

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

Re:)	Case No. 2001-19454
Pharmacist License of)	
ALEXANDER L. VERRIGNI)	STATEMENT OF CHARGES
License No. 19454)	
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 December 1, 2000, the Board issued Respondent, Alexander L. Verrigni, a license to engage in the practice of pharmacy by reciprocity as evidenced by license number 19454, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 19454 is current and active until June 30, 2002.
5. Respondent's current address is 620 Fremont Street, Iowa Falls, Iowa 50126.
6. Respondent is currently employed as the pharmacist in charge at Ellsworth Municipal Hospital, 110 Rocksylvania Avenue, Iowa Falls, 50126 and has been employed as such during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code §§ 147.55, 155A.12(1) & (3), & 272C.3 and 657 Iowa Administrative Code § 36.14(1) with fraud in procuring a license to practice pharmacy in the State of Iowa.

COUNT II

The Respondent is charged under Iowa Code §§ 155A.12(1) & 272C.3 (2001) and 657 Iowa Administrative Code §§ 36.1(1), 36.1(4)(c), 36.1(4)(z) & 8.5(9) with unprofessional

conduct, unethical conduct, and engaging in conduct that subverts or attempting to subvert a board investigation.

COUNT III

The Respondent is charged under Iowa Code §§ 155A.12(1) & (6) & 272C.3 (2001) and 657 Iowa Administrative Code 22.12, 22.19, & 36.1(4)(l) & (u) with aiding and abetting an unlicensed individual to engage in the practice of pharmacy and or to unlawfully perform the functions of a pharmacy technician.

THE CIRCUMSTANCES

1. The Respondent submitted an application for licensure signed under oath by the Respondent on November 7, 2000.
2. On December 1, 2000 the Board issued a license by reciprocity to the Respondent on the basis of the sworn application the Respondent submitted to the Board.
3. The Respondent was charged with the felony of embezzlement in the State of North Carolina on July 11, 2000.
4. The Respondent entered into a deferred prosecution program to resolve the embezzlement charges on January 29, 2001.
5. The embezzlement charges against the Respondent were not finally resolved and dismissed until September 13, 2001.
6. The Respondent did not disclose the fact that felony charges were pending against him in the State of North Carolina at the time he signed his application under oath and submitted it to the Board.
7. During the Board's investigation of the matter referred to in paragraphs 1 through 6, above, the Respondent told the Board investigator that he did not disclose the embezzlement charges against him because no charges were filed and the case was dropped.
8. On or about July 19, 2001 the Respondent sent his wife to the hospital pharmacy where the Respondent serves as the pharmacist in charge to dispense a medication order.
9. The Respondent's wife is not a licensed pharmacist. She was not employed by the dispensing hospital on July 19, 2001, and she was not a registered pharmacy technician on that date.

10. The Respondent was not present when his wife dispensed the medication and could not have provided final verification for the accuracy, validity, completeness, or appropriateness of the prescription dispensed by his wife.

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 15th day of November, 2001, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


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
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:)	Case No. 2001-19454
Pharmacist License of)	
ALEXANDER L. VERRIGNI)	AMENDED
License No. 19454)	STATEMENT OF CHARGES
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 (2003).
3. On December 1, 2000, the Board issued Respondent, Alexander L. Verrigni, a license to engage in the practice of pharmacy by reciprocity as evidenced by license number 19454, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 19454 was current and active until June 30, 2002.
5. Respondent's cresent address is 2226 Preston Grove Ave., Cary, North Carolina 27513.
6. Respondent was formerly employed as the pharmacist in charge at Ellsworth Municipal Hospital, 110 Rocksylvania Avenue, Iowa Falls, 50126 and was employed as such during all times relevant to this statement of charges.

COUNT I

The Respondent is charged under Iowa Code §§ 147.55, 155A.12(1) & (3), & 272C.3 (2003), and 657 Iowa Administrative Code § 36.14(1) with fraud in procuring a license to practice pharmacy in the State of Iowa.

COUNT II

The Respondent is charged under Iowa Code §§ 155A.12(1) & 272C.3 (2003) and 657 Iowa Administrative Code §§ 36.1(1), 36.1(4)(c), 36.1(4)(z) & 8.5(9) with unprofessional conduct, unethical conduct, and engaging in conduct that subverts or attempting to subvert a board investigation.

