

BEFORE THE BOARD OF PHARMACY EXAMINERS

OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT AND :

STATEMENT OF CHARGES AGAINST : COMPLAINT AND STATEMENT

JOHN L. ZORTMAN, PHARMACIST : OF CHARGES

RESPONDENT. :

COMES NOW Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners on the 12th day of January, 1984, and files this Complaint and Statement of Charges against John L. Zortman, a pharmacist licensed pursuant to Iowa Code, Chapter 155, and alleges:

1. That Robert E. Bellinger, chairman, John F. Rode, Vice chairman, Rollin C. Bridge, Jerry M. Hartleip, Melba L. Scaglione, Gale W. Stapp, and Margo L. Underwood are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. That the Respondent is a resident of Sioux City, Iowa, and was issued license number 14848 to practice pharmacy in the State of Iowa on July 1, 1976.

3. That Respondent's license to practice pharmacy is current until June 30, 1985.

4. That Respondent is a pharmacist employed at Zortman Rexall Drug, 5402 Military Road, Sioux City, Iowa, License #687.

5. That the license to operate Zortman Rexall Drug expires on December 31, 1984.

6. That on October 12, 1983, an inspection of Zortman Rexall Drug prescription files produced evidence of the following:

- a. Rx #236659 calling for 2 x 10cc Adenosin 200 injection 25mg/cc was dispensed to Bob Satherland, Dakota City, Nebraska, horse.
- b. Rx #236666 calling for Phenylbutazone tablets 1 gm #500 was dispensed to Ron Brochert, Box 129, South Sioux City, Nebraska, horse.
- c. Rx #236698 calling for Equalan 50mg #2 was dispensed to Alex Cortez, Dakota City, Nebraska, horse.
- d. Rx #236731 calling for 13 x 30cc Testosterone injection 50mg/cc was dispensed to Walker Kennel, unknown location, dog.
- e. Rx #236734 calling for 6 x 10cc Testosterone Propionate injection 100mg/cc was dispensed to Bob Schroeder, Dakota City, Nebraska, horse.

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- f. Rx #236747 calling for Phenylbutazone tablets 1 gm #1200 was dispensed to M. Riley, Dakota City, Nebraska, horse.
 - g. Rx #236748 calling for 7 x 10cc Adenosin 200 injection 25mg per cc was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
 - h. Rx #236749 calling for 3 x 100cc Vitamin E and Selenium injection was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
 - i. Rx #236750 calling for 5 x 50cc ACTH 80 units was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
 - j. Rx #236751 calling for 12 x 100cc Phenylbutazone 20% injection was dispensed to Eleanor Brocha, Dakota City, Nebraska, horse.
 - k. Rx #236752 calling for 3 x 50cc ACTH 80 units was dispensed to Eleanor Brocha, Dakota City, Nebraska, horse.
 - l. Rx #236753 calling for Azium 10mg #20 was dispensed to Barbara Knoll, Dakota City, Nebraska, horse.
 - m. Rx #236761 calling for 1 x 50cc Acepromazine injection was dispensed to Dean Peterson, Dakota City, Nebraska, horse.
 - n. Rx #236763 calling for 6 x 100cc Dexamethasone Sodium Phosphate injection 4mg/cc was dispensed to Dean Peterson, Dakota City, Nebraska, horse.
 - o. Rx #236768 calling for 35 x 10cc Calcium Gluconate 1gm injection was dispensed to Tiny Hawthorne, address unknown, dog.
 - p. Rx #236782 calling for 5 x 30cc Gomerol was dispensed to Ed Fisher, Dakota City, Nebraska, horse.
 - q. Rx #236793 calling for 1 x 30cc AMP 200 was dispensed to Loghry, Columbus, Nebraska, horse.
 - r. Rx #236803 calling for 1 x 50cc PromAce was dispensed to Richard Fleshner, Dakota City, Nebraska, horse.
 - s. Rx #236804 calling for 12 x 10cc Adenosin 200 injection 25mg/cc was dispensed to Richard Fleshner, Dakota City, Nebraska, horse.
 - t. Rx (no number) calling for 1 x 50cc Equalan was dispensed to Dwaine Twite, North Sioux City, South Dakota, horse.
 - u. Rx 237476 calling for 25 x 10cc Calcium Gluconate 1 gm injection was dispensed to Larry Cummings, Sodrac Park, South Dakota, dog.
 - v. Rx #237482 calling for 15 x 30cc Testosterone Suspension 50mg was dispensed to Larry Montgomery, Deer Trail, Colorado, dog.
 - w. Rx #237757 calling for 1 x 10cc Solu Delta Cortef injection was dispensed to Ted Haber, Dakota City, Nebraska, horse.
 - x. Rx #237880 calling for Methandrostenalone tablets 5mg #400 was dispensed to Lou Roden, Dakota City, Nebraska, dog.
 - y. Rx #238127 calling for 1 x 30 Testosterone Suspension 50mg/cc was dispensed to Diane Comeau, North Sioux City, South Dakota, dog.
 - z. Rx #238191 calling for 3 x 100cc Phenylbutazone injection 20% was dispensed to Wallen Stables, Sioux City, Iowa, horse.
7. That all prescriptions mentioned in Item 6 were signed by L. L. Vidal, D.V.M., 312 1st Avenue, N.W., Hampton, Iowa, and are on prescriptions from the office of Dr. Vidal.

8. That L. L. Vidal, D.V.M., of Hampton, Iowa, signed a statement on November 9, 1983, in which he states that he gave John L. Zortman approximately 40 signed blank prescriptions for the purpose of promoting the sale of Dr. Vidal's product Ferrolac and that he did not issue the prescriptions detailed in Item 6.

9. That on November 1, 1983, a regulatory letter was issued to John Zortman by James A. Adamson, District Director, Kansas City District of FDA. The regulatory letter indicated that Zortman Rexall Drug was engaged in the practice of distributing prescription drugs for veterinary uses without requiring a written or oral order of a licensed veterinarian.

10. That on November 3, 1983, John L. Zortman responded to the November 1, 1983, regulatory letter written by James A. Adamson by stating that he was now in compliance with the regulations requiring a written or oral order by a licensed veterinarian for distribution of prescription drugs for veterinary use.

11. That on November 16, 1983, a letter was sent to John L. Zortman by James E. McDonald, Compliance Officer, Kansas City District FDA. This letter indicates that on November 15, 1983, an FDA investigator purchased a 100cc bottle of Dexamethasone Sodium Phosphate labeled, "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." from Zortman Rexall Drug. The letter further alleges that the order was filled by a man behind the prescription counter who filled out a prescription blank but who they assumed was not a veterinarian.

12. That the inspection of prescription files at Zortman Rexall Drug on October 12, 1983, also produced evidence that:

- a. There were 5 unsigned Schedule II prescriptions (Rx numbers 234623, 234624, 234625, 234626, 234485).
- b. Rx #237550 issued to Vivian Simonsen on July 25, 1983, by Horst Blume, M.D., was illegally altered. The prescription called for 5 x 10cc vials of Demerol 50mg. The order was altered to read 5 x 30cc.
- c. Schedule V drugs, Robitussin AC Syrup and Terpin Hydrate Elixir with Codeine, were not included in the biennial inventory taken on May 16, 1983.
- d. Sales of Schedule V controlled substances for human and/or veterinary use were not being recorded as required by state and federal regulations.

13. That the Respondent is guilty of violations of Iowa Code Sections 155.13(3), 155.20, 155.30, and 204.306 and of Board Rule §620--Chapter 8.11

and 8.13(15) by virtue of the sales alleged in paragraphs 6, 11 and 12.

Section 155.13(8) reads 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:...

8. Violations of the provisions of this chapter."

Section 155.20 reads as follows:

"...nor shall any person licensed under this chapter sell or dispense any prescription drug to any person other than a licensed pharmacy or physician without prescription."

Section 155.30 reads as follows:

"...any person who violates a provision of Section 155.29 or who sells, gives away or administers to another person any prescription drug shall be guilty of a public offense...."

Section 204.306 reads as follows:

"Records of registrants. Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board...."

Federal regulations in this regard can be found in Code of Federal Regulations (CFR) Title 21. Pertinent parts of those regulations are 1304.03, 1304.04 and 1304.11.

Part 1304.03 reads, in part, as follows:

"Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section...."

Part 1304.04 reads, in part, as follows:

"Maintenance of records and inventories.

(a) Every inventory and other records required to be kept under this Part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration...."

Part 1304.11 reads, in part, as follows:

"General requirements for inventories.

(a) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken...."

Board rule §620--8.11 reads, in part, as follows:

"8.11(204) Manner of issuance of prescriptions. All prescriptions for controlled substances shall be dated as of, and manually signed on, the day when issued and shall bear the full name and address and registration number of the practitioner. A practitioner must manually sign a prescription in the same manner as he would sign a check or legal document. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by those regulations...."

Board rule §620--8.13(15) reads as follows:

"8.13(15) Dispensing without prescription. A controlled substance listed in Schedule V...may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

- a. Such dispensing is made only by a pharmacist and not by a non-pharmacist employee even if under the direct supervision of a pharmacist except as specifically provided by other rules of the board.
- b. Not more than 120cc. (4 ounces) of any such controlled substance may be distributed at retail to the same purchaser in any given forty-eight-hour period.
- c. The purchaser is at least eighteen years of age.
- d. The pharmacist requires every purchaser of a controlled substance under this rule not known to him to furnish suitable identification (including proof of age where appropriate).
- e. A bound record book for dispensing of controlled substances (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance to the purchaser.
- f. A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law.

This rule is intended to implement section 204.308, The Code."

14. That Respondent is guilty of a violation of Rule §620--10.1(4)"h," "j," and "u."

Rule 10.1(4) reads as follows:

"10.1(4) The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1000.00, when the board determines that the licensee or registrant is guilty of the following acts or offenses:

- h. Distribution of intoxicating liquors or drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of chapters 155, 203, 203A and 204 of the Code.
- 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.
- u. Violating any of the grounds for revocation or suspension of a license listed in section...155.13 of the Code."

15. That the sales of veterinary pharmaceuticals detailed in paragraphs 6, 7 and 8, and the altering of the prescription described in paragraph 12b constitute a violation of Iowa Code, Section 155.29(4) "Making or uttering a false or forged prescription or written order."

16. That the sale of the veterinary pharmaceutical described in paragraph 11 constitutes a violation of Iowa Code, Section 155.20.

17. That the prescription files described in paragraph 12a contained unsigned schedule II prescriptions in violation of board rule §620, Section 8.11.

