

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

---

Re: Pharmacist License of	)	<b>COMPLAINT</b>
<b>MICHAEL C. TOPF</b>	)	<b>AND</b>
License No. 12164	)	<b>STATEMENT</b>
Respondent	)	<b>OF CHARGES</b>
	)	<b>AND</b>
	)	<b>NOTICE OF HEARING</b>

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**COMES NOW,** Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 7th day of October, 1991, and files this Complaint and Statement of Charges against Michael C. Topf, a pharmacist 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 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 13, 1955, by examination.

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

4. Respondent currently resides at 5810 Morningside Avenue in Sioux City, Iowa 51102.

5. Respondent is the owner and pharmacist in charge of Mr. Drug, a licensed pharmacy located at 415 Fourth Street in Sergeant Bluff, Iowa. Respondent has been the owner and pharmacist in charge of Mr. Drug during all times relevant to this Complaint and Statement of Charges.

6. The Board has received Respondent's medical records from St. Luke's Regional Medical Center in Sioux City, Iowa. These records indicate the following:

a. Respondent was admitted to St. Luke's Regional Medical Center on July 26, 1991, for detoxification. He was discharged on July 29, 1991.

b. Respondent was admitted to St. Luke's Gordon Recovery Center in Sioux City, Iowa, on July 29, 1991, for treatment of alcohol and drug dependence. He was discharged on September 12, 1991.

c. Respondent's medical records dated July 30, 1991, indicate the following: "Laboratory work showed on his [Respondent's] drugs of abuse screen that he is positive for amphetamines and opiates and Benzodiazepines."

7. The Board has received an investigative report dated September 5, 1991, from Pharmacy Investigator Morrell A. Spencer which indicates the following:

a. An audit beginning July 7, 1989, and ending August 29, 1991, revealed the following shortages of schedule III controlled substances from the Mr. Drug Pharmacy in Sergeant Bluff: (1) a shortage of 1,772 tablets of Acetaminophen with Codeine No. 3 and (2) a shortage of 186 Prelu-2 capsules.

b. An audit beginning July 7, 1989, and ending August 29, 1991, revealed the following shortages of schedule IV controlled substances from the Mr. Drug Pharmacy in Sergeant Bluff: (1) a shortage of 1,590 tablets of Propoxyphene N-100; (2) a shortage of 884 tablets of Valium 5mg; (3) a shortage of 170 tablets of Diazepam 5mg; (4) a shortage of 133 tablets of Diazepam 10mg; and (5) a shortage of 1,493 capsules of Phentermine HCl 30mg.

8. Respondent unlawfully diverted schedule III and IV controlled substances from Mr. Drug Pharmacy to his own personal use without or in excess of prescriber authorization. He has excessively used drugs and alcohol on a continuing basis.

9. Respondent is guilty of violations of 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 155A.23(1)(c), 204.308(3), 204.401(1)(c)(6), 204.401(1)(d), 204.402(1)(a), and 204.403(1)(c) by virtue of the allegations in paragraphs 6, 7, and 8.

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.

....

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 prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

....

c. Concealment of a material fact.

Iowa Code section 204.308 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 204.401 provides, in part, the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

...

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:...

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor...

Iowa Code section 204.402(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 204.308;...

Iowa Code section 204.403(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;...

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations in paragraphs 6, 7, and 8.

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

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), 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.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair a pharmacist's ability to practice pharmacy with reasonable skill or safety.

....

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, 203, 203A, and 204.

...

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or 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 9 and 10 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), 155A.12(5), 155A.23(1)(a), 155A.23(1)(c), 204.308(3), 204.401(1)(c)(6), 204.401(1)(d), 204.402(1)(a), and 204.403(1)(c) and 657 Iowa Administrative Code sections 9.1(4)(c), 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 C. Topf appear before the Iowa Board of Pharmacy Examiners on Friday, November 22, 1991, at 10:00 a.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 C. Topf on July 13, 1955, 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



a period of five (5) years from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

a. Obey all federal and state laws and regulations substantially related to the practice of pharmacy.

b. Cause the quarterly progress report generated by St. Luke's Gordon Recovery Centers, Sioux City, Iowa, (the St. Luke's program) to be sent to the Board or its designee. Upon discharge from the St. Luke's program, Respondent shall cause the final report to be sent to the Board or its designee. After discharge from the St. Luke's program, Respondent shall file a personal report to the Board or its designee semi-annually. Said report shall be in person or in writing, as directed. The report shall include the Respondent's place of employment, current address, information regarding compliance with paragraph "c", and any further information deemed necessary by the Board from time to time.

c. Comply with St. Luke's program recommendations, including attendance at Alcoholics Anonymous, until discharge. After discharge, Respondent shall comply with the after-care recommendations of the St. Luke's program.

d. Immediately submit to biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.