COUNT III

The Respondent is charged under Iowa Code §§ 155A.12(1) & (6) & 272C.3 (2003), and 657 Iowa Administrative Code 22.12, 22.19, & 36.1(4)(l) & (u) with aiding and abetting an unlicensed individual to engage in the practice of pharmacy and or to unlawfully perform the functions of a pharmacy technician.

COUNT IV

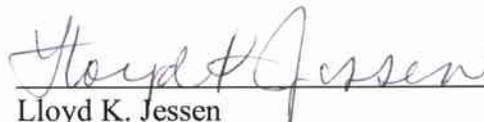
The Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a), 124.403(1)(c), 155A.12(1), 155A.15(2)(c) and 155A.15(2)(d) (2003), 657 IAC 6.2, 6.7, 10.15 and 36.4(u) with failing to provide and maintain effective security, controls and procedures to guard against the theft and diversion of prescription drugs and controlled substances, and with acquiring, dispensing, or allowing to be dispensed, controlled substances and prescription drugs without a prescription.

THE CIRCUMSTANCES

1. The Respondent submitted an application for licensure signed under oath by the Respondent on November 7, 2000.
2. On December 1, 2000 the Board issued a license by reciprocity to the Respondent on the basis of the sworn application the Respondent submitted to the Board.
3. The Respondent was charged with the felony of embezzlement in the State of North Carolina on July 11, 2000.
4. The Respondent entered into a deferred prosecution program to resolve the embezzlement charges on January 29, 2001.
5. The embezzlement charges against the Respondent were not finally resolved and dismissed until September 13, 2001.
6. The Respondent did not disclose the fact that felony charges were pending against him in the State of North Carolina at the time he signed his application under oath and submitted it to the Board.

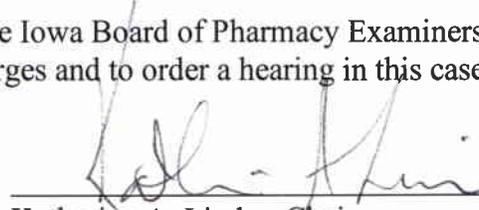
7. During the Board's investigation of the matter referred to in paragraphs 1 through 6, above, the Respondent told the Board investigator that he did not disclose the embezzlement charges against him because no charges were filed and the case was dropped.
8. On or about July 19, 2001 the Respondent sent his wife to the hospital pharmacy where the Respondent serves as the pharmacist in charge to dispense a medication order.
9. The Respondent's wife is not a licensed pharmacist. She was not employed by the dispensing hospital on July 19, 2001, and she was not a registered pharmacy technician on that date.
10. The Respondent was not present when his wife dispensed the medication and could not have provided final verification for the accuracy, validity, completeness, or appropriateness of the prescription dispensed by his wife.
11. Respondent ceased working as the "pharmacist in charge" at the Ellsworth Municipal Hospital in Iowa Falls, Iowa, on or about June 1, 2002. An inventory of drugs in stock was taken shortly after respondent ceased working at the hospital, which inventory revealed numbers of missing drugs, including 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 19 day of February, 2003, 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
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Des Moines, Iowa 50309-4688

cc: Thomas G. Crabb
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Scott M. Galenbeck
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BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2001-19454
Pharmacist License of:)	DIA NO: 03PHB004
ALEXANDER L. VERRIGNI)	
License No. 19454)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

TO: ALEXANDER L. VERRIGNI

On November 15, 2001, the Iowa Board of Pharmacy Examiners (Board) filed a Statement of Charges against Alexander L. Verrigni (Respondent), a licensed pharmacist. The Statement of Charges was subsequently amended on February 19, 2003. The Amended Statement of Charges alleged four counts:

COUNT I: Fraud in procuring a license to practice pharmacy, in violation of Iowa Code §§ 147.55, 155A.12(1) & (3), 272C.3 (2003), and 657 IAC 36.14(1).

COUNT II: Unprofessional conduct, unethical conduct, and engaging in conduct that subverts or attempting to subvert a board investigation, in violation of Iowa Code §§ 155A.12(1) and (6), 272C.3(2003) and 657 IAC 36.1(1), 36.1(4)"c" and "z" and 8.5(9).

COUNT III: Aiding and abetting an unlicensed individual to engage in the practice of pharmacy or to unlawfully perform the functions of a pharmacy technician, in violation of Iowa Code §§ 155A.12(1) and (6), 272C.3(2003) and 657 IAC 22.12, 22.19, and 36.1(4)(l) and (u).