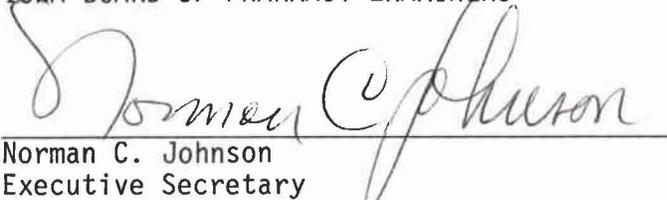
18. That the failure to take a biennial inventory of the schedule V drugs Robitussin AC syrup and Terpin Hydrate Elixir with codeine and the failure to record the sale of Schedule V controlled substances for human and/or veterinary use constitutes a violation of Iowa Code, Section 204.306; Federal Regulations CFR Title 21, parts 1304.03, 1304.04, and 1304.11; and Board Rule IAC §620, Section 8.13(15).

19. That paragraphs 13 and 14 constitute grounds for which Respondent's license to practice pharmacy in the state of Iowa can be suspended or revoked. Also that paragraph 13 constitutes grounds for revocation of the license to operate a pharmacy issued in the name of Zortman Rexall Drug.

WHEREFORE the undersigned charges that John L. Zortman has violated Section 155.13(3), 155.20, 155.30, and 204.306 of The Code of Iowa, and Rule 620--10.1(4)"h," "j" and "u" of the Iowa Administrative Code, and the undersigned asks that the board enter an Order fixing a time and place of hearing on this Complaint and Statement of Charges.

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 John L. Zortman on the first day of July 1976, and that they revoke or suspend the license issued to Lyle J. Zortman to operate Zortman Rexall Drug which license expires on December 31, 1984, or to take whatever additional action they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS


Norman C. Johnson
Executive Secretary

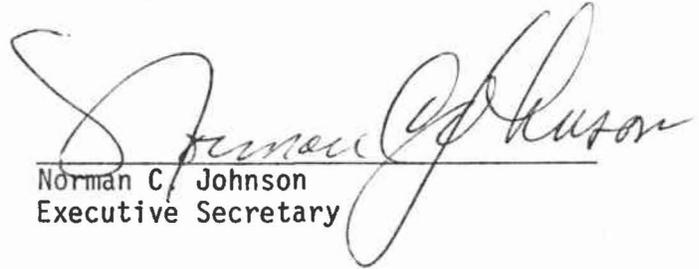
Section 204.308(4) reads as follows:

"A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 204.401(c) and (d) read as follows:

"...it is unlawful for any person to...deliver...a controlled substance...any person who violates this subsection with respect to...(c.) a substance classified in Schedule IV, is guilty of a serious misdemeanor...(d.) a substance classified in Schedule V, is guilty of a simple misdemeanor..."

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

After hearing the testimony and examining the evidence, the Board convened in closed session to deliberate. The undersigned was instructed to prepare this, the Board's Decision and Order.

THE RECORD

The record in this matter consists of the testimony presented at the evidentiary hearing held on Tuesday, February 14, 1984 and Board Exhibits numbered 1 through 21, 1A and 1B.

FINDINGS OF FACT

1. John L. Zortman is a resident of Sioux City, Iowa and is a licensed pharmacist who was issued License No. 14848 to practice pharmacy in the State of Iowa on July 1, 1976.

2. That Respondent is a pharmacist employed at Zortman Rexall Drug, 5402 Military Road, Sioux City, Iowa, License No. 687, (Testimony of Zortman).

3. That Mr. Zortman and/or Zortman Rexall Drug received from one L. L. Vidal, D.V.M., 312 First Avenue N.W., Hampton, Iowa, 103 prescription blanks. These prescription blanks were blank but were all signed by L. L. Vidal, D.V.M. (Exhibits 1 and 2, Testimony of Zortman).

4. That on October 12, 1983, an inspection of Zortman Rexall Drug prescription files produced evidence of the following prescriptions, all signed by one L. L. Vidal, D.V.M., 312 First Avenue N.W., Hampton, Iowa:

- a. Rx #236659 calling for 2 x 10cc Adenosin 200 injection 25mg/cc was dispensed to Bob Satherland, Dakota City, Nebraska, horse.
- b. Rx #236666 calling for Phenylbutazone tablets 1 gm #500 was dispensed to Ron Brochert, Box 129, South Sioux City, Nebraska, horse.
- c. Rx #236698 calling for Equalan 50mg #2 was dispensed to Alex Cortez, Dakota City, Nebraska, horse.
- d. Rx #236731 calling for 13 x 30cc Testosterone injection 50mg/cc was dispensed to Walker Kennel, unknown location, dog.
- e. Rx #236734 calling for 6 x 10cc Testosterone Propionate injection 100mg/cc was dispensed to Bob Schroeder, Dakota City, Nebraska, horse.
- f. Rx #236747 calling for Phenylbutazone tablets 1 gm #1200 was dispensed to M. Riley, Dakota City, Nebraska, horse.
- g. Rx #236748 calling for 7 x 10cc Adenosin 200 injection 25mg per cc was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
- h. Rx #236749 calling for 3 x 100cc Vitamin E and Selenium injection was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
- i. Rx #236750 calling for 5 x 50cc ACTH 80 units was dispensed to Cheryl Popplotsch, Dakota City, Nebraska, horse.
- j. Rx #236751 calling for 12 x 100cc Phenylbutazone 20% injection was dispensed to Eleanor Brocha, Dakota City, Nebraska, horse.

- k. Rx #236752 calling for 3 x 50cc ACTH 80 units was dispensed to Eleanor Brocha, Dakota City, Nebraska, horse.
- l. Rx #236753 calling for Azium 10mg #20 was dispensed to Barbara Knoll, Dakota City, Nebraska, horse.
- m. Rx #236761 calling for 1 x 50cc Acepromazine injection was dispensed to Dean Peterson, Dakota City, Nebraska, horse.
- n. Rx #236763 calling for 6 x 100cc Dexamethasone Sodium Phosphate injection 4mg/cc was dispensed to Dean Peterson, Dakota City, Nebraska, horse.
- o. Rx #236768 calling for 35 x 10cc Calcium Gluconate 1gm injection was dispensed to Tiny Hawthorne, address unknown, dog.
- p. Rx #236782 calling for 5 x 30cc Gomerol was dispensed to Ed Fisher, Dakota City, Nebraska, horse.
- q. Rx #236793 calling for 1 x 30cc AMP 200 was dispensed to Loghry, Columbus, Nebraska, horse.
- r. Rx #236803 calling for 1 x 50cc PromAce was dispensed to Richard Fleshner, Dakota City, Nebraska, horse.
- s. Rx #236804 calling for 12 x 10cc Adenosin 200 injection 25mg/cc was dispensed to Richard Fleshner, Dakota City, Nebraska, horse.
- t. Rx (no number) calling for 1 x 50cc Equalan was dispensed to Dwaine Twite, North Sioux City, South Dakota, horse.
- u. Rx #237476 calling for 25 x 10cc Calcium Gluconate 1 gm injection was dispensed to Larry Cummings, Sodrac Park, South Dakota, dog.
- v. Rx #237482 calling for 15 x 30cc Testosterone Suspension 50mg was dispensed to Larry Montgomery, Deer Trail, Colorado, dog.
- w. Rx #237757 calling for 1 x 10cc Solu Delta Cortef injection was dispensed to Ted Haber, Dakota City, Nebraska, horse.

- x. Rx #237880 calling for Methandrostenalone tablets 5mg #400 was dispensed to Lou Roden, Dakota City, Nebraska, dog.
- y. Rx #238127 calling for 1 x 30 Testosterone Suspension 50mg/cc was dispensed to Diane Comeau, North Sioux City, South Dakota, dog.
- z. Rx #238191 calling for 3 x 100cc Phenylbutazone injection 20% was dispensed to Wallen Stables, Sioux City, Iowa, horse.

(Exhibit 1).

5. That the prescription pharmaceutical, the name of the purchaser, and the use were, in each of the 26 instances, added to the signed prescription at the time of sale by John L. Zortman or someone acting under his direction, but without the authorization or consent of L. L. Vidal, D.V.M. (Exhibits 1, 2, Testimony of Christianson, Zortman).

6. On November 15, 1983, an investigator of the Federal Food and Drug Administration purchased a 100cc bottle of Dexamethasone Sodium Phosphate labeled, "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." The investigator purchased this drug from Zortman Rexall Drug. The investigator did not have a valid prescription for this drug (Exhibits 3-6, Testimony of James McDonald, George Baughman, Zortman).

7. An inspection of the files of Zortman Rexall Drug on October 12, 1983 produced five unsigned Schedule II prescriptions

(Rx numbers 234623, 234624, 234625, 234626, 234485). These prescriptions were authorized by a physician but were not signed (Exhibit 7, Testimony of Zortman).

8. The inspection of Zortman Rexall Drug on October 12, 1983 produced evidence that Schedule V drugs Robitussin AC syrup and Terpin Hydrate Elixir with codeine were not included in the biannual inventory taken on May 16, 1983 (Exhibit 8, 9).

9. The inspection of Zortman Rexall Drug on October 12 produced evidence that sales of Schedule V controlled substances for human and/or veterinary use were not being recorded as required by Federal and State regulations (Exhibits 9-11, 15-18).

10. An inspection of the prescription files of Zortman Rexall Drug produced evidence of the following:

- a. Rx #238528 calling for 128 ounces of Robitussin AC syrup was dispensed to Dale Moss Race Horses (no address given) on October 18, 1983. Rx #238528 was also refilled on November 2, 1983, and December 8, 1983, each time in the amount of 128 ounces.
- b. Rx #238591 calling for 128 ounces of Dihistine DH syrup was dispensed to Dave Koettters Stables (no address given) horses on November 1, 1983.
- c. Rx #235896 calling for Sanorex 2mg tablets #100 was dispensed to a Warren Melven of Jefferson, SD, on June 9, 1983. The directions on this prescription were "ut dict for horse." It was purportedly issued on a telephone order from a doctor of veterinary medicine whose last name is indicated to be "Milburn".

- d. The files contained seventy-seven (77) blank, signed prescriptions from the office of L. L. Vidal, D.V.M., 312 First Avenue N.W., Hampton, Iowa.

(Exhibits 2, 10, 11, 12, 1).

11. The exempt narcotic sales record obtained from Zortman Rexall Drug contained records of the sales of Schedule V cough syrups in quantities exceeding 120cc (4 oz.) in a 48-hour period (Exhibits 10, 11, 15, 16, 10).