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

f. Should Respondent cease to be self-employed, 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.

g. Not supervise any registered intern and shall not perform any of the duties of a preceptor.

8. Should Respondent leave Iowa to reside or practice outside this State, Respondent shall 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.

9. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the stayed suspension. 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.

10. Within thirty days after approval of this Stipulation and Informal Settlement, Respondent shall pay a civil penalty in the amount of \$150 by delivering a check made payable to the Treasurer of Iowa to the Executive Secretary of the Board. The check shall be deposited into the general fund.

11. Respondent shall, by June 30, 1993, obtain two hours of CE focusing on state and federal drug law, which shall be included as part of his 30 hour CE requirement.

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

13. This 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.

14. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 30 day of December, 1991.

Michael C Topf  
MICHAEL C. TOPF  
Respondent

Signed and sworn to before me this 30 day of December, 1991.

Alann Carlson  
NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA

15. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 14<sup>th</sup> day of January, 1992.

Melba L. Scaglione  
MELBA L. SCAGLIONE, Chairperson  
Iowa Board of Pharmacy Examiners

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

---

Re:	)	Case No. 2000-12164
Pharmacist License of	)	
<b>MICHAEL C. TOPF</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 12164	)	
Respondent	)	

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**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 (1999).
3. On July 13, 1955, the Board issued Respondent, Michael C. Topf, a license to engage in the practice of pharmacy by examination as evidenced by license number 12164, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 12164 is current and active until June 30, 2001.
5. Respondent's current address is 5810 Morningside Avenue, Sioux City, Iowa 51102.
6. Respondent is currently self employed as the owner and pharmacist in charge of Mr. Drug, located at 415 Fourth Street, Sergeant Bluff, Iowa 51054, and has been employed as such during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code §§ 155A.12(1), 155A.27, 155A.32(3) (1999) and 657 Iowa Administrative Code §§ 6.2(1)(i) & (k), 6.8, 8.4(3), 8.15(2) & 36.1(4) and 21 CFR 1304.11 & 1306.22(b)(3) with inadequate record keeping for controlled substances.

COUNT II

The Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a), 124.403

(1)(c), 155A.15(2)(c), 155A.15(2)(d), and 155A.12(1) (1999) and 657 Iowa Administrative Code §§ 6.2, 6.8, 36.1(4)(u) with failing to provide accountability for certain controlled substances.

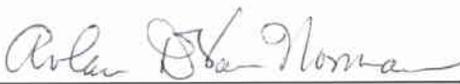
#### THE CIRCUMSTANCES

1. The Respondent is the Pharmacist in Charge of Mr. Drug pharmacy in Sergeant Bluff, Iowa.
2. An accountability audit of Schedule II controlled substances at Mr. Drug pharmacy for the time period between May 1, 1997 and April 30, 1999 revealed multiple shortages of Schedule II controlled drugs.
3. An accountability audit of Schedule II controlled substances at Mr. Drug pharmacy for the time period between May 1, 1999 and November 4, 1999 revealed additional shortages of Schedule II controlled drugs.
4. An accountability audit of Schedule III and IV controlled substances at Mr. Drug pharmacy for the time period between May 1, 1999 and November 4, 1999 revealed multiple shortages and overages of Schedule III and IV controlled drugs.
5. The accountability audits of controlled substances referred to in Paragraph 2-4, above, also revealed numerous discrepancies in Respondent's record-keeping for controlled substances.

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 2<sup>nd</sup> day of February, 2000, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.