COUNT IV: Failing to provide and maintain effective security, controls and procedures to guard against the theft and diversion of prescription drugs and controlled substances, and with acquiring, dispensing or allowing to be dispensed, controlled substances and prescription drugs without a prescription, in violation of Iowa Code §§ 124.308(3), 124.402(1)(a), 124.403(1)(c), 155A.12(1), 155A.15(2)(c) and (d)(2003) and 657 IAC 6.2, 6.7, 10.15 and 36.1(4)"u".

[Note: Although the Amended Statement of Charges uniformly cites the 2003 Code, the content and numbering of these Code sections have remained the same at all times relevant to the alleged violations. The rules cited in the Statement of Charges have been renumbered, but have not substantially changed, since the time of the alleged violations. For ease of reference, this decision will also refer to each rule's current number, if it has changed]

A Notice of Hearing was issued on February 25, 2003, setting the hearing for April 22, 2003. The hearing was continued twice. The hearing on the Statement of Charges was held on December 3, 2003 at 10:30 a.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Paul Abramowitz; Leman Olson; and G. Kay Bolton. The Respondent appeared by telephone, and was represented by his counsel, Thomas G. Crabb, who appeared in person. 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 closed to the public at the Respondent's request, pursuant to Iowa Code section 272C.6(1) (2003).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations, for the Board's review.

THE RECORD

The record includes the Amended Statement of Charges; Notices of Hearing; the testimony of the witnesses; and the following exhibits:

State Exhibit A:	Amended Statement of Charges, 2/19/03
State Exhibit B:	Investigative Report, 9/20/01
State Exhibit C:	Supplemental Investigative Report, 10/4/01
State Exhibit D:	NABP Application for Transfer of Pharmaceutic License to Iowa, 11/8/00
State Exhibit E:	Documents from District Court for Onslow County, North Carolina, <u>State of</u>

North Carolina v. Alexander Leo Verrigni

State Exhibit F: Supplemental Investigative Report, 8/2/02

State Exhibit G: Supplemental Investigative Report, 11/14/02; Faxed Statement of Respondent

State Exhibit H: Respondent Statement, 7/10/00

Respondent Exhibit 1: Letter dated 12/19/01 (Vatcher to Respondent); Order of Expunction; Letter dated 12/2/03 (Vatcher to Crabb); N.C.G.S. § 15A-146

Respondent Exhibit 2: Medical Record of ER visit (confidential pursuant to Iowa Code section 22.7)

Respondent Exhibit 3: Letters from Ellsworth Municipal Hospital, Drake University, Appointment as Adjunct Instructor;

Respondent Exhibit 4: Newspaper article and letter regarding new pharmacy dispensing system

FINDINGS OF FACT

1. In 1973, the Respondent received his original license to practice pharmacy in New York, by examination. In July 1982, the Respondent's New York pharmacy license was revoked after he was convicted of a misdemeanor petit larceny. His New York license was reinstated in June 1989. In 1993, the Respondent obtained licenses to practice pharmacy in the states of New Jersey and North Carolina, by reciprocity. (Testimony of Respondent; State Exhibit D)

2. On November 8, 2000, the Respondent filed a National Association of Boards of Pharmacy (NABP) Official Application For Transfer of Pharmaceutic License to the state of Iowa. The application form requires all applicants to disclose "Charges, Convictions, and Fines Imposed." This section of the application states, in relevant part:

...Applicants must enter the following statement: **"I have not been convicted, fined, disciplined or had my license revoked for violation of pharmacy, liquor or drug laws, nor am I presently charged with any such violations, nor have I been made aware of any current**

investigation into such violations. I have not been convicted of any felony as defined under any state or federal law, nor am I presently charged with the commission of any such felony." If, however, you are presently charged with or have been previously convicted of any such violations, OR if your license has been suspended, revoked, placed on probation, or disciplined for other than non-payment of fees, please explain briefly below, and provide a full explanation in the "Additional Space for Application Information" section on page 6,... **ALL APPLICANTS MUST COMPLETE THIS SECTION WITH FULL STATEMENT.**

(Emphasis original; State Exhibit C, 7th page, State Exhibit D)

3. In response to the question about charges, convictions, and fines, the Respondent disclosed that his pharmacist license had been revoked in July 1982, when he was convicted of a misdemeanor petit larceny. He further stated that his license was reinstated in June 1989. The Respondent did not disclose any other criminal charges on the application.