12. Mr. Zortman testified and admitted to the substance of each and every factual allegation against him. Mr. Zortman testified that it was common practice in the area to dispense veterinary pharmaceuticals without a prescription (Testimony of Zortman).

CONCLUSIONS OF LAW

1. The Board of Pharmacy Examiners is authorized by statute to "administer and enforce the laws and administrative rules relating to the practice of a profession whose members are examined for a licensure by the Board."

Section 358A.3(2) (A), the Code 1983.

2. The Board is further authorized to:

- a. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the Board, alleged acts or omissions which the Board reasonably believes constitutes cause under applicable law or administrative rule for licensee discipline;

- b. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted;
- c. Initiate and prosecute disciplinary proceedings;
- d. Impose licensee discipline.

Section 258A.3, the Code 1983.

3. Section 155.13(8) provides: The Board shall have the

The Board shall have the authority to deny, suspend or revoke a license in any case where it finds 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: ...

8. Violations of the provision of this chapter.

4. Section 155.20, the Code 1983, provides:

No prescription drug may be sold at wholesale or brokerage for resale to other than licensed pharmacies nor shall any person licensed under this Chapter sell or dispense any prescriptions drug to any person other than a licensed pharmacy or a physician without prescription.

5. Section 155.29, the Code 1983, provides in part "No person shall: ... 4. Make or utter any false or forged prescription or written order."

6. Section 155.30, the Code 1983, prescribes penalties for violations of Section 155.29 and states in part "Any person who violates a provision of 155.29 or who sells or offers for sale,

gives away, or administers to another person any prescription drug shall be guilty of a public offense and punished as provided below."

7. Section 204.306, the Code 1983, provides in pertinent part "Records of registrants. Persons registered to manufacture, distribute, dispense, or administer controlled substances under this Chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal Law and with such additional rules as may be issued by the Board."

8. Board Rule 620-8.11(204), Iowa Administrative Code provides in pertinent part:

Manner of issuance of prescriptions. All prescriptions for controlled substances shall be dated as of, and manually signed on, the day when issued and shall bear the full name and address and registration number of the practitioner. A practitioner must manually sign a prescription in the same manner as he would sign a check or legal document. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations.

9. Board Rule 620-8.13(15) reads as follows:

Dispensing without prescription. A controlled substance listed in Schedule V, and a controlled substance listed in Schedule III or IV which is not a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

a. Such dispensing is made only by a pharmacist and not by a nonpharmacist employee even if under the direct supervision of a pharmacist except as specifically provided by other rules of the Board.

b. Not more than 120cc (4 ounces) of any such controlled substance may be distributed at retail to the same purchaser in any given 48-hour period.

c. The purchaser is at least 18 years of age.

d. The pharmacist requires every purchaser of a controlled substance under this rule not known to him to furnish suitable identification (including proof of age where appropriate).

e. A bound record book for dispensing of controlled substances (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance to the purchaser.

f. A prescription is not required for distributing or dispensing of the substance pursuant to any other Federal, State or local law.

This rule is intended to implement Section 204.308, the Code.

10. Board Rule 620-10.1(4) h, j, and u provide:

The Board may impose any of the disciplinary sanctions sent out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1,000, when the Board determines that the licensee or registrant is guilty of the following acts or offenses:

h. Distribution of intoxicating liquors or 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 Chapters 155, 203, 203A and 204 of the Code.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation is either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

u. Violating any of the grounds for revocation or suspension of a license listed in Sections 147.55 and 155.13 of the Code.

11. Federal regulations (CFR) Title 21, Section 1304.03, provides in part: "Persons required to keep records and file reports.

a. Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this Section...."

12. Federal Regulation (CFR) Title 21, Section 1304.04, provides in part: "Maintenance of records and inventories.

a. Every inventory and other records required to be kept under this part shall be kept by the registrant and shall be available, for at least two years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration...."

13. Federal Regulation (CFR) Title 21, Section 1304.11, provides in pertinent part: "General requirements for inventories.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken...."

14. Section 204.308, the Code 1983, provides in pertinent part: "4. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

12. Sections 204.401(1)(c) and 204.401(1)(d) provide:

204.401 prohibited acts -- manufacturers -- possessors -- counterfeit substances -- simulated controlled substances -- penalties.

1. Except as authorized by this Chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a 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 intent to manufacture or deliver, a controlled substance. Any person who violates this section with respect to:

c. A substance classified in Schedule IV, is guilty of a serious misdemeanor.

d. A substance classified in Schedule V, is guilty of a simple misdemeanor.

15. Those instances set out in paragraphs 3, 4, 5, 6 and 10 of the Findings of Fact are supported by substantial evidence and constitute violations of Iowa Code Sections 155.13(3), 155.20, 155.30, and 204.306, the Code of Iowa, 1983, and Board Rules 620-8.11 and 8.13(15).

16. Those instances detailed in paragraphs 3, 4 and 5 of the Findings of Fact are supported by substantial evidence and constitute a violation of Section 155.29(4), the Code 1983.

17. The instance set out in paragraph 6 of the Findings of Fact is supported by substantial evidence and constitutes a violation of Section 155.20, the Code 1983.

18. The instances related in paragraph 7 of the Findings of Fact are supported by substantial evidence and constitute a violation of Iowa Board Rule 620-8.11, Iowa Administrative Code.

19. The instances related in paragraph 8 of the Findings of Fact are supported by substantial evidence and constitute violations of Sections 204.306, the Code of Iowa 1983, Federal Regulations (CFR) Title 21, Sections 1304.03, 1304.04, and 1304.11, and Board Rule 620-8.13(15), Iowa Administrative Code.

20. The instances set out in paragraph 10 and 11 of the Findings of Fact are supported by substantial evidence and constitute violations of Sections 155.20, 204.308(4), 204.40(1)(c) and 204.40(1)(d), the Code of Iowa 1983.

21. The Board may impose discipline, including civil penalties not to exceed \$1,000 for the violations set out in these Findings of Fact and Conclusions of Law. Such penalties may include:

- a. Revocation of license;
- b. Suspension of license, either until further order of the board or for a specified period;
- c. Nonrenewal of license;
- d. Prohibition from the engaging and specified procedures, methods or acts;

- e. Probation;
- f. Additional education or training;
- g. Re-examination;
- h. Physical or mental examination;
- i. Civil penalties not to exceed \$1,000;
- j. Citation and warning;
- k. "Such other sanctions allowed by law as may be appropriate."

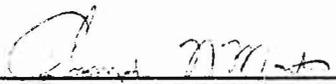
620-10.1(2), Iowa Administrative Code.

DECISION AND ORDER

It is the decision of the Board that John L. Zortman of Sioux City, Iowa is guilty of violations of the Statutes of the State of Iowa and the rules promulgated thereunder.

IT IS THE ORDER OF THE BOARD: That the license to practice pharmacy, License No. 14848, issued to John L. Zortman, Zortman Rexall Drug, 5402 Military Road, Sioux City, Iowa 50109 is hereby revoked.

Dated this 27th day of February, 1984.



THOMAS N. MARTIN
435 East Grand Avenue
Des Moines, IA 50309
Telephone: 284-1433

cc: John Zortman
5402 Military Road
Sioux City, IA 51109

Thomas D. McGrean
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319

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

Re: Pharmacist License of	)	COMPLAINT
JOHN L. ZORTMAN	)	AND STATEMENT
License No. 14848	)	OF CHARGES
Respondent	)	AND
	)	NOTICE
	)	OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary-Director of the Iowa Board of Pharmacy Examiners, on the 3rd day of November, 1992, and files this Complaint and Statement of Charges and Notice of Hearing against John L. Zortman, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Alan M. Shepley, Chairperson; Marian L. Roberts, Vice Chairperson; Donna J. Flower; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; 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 1, 1976, by examination. Respondent was issued a Complaint and Statement of Charges on January 12, 1984, which alleged that Respondent: (1) had engaged in the unlawful distribution of prescription drugs for veterinary uses without prescriber authorization; (2) had failed to obtain prescribers' signatures on certain Schedule II controlled substance prescriptions; (3) had failed to take a complete controlled substance inventory at Zortman Rexall Drug in Sioux City on May 16, 1983; (4) had failed to record over-the-counter sales of Schedule V controlled substances; (5) had created false prescriptions for controlled substances; and (6) had distributed or dispensed Schedule V controlled substances for *other than*

medical purposes. Following an administrative hearing on February 14, 1984, Respondent was found guilty of violations of: various sections of 1983 Iowa Code chapters 155 and 204; various sections of 620 Iowa Administrative Code chapter 8; and 21 Code of Federal Regulations sections 1304.03, 1304.04, and 1304.11. As a result, Respondent's license to practice pharmacy in Iowa was revoked by the Iowa Board of Pharmacy Examiners on February 29, 1984. Respondent's license to practice pharmacy in Iowa was subsequently reinstated in March 1986 and was placed on probation for five years.

3. Respondent currently resides at 143 Westwood Lane, McCook Lake, South Dakota 57049.

4. Respondent is currently self-employed as pharmacist in charge and owner of Zortman's Union Drug, 1419-2 Hamilton Boulevard, Sioux City, Iowa 51103.

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

6. The Board has received an investigative report from Pharmacy Investigator Morrell A. Spencer dated January 15, 1992, which alleges the following:

a. A written complaint dated November 26, 1991, was received on December 2, 1991, from Kathryn D. Opheim, M.D., of Riverside Family Practice Center, 2421 Riverside Boulevard, Sioux City, Iowa 51109, which stated, in part, the following:

As an active family physician in the community I would like to bring your attention to a prescribing practice that is, to my understanding, not particularly ethical. A patient of mine has been prescribed Tenormin 50mg daily. She mentioned to me in an office visit that her pharmacist at Zortman's Union Pharmacy in Sioux City was giving her a "compound Tenormin" in order to save her some money. My office staff contacted the pharmacist to find out what indeed it was that was given to her. He explained that she was getting the medication compressed in some way to be cheaper. We then asked the patient to bring in her pills. Enclosed

is the prescription label which as you can see reads, "take one capsule by mouth daily for blood pressure. Tenormin 50mg. CMPD. From 100mg tablets." I examined the tablets and Tenormin comes in a tablet form and is not a capsule. What was in the bottle was an orange and white capsule with no markings whatsoever on the outside. I was not able to open up one of the capsules without destroying it for the patient but I could see that it was a powdered form of medication contained within.