  
Arlan D. VanNorman, 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. 2000-12164
Pharmacist License of	)	
<b>MICHAEL C. TOPF</b>	)	<b>STIPULATION</b>
License No. 12164	)	<b>AND</b>
Respondent	)	<b>CONSENT ORDER</b>
	)	

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COME NOW the Iowa Board of Pharmacy Examiners ("the Board") and Michael C. Topf, R.Ph. ("Respondent") and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (1999), enter into the following Stipulation and Consent Order settling the contested case currently on file.

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on February 2, 2000, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That Respondent was issued a license to practice pharmacy in Iowa on the 13<sup>th</sup> day of July, 1955, by examination as evidenced by Pharmacist License Number 12164, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 12164, issued to and held by Respondent is active and current until June 30, 2001.
3. Respondent was employed as the owner and pharmacist-in-charge of Mr. Drug,

located at 415 Fourth Street, Sergeant Bluff, Iowa 51054 until July 8, 2000, and was been employed as such during all times relevant to the allegations made in this case. Respondent is currently unemployed and temporarily disabled for six to eight months.

4. A Statement of Charges was filed against Respondent on February 2, 2000.
5. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
6. This Stipulation and Consent Order is entered into in order to resolve disputed claims and constitutes no admission on the part of the Respondent.
7. Respondent's license to practice pharmacy is suspended until July 9, 2001. On February 1, 2001, the suspension will be stayed and the Respondent's license will be placed on probation indefinitely, with the following conditions:
  - a. Respondent shall only work as a pharmacist under the direct supervision of another Iowa-licensed pharmacist pre-approved by the Board. "Direct supervision" means that the supervising pharmacist shall be physically present whenever the Respondent is practicing pharmacy and shall periodically review the Respondent's work. The Respondent may apply to the Board for modification of the requirement that the supervising pharmacist be physically present whenever the Respondent is practicing pharmacy after July 9, 2001. Respondent understands that the determination of whether to modify the supervision requirement of his probation will remain in the Board's discretion.

- b. During the probationary period, the Respondent shall not become the owner, manager, or pharmacist in charge of any pharmacy in the State of Iowa.
- c. During the probationary period, the Respondent shall not have any involvement in the financial management and billing practices of a pharmacy.
- d. In the event Respondent works as a pharmacist, he shall provide his *typewritten* policies and procedures for processing, handling, and dispensing controlled substances and prescriptions for controlled substances to the Board within sixty (60) days of the date he begins such employment. The typewritten policies and procedures shall relate to Respondent's practice of pharmacy in the supervised work setting in which he will work. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to these policies and procedures whenever engaging in the practice of pharmacy during the probationary period.
- f. Within six (6) months of the date of approval of this Stipulation and Consent Order by the Board, the Respondent shall complete continuing pharmacy education (CPE) or other formal, structured education in controlled substances record-keeping and maintaining accountability for controlled substances. The education shall be *not less than* six (6) hours in length and shall be pre-approved by the Board. Documentation of

satisfactory completion of the education shall be submitted to the Board.

This education is in addition to the thirty (30) hours of continuing pharmacy education required every two years for license renewal.

- g. During probation, Respondent shall report to the Board or its designee quarterly. Said report shall be in writing. The report shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.
  - h. During probation, Respondent shall 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.
- 8. Respondent shall appear informally before a committee of the Board or the full Board upon the Board's request, for the purpose of reviewing his performance as a pharmacist during his probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances. Any such appearance shall be subject to the waiver provisions of 657 Iowa Administrative Code § 35.9.
  - 9. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.
  - 10. Respondent shall notify all present employers and prospective employers (no later than at the time of an interview), including the pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of

undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer and the pharmacist-in-charge that he works under to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.

11. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.
12. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.
13. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.
14. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

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15. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 27 day of September, 2000.

Michael C Topf  
Michael C. Topf, R.Ph.  
Respondent

Subscribed and sworn to before me by Michael C. Topf on this 27 day of September, 2000.



Dawn Carlson  
NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA

16. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 10 day of October, 2000.

Matthew C. Osterhaus  
MATTHEW C. OSTERHAUS, Chairperson  
Iowa Board of Pharmacy Examiners  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields  
Assistant Attorney General  
Office of the Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319  
ATTORNEY FOR STATE

Bradford Kollars  
Attorney at Law  
Suite 402 Benson Building  
705 Douglas Street  
Sioux City, Iowa 51101  
ATTORNEY FOR RESPONDENT