The Respondent signed the application in the presence of a notary. The Respondent's signature appears directly below the following statement:

I, Mr. Alexander Leo Verrigni, under oath, hereby swear or affirm that I have read the foregoing paragraphs, and the information therein is complete, true, and correct. I understand that any false statements made by me in this Application may be punishable by law.

(Testimony of Dennis Dobesch; State Exhibits C, D)

4. On December 1, 2000, the Board issued license number 19454 to the Respondent to engage in the practice of pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. In issuing the license, the Board relied on the information provided by the Respondent on his application. (Testimony of Dennis Dobesch; State Exhibit C)

5. Late in 2000, the Respondent was hired as the pharmacist-in-charge of the hospital pharmacy at Ellsworth Memorial Hospital in Iowa Falls, Iowa. In July 2001, staff members at Ellsworth Memorial Hospital contacted the Board to report an incident involving the Respondent. The evidence established

that on July 19, 2001, the hospital's nursing supervisor called the Respondent at home and asked him to come to the hospital to dispense a controlled substance, Versed Syrup, for a pediatric patient who had injured his foot. The Respondent answered the call and told the nursing supervisor that he would be in to dispense the Versed. (State Exhibit B, Attachment 2)

According to the Respondent, he was confined to the bathroom with rectal bleeding when he took the call. The Respondent did not go to the hospital but instead gave his pharmacy keys to his wife and allowed her to go to the pharmacy to dispense the medication. The Respondent gave his wife instructions for unlocking the pharmacy and dispensing the medication. The Respondent's wife went directly to the hospital pharmacy without informing the nursing or medical staff, removed the Versed syrup from the locked pharmacy, and delivered it to the emergency room. Approximately one-half hour to one hour later, the Respondent went to the pharmacy and checked the controlled substances inventory.

The Respondent's wife is not a pharmacist nor is she a registered pharmacy technician in the state of Iowa. She had been employed by the Iowa State pharmacy but was never employed by Ellsworth Memorial Hospital. According to the Respondent, his wife attended four years of pharmacy in school in New York but never finished. She had worked as a pharmacy technician in New York and New Jersey for more than twenty years. (Testimony of Respondent; Dennis Dobesch; State Exhibit B; Respondent Exhibit 2)

6. During the investigation of this complaint, a background check of the Respondent revealed that he had been arrested and charged with felony embezzlement in North Carolina on July 11, 2000, just four months prior to filing his application for licensure in Iowa. The felony charge stemmed from an embezzlement of over \$3,000 from a Kmart pharmacy in Jacksonville, North Carolina, where the Respondent had been employed as a pharmacist. The Respondent failed to disclose the felony embezzlement charge on his licensure application.

The Board's investigator interviewed the Respondent and obtained a written statement from him on October 3, 2001. During the interview and in his written statement, the Respondent stated that he did not disclose the embezzlement charge on his licensure application because he "went to court charges dropped/case dismissed." He also stated that "no charges were

filed and case was dropped." (Testimony of Dennis Dobesch; State Exhibits C-E)

7. On October 9, 2001, the Board obtained documentation concerning the Respondent's embezzlement charge in Jacksonville, North Carolina. According to court documents, the Respondent was arrested and charged on July 10, 2000, with embezzling \$3400 from the Kmart Pharmacy where he was employed. The Respondent filled out and signed a Loss Control Statement Form admitting that he misappropriated funds from the store register. The documents also indicate that there was a videotape of the Respondent taking money from the register. (Testimony of Dennis Dobesch; State Exhibits E, H)

8. According to a letter from the Respondent's criminal attorney, the Respondent applied to the Deferred Prosecution Program on July 31, 2000, but was not accepted into the Deferred Prosecution Program until January 29, 2001. This was nearly three months after the Respondent filed his licensure application. After his acceptance into the Deferred Prosecution Program, the criminal embezzlement charge was dismissed without prejudice, and the Respondent was placed on probation. According to the court documents, the Respondent was required to pay restitution of \$3400 and court costs of \$95, in monthly payments of \$185. He was also required to perform 72 hours of community service and spend 7 months on supervised probation.

On September 13, 2001, the embezzlement charge was dismissed with prejudice, after the Respondent complied with all of the program requirements. On December 19, 2001, the District Court issued an Order of Expunction of all court records relating to the embezzlement charge. The Order of Expunction further states:

5. That the Defendant/Petitioner shall not be held under any provision of law to be guilty of giving a false statement in response to any inquiry made for any purpose by reason of his failure to recite or acknowledge any expunged entries concerning his arrest, apprehension, or trial in this cause.