It is my understanding that prescription labels are to accurately present what is contained within. There would be no way to tell from looking at the pill what was actually in the medication. I have ethical concerns about this individual and his dispensing practices...

b. On October 3, 1991, Kathryn D. Opheim, M.D., issued a prescription for a female patient for Tenormin 50mg tablets #100 with directions to take one tablet daily for blood pressure. Dr. Opheim indicated "*dispense as written*" on the prescription. Respondent dispensed #30 Tenormin 50mg tablets to the patient on October 3, 1991, from Zortman's Union Drug as prescription number 008493.

c. On October 24, 1991, Respondent refilled prescription number 008493 at Zortman's Union Drug and dispensed #100 Atenolol 50mg capsules which were allegedly compounded extemporaneously using pulverized Tenormin 100mg tablets and lactose. The capsules were orange and white in appearance. Prescription number 008493 was labeled as "Tenormin 50mg. CMPD. from 100mg. tablets."

d. Dr. Opheim did *not* authorize the dispensing of "compounded Tenormin" to her patient on October 24, 1991.

e. Respondent's compounding records at Zortman's Union Drug reveal that between September 26, 1990, and October 4, 1991, Respondent compounded five batches (4,900 capsules) of "Tenormin 50mg" using pulverized Tenormin 100mg tablets, lactose, and orange food color. Respondent gave these capsules a one-year expiration date, claiming that they were good for one year from the date on which he compounded and prepared them.

7. Respondent has engaged in unlawful and unethical conduct: (1) by substituting a "compounded" drug for a commercially-available strength of a brand name drug product when there is no demonstrated bioavailability for the "compounded" product; (2) by dispensing a "compounded" drug without prescriber authorization; and (3) by dispensing a misbranded and mislabeled prescription drug which fails to meet applicable government standards.

8. Respondent is guilty of violations of 1991 Iowa Code sections 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.23(2), 155A.23(5), 155A.28, 155A.32, 203B.3(1), 203B.9(2), 203B.9(3), 203B.10(1), 203B.10(9)(a), 203B.10(9)(b), and 203B.10(9)(c) by virtue of the allegations contained in paragraphs 6 and 7.

1991 Iowa Code section 147.55 provides, in part, the following:

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

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

1991 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.

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

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

1991 Iowa Code section 155A.23 provides, in part, the following:

A person shall not:...

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

....

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

1991 Iowa Code section 155A.28 provides the following:

The label of any drug or device sold and dispensed on the prescription of a practitioner shall be in compliance with rules adopted by the board.

1991 Iowa Code section 155A.32 provides, in part, the following:

1. If an authorized prescriber prescribes, either in writing or orally, a drug by its brand name or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and **demonstrated bioavailability** as the one prescribed for dispensing and sale to the patient...If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the savings which the patient will obtain as a result of the drug product selection and pass on to the patient no less than fifty percent of the difference in actual acquisition costs between the drug prescribed and the drug substituted.

2. The pharmacist shall *not* exercise the drug selection described in this section if...the following is true:

a. The prescriber specifically indicates that no drug product selection shall be made (emphasis added).

1991 Iowa Code section 203B.3 provides, in part, the following:

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

1991 Iowa Code section 203B.9 provides, in part, the following:

A drug or device is adulterated under any of the following circumstances:...

2. If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in the official compendium...

3. If it is not subject to subsection 2 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

1991 Iowa Code section 203B.10 provides, in part, the following:

A drug or device is misbranded under any of the following circumstances:

1. If its labeling is false or misleading in any particular.

....

9. a. If it is a drug and its container is so made, formed, or filled as to be misleading.

- b. If it is an imitation of another drug.
- c. If it is offered for sale under the name of another drug.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.5(1), 8.14(1)(g), 8.15(2), 9.1(4)(b)(2), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations contained in paragraphs 6 and 7.

657 Iowa Administrative Code section 8.5 provides, in part, the following:

Unethical conduct or practice. The provisions of this section apply to licensed pharmacists and registered pharmacist-interns.

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

657 Iowa Administrative Code section 8.14 provides, in part, the following:

Prescription label requirements.

8.14(1) The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:...

g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. ***Under no circumstances shall the label bear the name of any product other than the one dispensed*** (emphasis added).

657 Iowa Administrative Code section 8.15 provides, in part, the following:

Records. When a pharmacist exercises the drug product selection prerogative pursuant to Iowa Code section 155A.32, the following information shall be noted:...

8.15(2) The name, strength, and either the manufacturer's or distributor's name or the National Drug Code (NDC) of the actual drug product dispensed shall be placed on the file copy of the prescription drug order whether it is issued orally or in writing by the prescriber. This information shall also be indicated on the prescription in those instances where a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. This information may be placed upon patient medication records if such records are used to record refill information.

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:...

b. Professional incompetency. Professional incompetency includes but is not limited to:...

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

....
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.

....
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.

....
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 8 and 9 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 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.23(2), 155A.23(5), 155A.28, 155A.32, 203B.3(1), 203B.9(2), 203B.9(3), 203B.10(1), 203B.10(9)(a), 203B.10(9)(b), and 203B.10(9)(c) and 657 Iowa Administrative Code sections 8.5(1), 8.14(1)(g), 8.15(2), 9.1(4)(b)(2), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u).

IT IS HEREBY ORDERED that John L. Zortman appear before the Iowa Board of Pharmacy Examiners on Wednesday, January 13, 1993, at 9:00 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 John L. Zortman on July 1, 1976, 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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of JOHN L. ZORTMAN License No. 14848 Respondent	} } } } }	STIPULATION AND INFORMAL SETTLEMENT
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COMES NOW the Iowa Board of Pharmacy Examiners (the Board) and John L. Zortman (Respondent) and, pursuant to Iowa Code sections 17A.10 and 258A.3(4), enter into the following Stipulation of the contested case currently on file:

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1976, by examination.
2. Respondent's license is current until June 30, 1993.
3. Respondent's current address is 143 Westwood Lane, McCook Lake, South Dakota 57049.
4. A Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on November 3, 1992.
5. The Board has jurisdiction of the parties and the subject matter.
6. Respondent does not contest the allegations set forth in the complaint. The Respondent agrees that the Board may treat the allegations as true for the purpose of this Informal Settlement only and it is expressly understood that the Respondent is not affirmatively admitting to the allegations.

7. Respondent's license is placed on probation for a period of one year from the date of approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

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

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

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

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

e. Submit a written report to the Board once every six (6) months, beginning six months after the date of approval of this Stipulation and Informal Settlement, stating truthfully whether or not he has complied with all terms and conditions of his probation.

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

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

Informal Settlement, and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read this document.

8. Respondent shall remit a \$1,000 civil penalty to the Board office within thirty (30) days of acceptance of this Stipulation and Informal Settlement by the Board.

9. Respondent shall cease and desist compounding drug products when there is a commercially available drug product that is therapeutically suitable for the patient. Respondent shall not sell over-the-counter any compounded product containing a drug as defined in 1993 Iowa Code section 155A.3(13), unless registered as a manufacturer with FDA. In addition, Respondent shall follow and adhere to the attached "Good Compounding Practices" guideline (or a successor rule as may be adopted by the Board) whenever engaging in the compounding of drugs and drug products.

10. Should Respondent practice outside of this state, Respondent shall notify the Board in writing of the dates of such practice. Periods of practice outside of this State shall not apply to reduction of the probationary period.

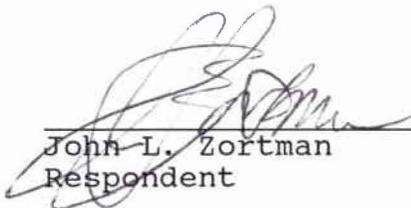
11. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the stayed suspension. If a petition to revoke probation is filed against Licensee during probation, the Board shall have continuing jurisdiction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

period of probation shall be extended until the matter is final.

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

13. 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 2nd day of March, 1993.



John L. Zortman
Respondent

Signed and sworn to before me this 2nd day of March, 1993.



NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

15. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 2nd day of March, 1993.



Alan M. Shepley, Chairperson
Iowa Board of Pharmacy Examiners

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

Re:)
Pharmacist License of)
JOHN L. ZORTMAN) **STATEMENT OF CHARGES**
License No. 14848)
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 (1997).

3. On July 1, 1976, John L. Zortman, the Respondent, was issued license number 14848 by the Board to engage in the practice of pharmacy, subject to the laws of the State of Iowa and the rules of the Board.

4. License number 14848 is current and active until June 30, 1999.

5. Respondent's current address is Post Office Box #161, Whiting, Iowa 51063.

6. Respondent is currently employed as the pharmacist in charge at Freeman Pharmacy, Inc., 604 Whittier, Whiting, Iowa 51063.

7. Respondent's license to practice pharmacy was previously disciplined by the Board in 1984 and 1993.

In the 1984 disciplinary action, the Board revoked Respondent's pharmacist license on February 29, 1984. On March 4, 1986, Respondent's pharmacist license was reinstated. His license was placed on probation with conditions for five years, from March 4, 1986, to March 3, 1991.

In the 1993 disciplinary action, Respondent and the Board reached an informal settlement on March 2, 1993, in which Respondent's license was placed on probation with conditions for one year beginning March 2, 1993.

COUNT I

The Respondent is charged with failure to comply with the requirements for prescription drug orders filled in Iowa in violation of 1997 Iowa Code §§ 155A.12(1) and 155A.27.

COUNT II

The Respondent is charged with failing to keep and maintain records required by Iowa Code chapter 155A and complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act in violation of 1997 Iowa Code § 155A.12(4).

COUNT III

The Respondent is charged with failure to provide accurate accountability for controlled substances in violation of 1997 Iowa Code § 155A.12(5).

COUNT IV

The Respondent is charged with failure to adequately supervise delegated acts performed by supportive personnel in violation of 1997 Iowa Code § 155A.12(1) and 657 Iowa Administrative Code Section 6.1.

COUNT V

The Respondent is charged with failure to maintain controlled substance records in a manner to establish receipt and distribution of all controlled substances in violation of 1997 Iowa Code § 155A.12(1) and 657 Iowa Administrative Code Section 6.8(1).

COUNT VI

The Respondent is charged with failure to distinguish controlled substances from non-controlled substances in pharmacy records in which controlled substances and non-controlled substances are listed together in

violation of 1997 Iowa Code § 155A.12(1) and 657 Iowa Administrative Code Section 6.8(7).

COUNT VII

The Respondent is charged with failure to maintain a complete and accurate biennial inventory of controlled substances in violation of 1997 Iowa Code § 155A.12(1) and 657 Iowa Administrative Code Section 6.8(10).

