8. The Respondent denied that he sold cocaine to make a profit. He maintains that he was only trying to help a friend. (Testimony of Respondent)

9. On September 14, 1987, a Judgment and Probation Commitment Order was filed in the United States District Court, Northern District of Iowa, committing the Respondent to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years and assessing a special assessment of \$50.00. (Exhibit B)

10. Following a disciplinary hearing on December 9, 1987, the Board issued its Decision and Order on December 23, 1987, which revoked the Respondent's license for a minimum period of five years. (Exhibit C)

11. Prior to his arrest and conviction, the Respondent was a respected member of the Jefferson community and was a leader in numerous community affairs. The Respondent had a successful pharmacy practice with many satisfied customers. He was married and the father of two children. The Respondent's wife was pregnant with their third child when the Respondent was charged and gave birth to their fourth child prior to his incarceration. The community was shocked when they heard about the Respondent's arrest. (Testimony of Respondent, Father Roger Joseph Linnan; Johnny Hamilton; Morrell Spencer; (Exhibits 1, 4, 6, 8-11, 13, 15-20, 24, 25)

12. The Respondent served his federal sentence at the Correctional Institution at Leavenworth, Kansas. He was released on March 5, 1990, to the Curt Forbes Residential Center in Ames, Iowa, a halfway house. The Respondent was evaluated for drug dependency while at Leavenworth, at the the halfway house, and while on parole. The Respondent denies that he was ever addicted to drugs and alcohol, and he has never been diagnosed as being dependent on drugs. The Respondent had not been treated for drug dependency. However, he attended eight Drug and Alcohol Educational Sessions between January 17 and March 22, 1991, at the recommendation of his parole officer. The Respondent was discharged from parole on October 21, 1992. (Testimony of Respondent Exhibits 28 and 29; Testimony of David Gaskill)

13. After leaving the halfway house in Ames, the Respondent returned to Jefferson, Iowa. He supported his family with a variety of jobs, including landscaping and snow removal. He is currently employed as a cement truck driver. The Respondent participates in community and church activities. He has submitted

numerous letters of support from citizens of Jefferson. In addition, several citizens from Jefferson testified as to the Respondent's excellent reputation in the community. (Testimony of Respondent; Camilla Mears, Robert Ausberger, George Meinacke, Father Roger Joseph Linnan, Johnny Hamilton, Exhibits 1-27)

14. The Respondent's counselor at the halfway house testified that he was very impressed by the Respondent's remorse over his actions. In his opinion, the Respondent has been rehabilitated. (Testimony of David Gaskill; Exhibit 30)

15. The Respondent's wife is the current owner of The Dispensary Pharmacy. Bill Deets is the pharmacist in charge. (Exhibit G, 31)

CONCLUSIONS OF LAW

657 IAC 9.23 provides:

657-9.23 (17A,147,155A,124B,272C) Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

2. A person whose license to practice pharmacy was revoked must successfully pass NABPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an information reinstatement conference before the board, as provided in rule 9.24 (17A,147,155A,124B,272C).

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the

board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657--Chapter 14.

The Respondent has failed to establish, by a preponderance of the evidence, that the basis for his revocation no longer exists and it is in the public interest for his license to be reinstated.

The Respondent's license was revoked due to his federal drug convictions, which related to and involved his pharmacy practice. This was an extremely serious violation, which directly affects public health and safety. At the time of his criminal behavior, the Respondent was more than thirty years old. He was the owner of an apparently successful pharmacy and was a respected and trusted pharmacist. He was a husband, a father, and a respected community leader. From all accounts, the news that he was charged with federal drug offenses both surprised and shocked the community.

The Respondent has failed to adequately explain how he could have risked all that he had achieved by selling illegal drugs. The Respondent denies that he was ever addicted to alcohol or drugs and he has never been treated for chemical dependency. He has not received any formal counselling or therapy. In explaining his behavior, the Respondent denies that he was motivated by money and states that he was only trying to help some friends. Such an explanation demonstrates a lack of insight into his problems and a failure to assume full responsibility for his actions. Unless the board is able to identify what caused the Respondent to act criminally in the first place, it is at a loss to determine that the problem has been corrected.

The members of the Jefferson community clearly support the Respondent and were credible witnesses. The Board was impressed that the Respondent returned to Jefferson after he was paroled. However, the community was deceived as to the Respondent's true character and activities when he was selling cocaine. The Board is not convinced that the Respondent would not be able to deceive them again.

DECISION AND ORDER

THEREFORE, IT IS THE ORDER of the Iowa Board of Pharmacy Examiners that the Respondent's request for reinstatement of his pharmacy license is hereby denied.

It is further ordered that the Respondent will be allowed to reapply for reinstatement ten (10) years from the date of receipt of this order.

Finally, it is ORDERED, pursuant to Iowa Code section 272C 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 witness fees and expenses and 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 12 day of October, 1993.



Marian L. Roberts, Chairperson
Iowa Board of Pharmacy Examiners

ML/kt

CC: Lynette Donner, Assistant Attorney General
James R. Bowers