On December 19, 2001, the Respondent's criminal attorney sent him a copy of the Order of Expunction and a letter explaining that as a result of the Order of Expunction, all official entries relating to his apprehension, arrest and dismissal of the charges had been expunged or erased. (Testimony of Dennis Dobesch; Respondent State Exhibits E; Respondent Exhibit 1)

9. In July 2002, the hospital administrator at Ellsworth Memorial Hospital reported a loss of drugs at the hospital pharmacy to the Board and also reported that he had been unable to contact the Respondent for approximately six weeks. The report was referred to a Board investigator, who visited the hospital pharmacy on July 29-30, 2002 and interviewed hospital administrators and pharmacy staff concerning the loss of drugs. Pharmacy records were reviewed for the missing drugs, but a complete audit was not conducted because some of the records could not be found. There were not a large number of missing drugs. When the Respondent was later contacted and asked about the missing drugs, he attributed it to bookkeeping errors and stated that the pharmacy technician, Marie Sporaa, was responsible for keeping the records of outdated drugs in the pharmacy. The Respondent also asserted that there were a number of problems with Ms. Sporaa's performance as a technician, but these were not substantiated by hospital management. There was insufficient evidence to establish that a specific person had taken any drugs from the pharmacy. (Testimony of J.L. Devine; State Exhibits F, G)

a. According to records maintained by the hospital, the Respondent approached hospital administrators on May 23, 2002 to inquire about resigning his position as pharmacist-in-charge, stating that his mother was ill in New York. The Respondent was told that his contract required a 180-day notice prior to resignation and to consider his options under the Family Leave Act. On June 3, 2002, the Respondent did not report for work. He had made no plans for pharmacist coverage. Later that evening, the Respondent left a voice mail message for a hospital administrator stating that he was out of state taking care of mother and would be gone for at least six weeks. From June 3, 2002 through July 2, 2002, the Respondent was absent from work. He left intermittent voice mail messages in the evening asking for his paycheck and for an IPERS form but did not return the multiple messages left for him by hospital staff asking him to call back during the work day. The Respondent eventually appeared at the hospital on July 3, 2003, and the hospital administrator agreed to waive the required 180-day notice and accept his resignation. (State Exhibit G, Attachment B)

b. On June 10, 2002, the hospital relief pharmacist completed an inventory of the pharmacy's controlled substances and discovered that there were no dispensing

records for 25 tablets of Oxycontin, 40 mg that had apparently been dispensed after November 30, 2001. (State Exhibit F, Attachment C)

c. Pharmacy staff placed outdated drugs in a special cupboard in the hospital pharmacy until they were returned to the manufacturer or reverse distributor and destroyed. The hospital's pharmacy technician, Marie Spora, maintained records for the outdated drugs. The following items were no longer in the pharmacy and were listed as outdated, but no return invoices could be found for them: 48ml Capital with Codeine Suspension; 8 tablets Hydrocodone/APAP 2.5/500mg; 15 capsules Oxazepam 10 mg; 22 tablets Clorazepate Dip 3.75 mg; 31 x 2ml syringes Diazepam 10 mg/2ml by Abbott; 12 capsules Sonata 5 mg; and 55 ml Chloral Hydrate Syrup. (State Exhibit F, Attachment D)

d. Ms. Spora reported that she asked the Respondent about discrepancies in the records for the outdated drugs that were no longer in the pharmacy, and the Respondent told her that he sent some of the drugs to EXP Pharmaceutical Services Corp. on her day off. The Board's investigator contacted EXP Pharmaceutical Services Corp. and requested a copy of their records for any controlled substances destroyed for Ellsworth Memorial Hospital. EXP Pharmaceutical provided the Board's Investigator with State Exhibit F, Attachment E.

The Board's investigator determined that the following items were no longer in the pharmacy and the return invoices did not correspond to the records of destroyed drugs provided by EXP Pharmaceutical: Tussigon Tablets, inventory shows 15 plus 85 tablets, return invoice shows 89 tablets; Darvocet N 50 mg, inventory records 95 tablets, return invoice shows 32 tablets; Hydrocodone APAP 7.5/750mg, inventory shows 60 tablets, return invoice shows 38; Hydrocodone/APAP 7.5/500mg, inventory shows 53 tablets, return shows 32. (Exhibit F, Attachments D, E; Testimony of J.L. Devine)

CONCLUSIONS OF LAW

Count I

Iowa Code section 147.55(1) 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:

1. Fraud in procuring a license.

Iowa Code section 155A.12(1) and (3) provide, 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 license 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.