THE CIRCUMSTANCES

1. On April 22, 1997, the Board received a complaint against Respondent alleging unlawful practices at Freeman Pharmacy. A subsequent investigation and audit by Board investigators and U.S. Postal Inspectors confirmed various violations of Iowa law and administrative rules including, but not limited to, the following:

a. Lack of complete information on prescription drug orders processed at Freeman Pharmacy.

b. Lack of complete and accurate records of purchases, dispensing, disposal, and other distribution of prescription drugs, including controlled substances, from Freeman Pharmacy.

c. Inability to accurately account for prescription drugs, including controlled substances, purchased by and dispensed from Freeman Pharmacy.

d. Inadequate and ineffective supervision and control of non-pharmacist employees of Freeman Pharmacy by the pharmacist in charge.

e. Failing to take complete and accurate inventories of controlled substances as required by state and federal law.

2. A general pharmacy inspection of Freeman Pharmacy was conducted on April 29, 1997. The inspection revealed the following deficiencies:

a. Failure to have the current edition of the USP/DI Volume III.

b. Failure to have the current edition of the *Iowa Pharmacy Law and Information Manual*.

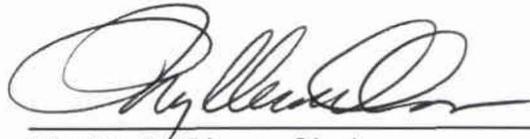
c. Failure to take a complete and accurate inventory of controlled substances on March 15, 1996, when there was a change of the pharmacist in charge at Freeman Pharmacy.

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 10th day of September, 1997, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Phyllis A. Olson, Chairperson
Iowa Board of Pharmacy Examiners
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

7. Respondent's license to practice pharmacy is suspended for a period of six (6) months. The suspension is stayed, however, and the Respondent's license is placed on probation for a period of two (2) years from the date of 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 and the distribution of controlled substances and all federal and state criminal laws.

b. Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Stipulation and Informal Settlement. The reports shall be filed not later than September 5, December 5, March 5, and June 5 of each year of the Respondent's probation. The quarterly reports shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time. Respondent's first quarterly report shall be filed with the Board not later than March 5, 1998.

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

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

8. Within one hundred twenty (120) days of the date of approval of this Stipulation and Informal Settlement by the Board, the Respondent shall develop and submit to the Board, for its approval, a written policy and procedure for obtaining, recording, and maintaining patient information and prescription drug order information. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure whenever engaging in the practice of pharmacy.

9. Within one hundred twenty (120) days of the date of approval of this Stipulation and Informal Settlement by the Board, the Respondent shall develop and submit to the Board, for its approval, a written policy and procedure for maintaining

complete and accurate records of the receipt and distribution of controlled substances; for ensuring accurate accountability for controlled substances; for distinguishing controlled substances from non-controlled substances in pharmacy records where controlled and non-controlled substances are listed together; and for maintaining a complete and accurate biennial inventory of controlled substances. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure whenever engaging in the practice of pharmacy.

10. Within one hundred twenty (120) days of the date of approval of this Stipulation and Informal Settlement by the Board, the Respondent shall develop and submit to the Board, for its approval, a written policy and procedure for supervising delegated acts performed by pharmacy technicians and other pharmacy supportive personnel. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure whenever engaging in the practice of pharmacy.

11. Within one hundred twenty (120) days of the date of approval of this Stipulation and Informal Settlement by the Board, the Respondent shall develop and submit to the Board, for its approval, a written policy and procedure for conducting prospective drug utilization review in the practice of pharmacy. The policy and procedure shall include a written protocol which describes the procedure for Respondent to follow when dispensing prescription medication upon receipt of a new prescription drug order or a refill request. The policy and procedure shall include all of the requirements contained in 657 Iowa Administrative Code § 8.19 and shall provide for a process whereby patients' medication records are reviewed and assessed by Respondent for the purpose of determining therapeutic appropriateness prior to the dispensing of any prescription medication by Respondent. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure whenever engaging in the practice of pharmacy.

12. Within one hundred twenty (120) days of the date of approval of this Stipulation and Informal Settlement by the Board, the Respondent shall develop and submit to the Board, for its approval, a written policy and procedure for patient counseling. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure whenever engaging in the practice of pharmacy.

13. Respondent shall not dispense any prescription medication without a valid prescription drug order from an authorized prescriber.

14. Respondent shall pay a civil penalty of \$1,250.00 within 180 days of the date of approval of this Stipulation and Informal Settlement by the Board. Respondent shall deliver a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund of the State of Iowa.

15. Respondent shall complete an additional eight (8) hours of continuing pharmacy education in prospective drug utilization review during the first twelve (12) months of the probationary period. Each continuing education course taken by Respondent shall be pre-approved by the Board. Documentation of successful completion of each course shall be submitted to the Board. These courses are in addition to the thirty (30) hours of continuing education required for license renewal.

16. Respondent shall complete an additional eight (8) hours of continuing pharmacy education in patient counseling during the first twelve (12) months of the probationary period. Each continuing education course taken by Respondent shall be pre-approved by the Board. Documentation of successful completion of each course shall be submitted to the Board. These courses are in addition to the thirty (30) hours of continuing education required for license renewal.

17. Respondent shall notify any and all prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent

by this document. Within thirty (30) days after approval of this Stipulation and Informal Settlement by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer to report to the Board in writing acknowledging that the employer has read this document and understands it.

18. Should Respondent leave Iowa to reside in and practice pharmacy in another State, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence and practice outside the State shall not apply to reduction of the probationary period.

19. 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.

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

21. This Stipulation and Informal Settlement is subject to approval of a majority of the full 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.

22. This Stipulation and Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 30th day of January, 1998.



JOHN L. ZORTMAN, R.Ph.
Respondent

Subscribed and Sworn to before me on this 30th day of January, 1998.



NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

23. This Stipulation and Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 3rd day of February, 1998.



PHYLLIS A. OLSON, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
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. <u>99-14848</u>
Pharmacist License of)	
JOHN L. ZORTMAN	)	STATEMENT OF CHARGES
License No. 14848)	
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 (1999).
3. On July 1, 1976, the Board issued Respondent, John L. Zortman, a license to engage in the practice of pharmacy by examination as evidenced by license number 14848, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 14848 now current and active until June 30, 2001; but on probation.
5. Respondent's current address is 11 Second St. NW, Apt. 3, LeMars, Iowa 51031.
6. Respondent is currently employed as a pharmacist at Family Pharmacy, 44 1st Ave NE, LeMars, Iowa 51031 and at LeMars Clinic Pharmacy, 190 6th Avenue, NE, LeMars, Iowa 51031, 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) (1999) and 657 Iowa Administrative Code § 36.1(4) with failure to comply with the terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement with the Respondent.

COUNT II

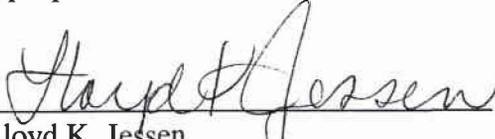
The Respondent is charged under Iowa Code §§ 155A.7, 155A.11, & 155A.12(1) & (8) (1999) and 657 Iowa Administrative Code § 36.1(4)(v) with engaging in the practice of pharmacy in the State of Iowa without an active and current Iowa pharmacist license.

THE CIRCUMSTANCES

1. The Board's records show that the Respondent's pharmacist license expired on June 30, 1999. The Respondent did not file an application to renew of his pharmacist license prior to July 1, 1999. On August 31, 1999, the Board had not yet received Respondent's application to renew his pharmacist license with the Board.
2. The Respondent continued practicing pharmacy in the State of Iowa between June 30, 1999 and August 31, 1999.
3. On February 3, 1998, the Board accepted a Stipulation and Informal Settlement settling a Statement of Charges filed against Respondent's pharmacist license on September 10, 1997.
4. Pursuant to the terms of the settlement, Respondent's license to practice pharmacy was suspended for a period of six months, but the suspension was stayed and the Respondent's license was placed on probation for a period of two years from the date of the Board's approval of the Stipulation and Informal Settlement.
5. Under the terms of Respondent's probation, Respondent was required to complete an additional eight hours of continuing pharmacy education in prospective drug utilization review during the first twelve months of the probationary period and to submit documentation of successful completion of each course to the Board.
6. Under the terms of Respondent's probation, Respondent was also required to complete an additional eight hours of continuing pharmacy education in patient counseling during the first twelve months of the probationary period and to submit documentation of successful completion of each course to the Board.
7. The continuing pharmacy education referred to in paragraphs 6 and 7, above, was in addition to the thirty hours of continuing education required for license renewal.
8. As of November 16, 1999, the Respondent still had not provided the Board with documentation of successful completion of any continuing pharmacy education in prospective drug utilization review or in patient counseling as required by the terms of his probation.

9. The Respondent's actions in failing to submit documentation of successful completion of additional the continuing pharmacy education in prospective drug utilization review and patient counseling violated the terms of probation ordered by the Board when it accepted the Stipulation and Informal Settlement on February 3, 1998.

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 16th day of Nov., 1999, 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
1209 East Court Avenue
Des Moines, Iowa 50319

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. 99-14848
Pharmacist License of	)	DIA NO: 00PHB003
JOHN L. ZORTMAN	)	FINDINGS OF FACT,
License No. 14848	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

TO: JOHN L. ZORTMAN

On November 16, 1999, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against John L. Zortman (Respondent), a licensed pharmacist. The Statement of Charges alleged that the Respondent had violated Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4) by his failure to comply with terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement (COUNT I). The Statement of Charges further alleged that the Respondent violated Iowa Code sections 155A.7, 155A.11, and 155A.12(1) and (8)(1999) and 657 IAC 36.1(4) "v" when he engaged in the practice of pharmacy in the state of Iowa without an active and current Iowa pharmacist license.

The hearing on the Statement of Charges was held on July 11, 2000 at 1:00 p.m., in the conference room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Matthew C. Osterhaus, Chairperson; Phyllis A. Olson; Katherine A. Linder; Michael J. Seifert; Lemman Olson; Mary Pat Mitchell and G. Kay Bolton. The Respondent appeared and was represented by his counsel, Bob Deck. The state was represented by Shauna Russell Shields, 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 request of the Respondent, pursuant to Iowa Code section 272C.6(1)(1999).

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 the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

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

State Exhibit A: Stipulation and Informal Settlement,
dated 2/3/98

State Exhibit B: Statement of Charges, dated 9/10/97

State Exhibit C: Probation Compliance Summary

State Exhibit D: Letter dated 6/18/98 (Jessen to Respondent)

State Exhibit E: Letter dated 6/18/98 (Pearson to Respondent) with enclosure

State Exhibit F: Letter dated 1/28/99 (Respondent to Pearson)

State Exhibit G: Letter dated 2/1/99 (Respondent to Jessen)

State Exhibit H: Letter dated 2/17/99 (Pearson to Respondent)

State Exhibit I: Letter dated 4/9/99 (Respondent to Pearson)

State Exhibit J: Complaint Report for complaint number 1999-76 and attached license status report dated 8/31/99

State Exhibit K: Iowa Pharmacist License Renewal Application dated 8/27/99

State Exhibit L: Quarterly Reports of Probation Compliance

State Exhibit M: Certificates of Continuing Education Credit, certifying completion of the Abbott Quality Pharmacy System Modules #1, #2, and #3, dated 4/12/99

State Exhibit N: Decision and Order dated 2/29/84

State Exhibit O: Stipulation and Informal Settlement, dated 3/2/93

State Exhibit P: Brochure, Drug Topics, Issues & Trends in Pharmacy Care and Pharmaceutical Care

State Exhibit Q: Brochures: Clinical Pharmacy Newswatch (3); The Dynamics of Pharmaceutical Care: Enriching Patient's Health (2); A PhA Special Report.

Respondent Exhibit 1: Certificates of Continuing Education

Respondent Exhibit 2: Letters of Recommendation;
Evaluations

FINDINGS OF FACT

1. The Respondent was issued a license to practice pharmacy in Iowa on July 1, 1976, by examination. His license is now current and active until June 30, 2001, but is on probation. (Testimony of Respondent; State Exhibits A, B, K)

2. The Respondent has had a history of license discipline by the Board. On February 29, 1984, the Respondent's pharmacy license was revoked, following a hearing before the Board. His license was later reinstated by the Board, but a second Statement of Charges was filed on November 3, 1992. The Respondent and the Board entered into an informal settlement of the second Statement of Charges, which resulted in the Respondent's license being placed on probation for a period of one year. On September 10, 1997, a third Statement of Charges was filed against the Respondent. (Testimony of Lindy Pearson; State Exhibits N, O, B)

3. On February 3, 1998, the Respondent and the Board entered into a Stipulation and Informal Settlement, in resolution of the September 10, 1997 Statement of Charges. The Respondent's pharmacy license was suspended for a period of six (6) months, but the suspension was stayed, and the Respondent's license was placed on probation for a period of two (2) years, subject to numerous terms and conditions.

As a condition of probation, the Respondent was required to file quarterly written reports, not later than September 5, December 5, March 5, and June 5 during probation. The Respondent was also required to pay a civil penalty of \$1250.00 within 180 days of the date of approval of the Stipulation and Informal Settlement. During the first twelve (12) months of the probationary period, the Respondent was required to complete eight (8) hours of continuing pharmacy education in prospective drug utilization review and eight (8) hours in patient counseling. The Respondent was required to obtain pre-approval from the Board for each continuing education course. These sixteen hours of continuing education were in addition to the thirty (30) hours normally required for license renewal. (Testimony of Lindy Pearson; State Exhibits A, C)

4. The Respondent filed quarterly reports, but they were frequently filed after their due date. On June 18, 1998, the Board granted the Respondent's request for an extension of six months to pay the \$1250 civil penalty. (Testimony of Lindy Pearson; State Exhibits D, L)

5. The Respondent was required to complete the additional sixteen hours of continuing education by February 3, 1999. On October 29,

1998, the Board's chief investigator followed up a telephone call to the Respondent with a written reminder of the continuing education requirement. The Respondent was reminded that the sixteen hours of additional continuing education must be pre-approved by the Board and that documentation of satisfactory completion must be submitted to the Board. "Pre-approved" was italicized by the Chief Investigator for emphasis. (Testimony of Lindy Pearson; State Exhibit E)

6. On January 28, 1999, the Respondent faxed a letter to the Board with an attached list of continuing education courses. The Respondent placed a check mark next to the courses for which he requested approval. This was the first time that the Respondent requested approval of courses for the purpose of satisfying his additional 16 hour continuing education requirement.

On February 1, 1999, the Respondent faxed another letter to the Board. In this letter, the Respondent stated that he was going through the most difficult period of his life. The Respondent believed that he suffered from depression, but could not afford treatment. The Respondent stated that he would complete the required continuing education as soon as "physically possible" and assured the Board that the check for the civil penalty was in the mail.

The Board met on February 3, 1999 and reviewed the Respondent's requests for approval of continuing education courses. Following the meeting, the Board's chief investigator called the Respondent to tell him that the Board had determined that the courses for which he requested approval were too drug specific, and he should find more generalized courses in drug utilization review and patient counseling. The chief investigator followed up this telephone call with a letter to the Respondent. The chief investigator specifically recommended a three part educational module, offered by Abbott Laboratories, as courses that the Board had approved in the past for patient counseling.

Other probationers have had some difficulty identifying appropriate prospective drug utilization review courses, but all have been able to successfully meet the requirement. (Testimony of Lindy Pearson; State Exhibits F, G, H)

7. On April 9, 1999, the Respondent faxed a letter to the Board's chief investigator. He stated that he had not been able to complete all of the required continuing education credits. He had completed .9 C.E.U.s (the Abbott series) and further stated that he would be sending .2 C.E.U.s that weekend. This was the last correspondence received by the Board from the Respondent concerning his efforts to complete the continuing education. (Testimony of Lindy Pearson; State Exhibit I)

8. The Respondent's license to practice pharmacy expired on June 30, 1999. As of August 31, 1999, the Board had not received a renewal application from the Respondent, and a complaint report was filed. On September 1, 1999, the Board received an Iowa Pharmacist License Renewal Application from the Respondent. The Respondent paid the applicable \$200.00 penalty for failure to renew his license by July 1. In his application, the Respondent states he is currently working in pharmacy in Iowa, as an employee pharmacist. The Respondent listed forty-six (46) hours of continuing education on the application. (Testimony of Lindy Pearson; State Exhibits J, K)

9. At the hearing, the Respondent submitted certificates for the forty six (46) hours of continuing education that he completed. Nine (9) of the forty-six (46) hours were for the three part Abbott Laboratory Course on patient counseling, which had been pre-approved by the Board. The Respondent contends that some of the other courses that he completed should satisfy the Board's requirement of eight (8) hours on the topic of prospective drug utilization review.

None of the courses listed on the Respondent's renewal application were the type of courses which would normally have been approved by the Board as prospective drug utilization review (DUR). The Respondent did not obtain prior approval from the Board prior to taking the courses. The Board was not convinced that any of these courses had been post-approved by the chief investigator at the July 1999 Board meeting, as claimed by the Respondent. (Testimony of Respondent; Lindy Pearson; Respondent Exhibit 1; State Exhibits P, Q)

10. The Respondent testified that several factors contributed to his noncompliance with the terms of the Stipulation and Informal Settlement. The Respondent had been depressed and was having extreme financial difficulties following a divorce. According to the Respondent, he did not have sufficient funds to complete the required continuing education courses or to timely pay his renewal fee. The Respondent testified that he had great difficulty locating courses in prospective drug utilization review.

The Respondent has been employed by Walgreens in Sioux City, Iowa since January 2000. His work has apparently been satisfactory, and he has received a pay raise. He testified that he is feeling much better now and has new enthusiasm and energy. The Respondent submitted a number of favorable letters of recommendation from patients and licensed professionals who are familiar with his work as a pharmacist. (Testimony of Respondent; Respondent Exhibit 2)

CONCLUSIONS OF LAW

Count I

1. Iowa Code section 155A.12(1) (1999) provides in relevant part:

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

2. 657 IAC 36.1(4) provides, in relevant part:

657-36.1(147,155A,272C) Authority and grounds for discipline.

...
36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...
i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of the Acts include, but are not limited to, ...violating a lawful order of the board in a disciplinary hearing... [See also Iowa Code section 272C.3(2) (a) (1999)]

3. The preponderance of the evidence established that the Respondent willfully failed to comply with the terms of probation ordered by the Board pursuant to a Stipulation and Informal Settlement. The Stipulation and Informal Settlement, which was signed by the Respondent on January 30, 1998 and approved by the Board on February 3, 1998, required the Respondent to complete eight (8) hours of continuing education in patient counseling and eight (8) hours of continuing education in prospective drug utilization review (DUR), prior to February 3, 1999. This continuing education requirement was in addition to the thirty (30) hours of continuing education required for renewal. Any course taken for the purpose of satisfying this requirement was required to be pre-approved by the Board, and the Respondent was further required to submit documentation that he had completed the course.

The Respondent was specifically reminded of these requirements in telephone calls and letters from the Board's chief investigator. Despite this, the Respondent willfully failed to complete any of

the required additional hours of continuing education by the February 3, 1999 deadline.

The Board continued to work with the Respondent to achieve compliance. A three part Abbott Laboratories course in patient counseling was recommended to the Respondent and was completed by him by April 12, 1999. The Respondent did complete forty-six hours of continuing education, or sixteen hours in addition to the thirty hours required for renewal. However, seven of the sixteen additional hours were not pre-approved by the Board. No DUR courses were ever pre-approved by the Board or completed by the Respondent.

The Respondent argued that it was extremely difficult for him to find DUR courses to satisfy the Board's requirement. The Board has given this argument consideration in determining the appropriate sanction to impose; however, it does not excuse his complete noncompliance. Other probationers have been able to find courses to satisfy this requirement. The Respondent was eventually given more than a year to find and complete the required courses. By failing to comply with the terms of probation imposed in the Stipulation and Informal Settlement, the Respondent has violated Iowa Code section 155A.12(1)(1999) and 657 IAC 36.1(4).

Count II

4. Iowa Code sections 155A.7, 155A.11, and 155A.12(1) provide in relevant part:

155A.7 Pharmacist license.

A person shall not engage in the practice of pharmacy in this state without a license. The license shall be identified as the pharmacist license.

155A.11 Renewal of pharmacist license.

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and penalties for late renewal or failure to renew a pharmacist license.

155A.12 Pharmacist license-grounds for discipline.

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

...

5. 657 IAC 36.1(4)"v" provides, in relevant part:

36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

v. Practicing pharmacy without an active and current Iowa pharmacist license,....

6. The preponderance of the evidence established that the Respondent failed to timely renew his pharmacist license prior to July 1, 1999. From July 1, 1999 through September 1, 1999, the Respondent practiced pharmacy without an active and current license, in violation of Iowa Code sections 155A.7, 155A.11, 155A.12(1) and 657 IAC 36.1(4) "v".