...

3. Violated any of the provisions for licensee discipline set forth in section 147.55.

...

Iowa Code section 272C.3 establishes the authority of licensing boards to enforce laws and adopt administrative rules relating to the profession, to initiate investigations and disciplinary proceedings, and to impose licensee discipline.

657 IAC 36.1(4)"a" (formerly 36.14(1)) provides, 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:

- a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, ... It includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application, ...

The preponderance of the evidence established that the Respondent committed fraud in procuring his Iowa pharmacist

license, in violation of Iowa Code sections 147.55(1), 155A.12(1) and (3) and 657 IAC 36.1(4)"a," by intentionally concealing his pending felony charge for embezzlement at the time that he filed his application. The Respondent is solely responsible for answering all questions on the application fully and truthfully and certifying his answers under oath. The NABP application clearly and unequivocally required applicants to disclose any felony charges pending at the time that the application is filed. On July 10, 2000, the Respondent was arrested and charged with the felony of embezzlement, in connection with his employment at a North Carolina Kmart pharmacy. The Respondent signed a voluntary written statement admitting the embezzlement. While the Respondent apparently applied for the deferred prosecution program in late July 2000, he was not accepted into the program until January 29, 2001, nearly three months after he filed his NABP application with the Board. He did not successfully complete the deferred prosecution program until September 13, 2001 and then the charges were dismissed with prejudice. The charges were later expunged.

The Respondent's claim that his criminal attorney in North Carolina, Walter Vatcher, advised him that he did not have to report the felony charge on his NABP application was not credible. The record includes a letter from Mr. Vatcher, in which he carefully and accurately outlines the North Carolina deferred prosecution procedure. Mr. Vatcher clearly states that the Respondent was not accepted into the deferred prosecution program until January 29, 2001 and at that time the charges were dismissed, without prejudice, contingent on Respondent's completion of the terms and conditions of the program. He further states that the charges were not dismissed with prejudice until September 13, 2001. It is highly improbable that Mr. Vatcher would have advised the Respondent that he did not have to disclose the pending felony charge on the licensure application in November 2000, if Mr. Vatcher was accurately advised of the nature of the question on the application.

In addition, when the Respondent was questioned by the Board's investigator about his failure to disclose the pending felony charge, he falsely asserted that no charges were filed and the case was dropped. The Respondent's statements to the investigator were blatantly untrue. The Respondent intentionally misled the Board, first by concealing the felony charge, and later by lying about the status of the criminal proceedings in North Carolina at the time of his application.

Pending felony charges are relevant and material to the Board's decision whether to issue a license to practice pharmacy. Pharmacists are obligated to comply with numerous state and federal laws in the practice of the pharmacy profession. Pharmacists are entrusted with prescription and controlled drugs that are subject to abuse and diversion. Consumers rely on their pharmacists to be honest, trustworthy, and law abiding. As a crime of dishonesty involving the Respondent's practice as a pharmacist, the pending embezzlement charge was very material to the licensure decision, especially in light of the fact that the Respondent previously had a license revoked when he was convicted of petit larceny.

Count II

Iowa Code section 155A.12 provides, in relevant part:

155A.12 Pharmacist license-grounds for discipline.

...The board 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.

657 IAC 36.1(1) grants the board authority to impose discipline for any violation of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, 272C, and the rules promulgated thereunder.

657 IAC 36.1(4) provides, 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:

- ...
- c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct...

- ...
- z. Engaging in any conduct that subverts or attempts to subvert a board investigation.

657 IAC 8.11(8) [now found at 8.5(9)] relates to unprofessional conduct or behavior and provides that a pharmacist shall not

exhibit unprofessional behavior in connection with the practice of pharmacy or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient. Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

This count alleged that the Respondent subverted the Board's investigation when, on October 3, 2001, he told the Board's investigator and provided a written statement that he did not disclose the charges on his application because no charges were filed and the case was dropped. While the Board is convinced that the Respondent was attempting to mislead the Board and its investigator with his statement, this deception was adequately addressed in Count I, and the Board was not persuaded that it should be sanctioned as a separate violation.