DECISION AND ORDER

The Board gave serious consideration to imposing the previously stayed six month suspension of the Respondent's pharmacist license. However, the Board is sympathetic to the personal difficulties experienced by the Respondent and was impressed with the significant improvement in the Respondent's demeanor, attitude and confidence from his previous appearance. Rather than impose a suspension at this time, the Board has elected to give the Respondent a final opportunity to demonstrate that he can successfully complete probation.

IT IS THEREFORE ORDERED, that pharmacist license no. 14848, issued to John L. Zortman, shall be placed on a new one (1) year period of probation, subject to the following terms and conditions:

1. The Respondent shall file sworn **monthly** reports with the Board attesting to his compliance with all of the terms and conditions of this decision and order. The reports shall be received in the Board office, not later than the 5th day of each month. The monthly reports shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

2. The Respondent must timely renew his pharmacist license, prior to the July 1st deadline.

3. In addition to the thirty (30) hours of continuing education normally required for license renewal, the Respondent shall complete the following specified 8.5 hours of continuing education:

a. "Module III: Practicing Pharmaceutical Care-Transforming Traditional Practice," 4 hours, by the Institute for Continuing Healthcare Education-ACPE ID#781-000-99-016-H04, available at:

http://www.cecility.com/comed/pharm_care/mod3/cedisclaim.htm

b. "Drug Interaction Update," 3 hours, by the University of Kansas School of Pharmacy Office of Postgraduate Professional Education-ACPE #021-999-99-704-H01, available at:
<http://www.continuingeducation.com/pharmacy/druginteraction/first.html>

c. "Strategies to Improve Patient Compliance," 1.5 hours, by Power-Pak Communications, Inc.-ACPE #424-000-99-006-H04, available at:
http://www.powerpak.com/CE/Patient_Compliance/default.htm

These hours must be completed by the Respondent and the certificates of completion must be received in the Board office no later than December 31, 2000.

4. The Respondent shall make personal appearances at the request of the Board.

5. The Respondent shall not dispense any prescription medication without a valid prescription drug order from an authorized prescriber.

6. The Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy and the distribution of controlled substances and all federal and state criminal laws.

7. During the period of probation, the Respondent shall notify any and all prospective employers of this decision and order and the terms, conditions and restrictions imposed on Respondent by this decision. Within 15 days of undertaking new employment as a pharmacist, the Respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read the decision in this case and understands it.

8. During the period of probation, the Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

9. Should the Respondent leave Iowa to reside or practice outside this state, Respondent must 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.

10. The Respondent shall notify the Board within ten (10) days of any change in employment or address.

11. All reports must be received by the date specified in this order, and all deadlines will be strictly enforced, without exceptions. Should the Respondent violate probation in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may revoke probation. If a petition to revoke probation is filed against the Respondent, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, 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 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 12th day of Sept. , 2000.



Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields, Assistant Attorney General
Bob Denk, 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.

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

Re:	)	Case No. 2001-14848
Pharmacist License of)	
JOHN L. ZORTMAN	)	STATEMENT OF CHARGES
License No. 14848)	
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 July 1, 1976, the Board issued the Respondent, John L. Zortman, a license to engage in the practice of pharmacy by examination as evidenced by license number 14848, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 14848 is now current and active until June 30, 2001; but on probation until September 12, 2001.
5. The Board has disciplined the Respondent's license to practice pharmacy four times prior to issuing this Statement of Charges. The Board has issued Decisions and Orders or entered into settlement agreements disciplining the Respondent's pharmacist license on the following dates: February 29, 1984, March 2, 1993, February 3, 1998, and September 12, 2000.
6. Upon information and belief, the Respondent's current address is 11 Second St. NW, Apt. 3, LeMars, Iowa 51031.
7. The Respondent is currently employed as a pharmacist at Walgreens pharmacy, 100 Pierce Street, Sioux City, Iowa 51101, 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) (2001) and 657 Iowa Administrative Code §§ 8.18, 36.1(1), 36.1(4)(b)(4) with failing to provide adequate patient counseling as specified in rule 657 Iowa Administrative Code § 8.20.

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) (2001) and 657 Iowa Administrative Code § 36.1(4) with failure to comply with the terms of probation ordered by the Board pursuant to a Decision and Order of the Board.

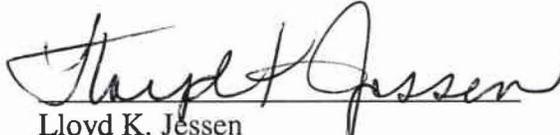
THE CIRCUMSTANCES

1. On or about February 12, 2001, the Board office received a complaint about a dispensing error that occurred at the pharmacy where the Respondent works as a pharmacist.
2. The Board's investigation of the dispensing error referred to in paragraph 1, revealed that the Respondent was the dispensing pharmacist on a prescription that was filled for the wrong patient.
3. The Respondent personally handed the incorrectly filled prescription to the patient's caregiver, but did not provide patient counseling. Proper patient counseling would have alerted the patient's caregiver that the prescription did not belong to the patient.
4. During the course of the Board's investigation, it became apparent that the Respondent was not truthful with either his employer or the Board investigator regarding the dispensing error in question.
5. The Respondent's pharmacist license is currently on probation pursuant to a Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") issued by the Board on September 12, 2000.
6. The Decision and Order referred to in Paragraph 5 placed the Respondent's Iowa pharmacist license on probation for a period of 1 year. One of the terms of

probation is that "[t]he Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy and the distribution of controlled substances and all federal and state criminal laws."

7. The Respondent's failure to provide adequate patient counseling and his attempts to subvert a board investigation or mislead his employer constitute violations of the Respondent's probation.

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 7th day of August, 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. 2001-14848
Pharmacist License of)	
JOHN L. ZORTMAN	)	STIPULATION
License No. 14848	)	AND
Respondent	)	CONSENT ORDER
)	

COME NOW the Iowa Board of Pharmacy Examiners (“the Board”) and John L. Zortman, R.Ph. (“Respondent”) and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2001), 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 August 7, 2001, 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 July 1, 1976, by examination as evidenced by Pharmacist License Number 14848, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 14848, issued to and held by Respondent is active and current until June 30, 2001; but on probation until September 12, 2001.
3. The Board has disciplined the Respondent’s license to practice pharmacy in the

State of Iowa four times prior to this case.

4. Respondent is currently employed as a pharmacist at Walgreens Pharmacy, 100 Pierce Street, Sioux City, Iowa 51101, and has been employed as such during all times relevant to this case.
5. A Statement of Charges was filed against Respondent on August 7, 2001.
6. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
7. The Respondent admits to the allegations of the Stipulation and Consent Order and agrees that the violations alleged therein constitute the basis for disciplining his Iowa pharmacist license.
8. Respondent shall pay a civil penalty of \$1,500.00 within 30 days of the date of approval of this Stipulation and Consent Order by the Board. Respondent shall deliver a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund of the State of Iowa.
9. Respondent agrees to accept the following **CITATION AND WARNING** for the alleged violation set forth in the Statement of Charges:

The Respondent, John L. Zortman, is hereby Cited and Warned for failing to provide adequate patient counseling that, if properly given, would likely have prevented a dispensing error in which a prescription was filled for the incorrect patient. Not only is proper patient counseling a requirement of the Board's rules, but it is also a

valuable tool in preventing dispensing errors that have the potential to harm patients. The Respondent is further warned that his attempts to subvert the Board's investigation into the dispensing error described above constitutes unprofessional and unethical conduct on behalf of a pharmacist. The Respondent's conduct constitutes the basis for disciplining his license to practice pharmacy under any circumstances, but is particularly egregious in light of the Respondent's disciplinary history with the Board. The Respondent has been previously disciplined by the Board four times. The previous disciplinary actions against the Respondent's Iowa pharmacist license included revocation of his pharmacist license, a stayed suspension of his pharmacist license, and periods of probation. The Findings of Fact, Conclusions of Law, [and] Decision and Order issued by the Board in the most recent disciplinary action taken against the Respondent's pharmacist license provided:

The Board gave serious consideration to imposing the previously stayed six month suspension of the Respondent's pharmacist license. However, the Board is sympathetic to the personal difficulties experienced by the Respondent and was impressed with the significant improvement in the Respondent's demeanor, attitude and confidence from his previous appearance. Rather than impose a suspension at this time, the Board has elected to give the Respondent a final opportunity to demonstrate that he can successfully complete probation.

In light of the Respondent's disciplinary history, his continued

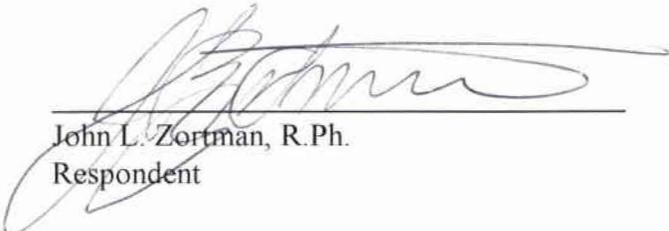
failure to abide by the orders and the rules of the Board is inexcusable and amounts to blatant disrespect not only for the Board, but for the pharmacy profession as a whole.

10. Respondent shall fully and promptly comply with all Orders of the Board and all federal and state laws, rules, and regulations substantially related to the practice of pharmacy in Iowa. Any violation of the terms of this Order or the laws, rules, and regulations substantially related to the practice of pharmacy in Iowa is grounds for ***IMMEDIATE SUSPENSION OF THE RESPONDENT'S LICENSE TO PRACTICE PHARMACY IN THE STATE OF IOWA. By entering into this Stipulation and Consent Order, the Respondent hereby consents to the immediate suspension of his license to practice pharmacy in the State of Iowa in the event the Board determines there is probable cause to believe he has violated the terms of this Order or the laws, rules, and regulations substantially related to the practice of pharmacy in Iowa. The Respondent waives all rights to a contested case hearing on the allegations contained in any order of the Board suspending his license to practice pharmacy in the State of Iowa pursuant to the terms of this Stipulation and Consent Order.***
11. 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.
12. 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.

13. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

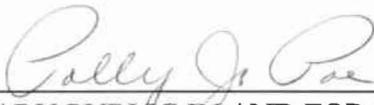
14. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 9th day of October, 2001.



John L. Zortman, R.Ph.
Respondent

Subscribed and sworn to before me by John L. Zortman on this 9th day of October, 2001.





NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

15. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 10 day of Oct., 2001.