Count III

Iowa Code section 155A.12(6) provides that the board may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation if the licensee aided or abetted an unlicensed individual to engage in the practice of pharmacy.

657 IAC 22.12 provides that a pharmacy technician shall not:

1. Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

....

657 IAC 22.19 provides that the ultimate responsibility for the actions of a pharmacy technician working under a supervising pharmacist shall remain with the supervising pharmacist.

657 IAC 36.1(4) "l" and "u" provide that the board may impose any of the disciplinary sanctions set out in subrule 36.1(4) when the board determines that the licensee is guilty of any of the following acts or offenses:

...

1. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacy technician or pharmacist-intern.

...

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 on July 19, 2001, the Respondent knowingly aided and abetted the unlawful practice of pharmacy by his wife, who is not licensed as a pharmacist and is also not registered as a pharmacy technician. The Respondent concedes that he gave his wife the keys to the locked pharmacy and directed her to retrieve the Versed syrup and deliver it to the emergency room. The Board was entirely unconvinced by the Respondent's argument that his actions were justified under the circumstances or should be excused. The Respondent's wife would not have been qualified to dispense the Versed without a pharmacist's supervision even if she had been registered as a pharmacy technician in the state of Iowa. Even if the Respondent was severely ill when he received the call from the hospital, he had several obvious options to ensure that the injured child received the necessary medication. He should have advised the nursing supervisor that he was too ill to come to the hospital, and other arrangements could have been made to obtain the medication. Instead, the Respondent exhibited extremely poor professional judgment by sending his wife, an unlicensed person who was not employed by the hospital, to dispense the medication for the child.

Count IV

Iowa Code section 124.308(3) provides that a controlled substance included in schedule III or IV shall not be dispensed without an oral or written prescription of a practitioner, except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, .

Iowa Code section 124.402(1)(a) provides that it is unlawful for any person who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308.

Iowa Code section 124.403(1)(c) provides that it is unlawful for any person knowingly and intentionally to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

Iowa Code section 155A.15(2)(c) and (d) relate to pharmacies and provide that the board 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 licensee has:

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.

657 IAC 6.2 provides, in relevant part:

657-6.2 (155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the following:

...

11. Disposing of and distributing drugs from the pharmacy;

12. Maintaining records for all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.

13. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs;

14. Establishing and implementing policies and procedures for all operations of the pharmacy;

15. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

657 IAC 6.7 provides that while on duty, each pharmacist shall be responsible for the security of the prescription department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs,

records for such drugs, and patient records as provided in 657 IAC chapter 21.

657 IAC 10.15 provides that all applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances and sets forth security requirements for the physical security controls and operating procedures necessary to prevent diversion.

The preponderance of the evidence established that as of June 10, 2002, 25 Oxycontin 40 mg were missing from the Ellsworth Memorial Hospital Pharmacy, where the Respondent was the pharmacist in charge. It was further established that as of July 29, 2002 there were several outdated drugs that were no longer in the hospital pharmacy, and for which there were no return invoices. There is no question that the Respondent, not the pharmacy technician, was responsible for maintaining effective security, controls, and procedures, including appropriate recordkeeping, to protect against the loss, theft, or diversion of prescription drugs and controlled substances at Ellsworth Memorial Hospital pharmacy. However, the evidence also established that the Respondent was absent and not in actual physical control of the pharmacy after June 3, 2002. In addition, the total number of missing drugs in this case is not large and would not typically result in a Statement of Charges, absent evidence of diversion or theft. Given these circumstances, the Board declines to find that the Respondent violated the statutes and rules cited in Count IV.

Sanction

In determining an appropriate sanction, the Board considered the factors outlined in 657 IAC 36.1(3). The Respondent's violations under Counts I and III are very serious and reflect adversely on his ethical standards, his professional conduct, and his fitness to practice pharmacy in the state of Iowa. The Respondent intentionally misled the Board by failing to disclose pending felony charges when he filed his application and subsequently violated statutes and rules governing his practice when he aided and abetted the unlicensed practice of pharmacy. These violations justify revocation of the license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy license no. 19454, issued to Alexander Verrigni, is hereby REVOKED.

IT IS FURTHER ORDERED that the Respondent shall not apply for reinstatement for a minimum period of three (3) years from the date of this decision and order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), 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 witness fees and expenses or 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 17th day of February, 2004.

Katherine A Linder

Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General
Thomas G. Crabb, Attorney for Respondent

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.