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

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

Re: Pharmacist License of JOHN L ZORTMAN License No. 14848 Respondent))))))	Case No. 2002-19 STATEMENT OF CHARGES
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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 (2003).
3. On July 1, 1976, the Board issued Respondent, John L Zortman, a license to engage in the practice of pharmacy by examination as evidenced by license number 14848, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 14848 is current and active until June 30, 2003.
5. Respondent's current address is 11 Second Street N.W., Apartment #3, Lemars, Iowa 51031.
6. Respondent was employed as a pharmacist Walgreens, 100 Pierce St., Sioux City, Iowa, 51101, and Walgreens, 4650 Morningside Avenue, Sioux City, Iowa, 51106, at all times relevant to this statement of charges.

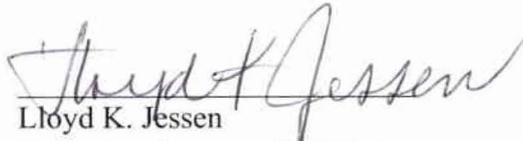
COUNT I

The Respondent is charged under Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(b) with unprofessional conduct and a lack of professional competency, including repeated departure from, or failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.

THE CIRCUMSTANCES

1. On or about 3-12-02, the Board received a complaint about a dispensing error that occurred at the pharmacy where the Respondent was employed as a pharmacist.
2. Investigation of the complaint revealed that the Respondent has repeatedly utilized obscene language in front of customers, made sexual comments to staff members and exhibited rude behavior to customers.

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 19th 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
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:	)	Case No. 2002-19
Pharmacist License of)	
JOHN L ZORTMAN	)	ORDER SUSPENDING
License No. 14848	)	LICENSE
Respondent)	

I. BACKGROUND

On October 9, 2001, Respondent John L. Zortman entered into an agreement with the Iowa Board of Pharmacy Examiners (hereinafter, "Board") settling contested case proceeding #2001-14848. The agreement, entitled "Stipulation and Consent Order" (attached hereto as exhibit A, and made a part hereof by this reference), provides, in part, as follows:

By entering into this Stipulation and Consent Order, the Respondent hereby consents to the immediate suspension of his license to practice pharmacy in the State of Iowa in the event the Board determines there is probable cause to believe he has violated the terms of this Order or the laws, rules, and regulations substantially related to the practice of pharmacy in Iowa. The Respondent waives all rights to a contested case hearing on the allegations contained in any order of the Board suspending his license to practice pharmacy in the State of Iowa pursuant to the terms of this Stipulation and Consent Order.

On February 19, 2003, Respondent was charged with unprofessional conduct and a lack of professional competency, including repeated departure from, or failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.

II. FINDINGS

1. On February 19, 2003, the Board found probable cause in support of a charge that Respondent has violated the provisions of Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(b) concerning professional incompetency, by repeated departure

from, or failure to conform to the minimal standards of, or the acceptable and prevailing practice for, pharmacists in the State of Iowa.

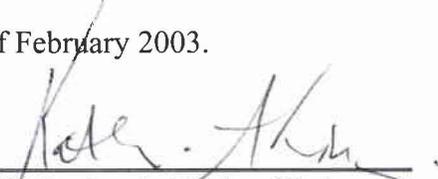
2. The laws, rules, and regulations cited in the Board's February 19, 2003 finding of probable cause substantially relate to the practice of pharmacy in Iowa.

3. Pursuant to the provisions of a "Stipulation and Consent Order" executed by the Board and Respondent on October 9, 2001, any determination that probable cause exists that Respondent has violated "laws, rules, and regulations substantially related to the practice of pharmacy in Iowa" may result in an immediate suspension of Respondent's license to practice pharmacy in Iowa without the necessity of a contested case hearing.

III. CONCLUSIONS OF LAW

The pharmacist license # 14848 of John L. Zortman may be and is hereby immediately suspended as a result of the Board's February 19 2003 finding of probable cause in support of allegations of violations of Iowa law by Respondent.

IT IS SO ORDERED this 19th day of February 2003.


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

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:)
Pharmacist License of)
JOHN L. ZORTMAN)
License No. 14848,)
Respondent.)

**REINSTATEMENT
ORDER**

COMES NOW, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 25th day of October, 2006, and declares that:

1. On February 19, 2003, Respondent's Iowa pharmacist license number 14848 was placed on indefinite suspension pursuant to the terms of a Stipulation and Consent Order approved by the Board on October 10, 2001.
2. On September 13, 2006, Respondent appeared before the Board at an Informal Reinstatement Conference pursuant to 657 I.A.C. 36.14.
3. Based on the testimony presented at the Informal Reinstatement Conference, the Board concludes that the basis for the indefinite suspension of the Respondent's pharmacist license no longer exists and that it is in the public interest to allow his license to be reinstated.

WHEREFORE, following deliberation by the Board, it is hereby ordered that Respondent's pharmacist license number 14848 shall be reinstated, subject to the following terms and conditions:

- (1) Upon receipt of a completed license renewal application and a renewal fee of \$220 from Respondent, the Board shall reinstate Respondent's license and place it on probation for a term of two (2) years. Periods during which the Respondent is not employed as a pharmacist shall not count toward satisfaction of the two-year probationary period. The Respondent's probation is subject to the following terms and conditions:
 - a. Respondent shall complete courses in appropriate workplace behavior and/or professional boundaries; sexual harassment; and anger management. Each of the three courses shall be completed within six (6) months of the date of issuance of this Order. Each course shall be a minimum of two (2) contact hours and shall be pre-approved by the Board.

- b. Respondent shall take and pass the Iowa edition of the Multistate Pharmacy Jurisprudence Examination (MPJE) within one (1) year of the date of issuance of this Order.
- c. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The reports shall be filed not later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.
- d. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearance.
- e. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy and the distribution of controlled substances.
- f. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing pharmacy education (CPE) as directed by the Board.
- g. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- h. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.
- i. Respondent shall notify all prospective pharmacy or pharmacy-related employers of the terms, conditions, and restrictions imposed on Respondent by this document. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause his employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

- (2) Should the Respondent violate or fail to comply with any of the terms, conditions, or restrictions of probation, 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.

Dated this 25th day of October, 2006.

Michael J. Seifert

MICHAEL J. SEIFERT, Chairperson
Iowa Board of Pharmacy Examiners
RiverPoint Business Park
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Iowa Assistant Attorney General

Robert B. Deck, Esq.
225 Frances Building
505 Fifth Street
Sioux City, IA 51101

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	DIA NO: 07PHB001
Pharmacist License of)	
JOHN ZORTMAN	)	FINDINGS OF FACT,
License No. 14848	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On July 21, 2009, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by John Zortman (Respondent). The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Edward Maier; DeeAnn Wedemeyer Oleson; Mark Anliker; Ann Diehl; and Margaret Whitworth. Respondent was self-represented. Assistant Attorney General Scott Galenbeck represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2009), and was recorded by a certified court reporter. 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 the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; Respondent's testimony; Respondent Exhibit 1 (Reinstatement Order issued 10/25/06); Respondent Exhibit 2 (Continuing Education records) and State Exhibits A-I (See Exhibit Index for description)

FINDINGS OF FACT

1. On July 1, 1976, the Board issued Respondent license number 14848 to engage in the practice of pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 1)
2. Respondent has a lengthy history of license discipline by the Board:
 - a. On February 29, 1984, Respondent's pharmacist license was revoked following a hearing. The revocation was based, in part, on the Board's findings

that Respondent dispensed veterinary pharmaceuticals without a valid prescription and pursuant to false or forged prescriptions and that Respondent failed to maintain required records for controlled substances. (State Exhibit A)

b. Respondent's license was reinstated in March 1986 and placed on probation for five years. (State Exhibit B)

c. On November 3, 1992, the Board filed a second Statement of Charges against Respondent. He was charged with engaging in unlawful and unethical conduct by 1) substituting a "compounded" drug for a commercially available strength of a brand name product when there was no demonstrated bioavailability for the "compounded" product; 2) dispensing a "compounded" drug without prescriber authorization; and 3) dispensing a misbranded and mislabeled prescription drug which failed to meet applicable government standards. Respondent did not contest the allegations. He entered into a Stipulation and Informal Settlement with the Board placing his license on probation for one year. (State Exhibit B).

d. On September 10, 1997, the Board filed a third Statement of Charges against Respondent alleging seven counts, including inadequate record keeping and inadequate accounting for prescription and controlled substances and failure to maintain current library reference books. On February 3, 1998, Respondent and the Board entered into a Stipulation and Informal Settlement which suspended Respondent's license for six months. The suspension was stayed and Respondent's license was placed on probation for two years. (State Exhibit C)

e. On November 16, 1999, the Board filed a fourth Statement of Charges charging Respondent with failure to comply with probationary terms and failure to timely renew his pharmacist license. Following a hearing, Respondent's license was placed on a new one year period of probation. (State Exhibit D)

f. On August 7, 2001, the Board filed a fifth Statement of Charges against Respondent, charging him with failing to provide adequate patient counseling, engaging in unprofessional or unethical conduct, and failure to comply with the terms of probation. On October 9, 2001, Respondent and the Board entered into a Stipulation and Consent Order. Respondent was fined \$1500 and issued a Citation and Warning. In addition, Respondent agreed that any violation of the

terms of the Board's Order or the statutes and rules substantially related to the practice of pharmacy would be grounds for the immediate suspension of Respondent's license to practice pharmacy in the state of Iowa. (State Exhibit E)

g. On February 19, 2003, the Board filed a sixth Statement of Charges against Respondent, charging him with unprofessional and unethical conduct and a lack of professional competency. The Statement of Charges alleged a dispensing error and further alleged that Respondent repeatedly utilized obscene language in front of customers, made sexual comments to staff members, and exhibited rude behavior to customers. The Board also issued an Order Suspending License, based on the terms of the October 9, 2001 Stipulation and Order. (State Exhibit F)

h. Respondent did not appeal the Board's suspension order but later filed a lawsuit against the Board in Pottawattamie District Court. Respondent's lawsuit and his subsequent appeal were both dismissed. (State Exhibits G-I)

3. On September 13, 2006, Respondent appeared before the Board at an Informal Reinstatement Conference, pursuant to 657 IAC 36.14. On October 25, 2006, the Board issued a Reinstatement Order granting Respondent's request for reinstatement, following his submission of a reinstatement application and reinstatement fee. The Board stipulated that following reinstatement, Respondent's pharmacy license would be on probation for a period of two years, subject to a number of terms and conditions. The terms and conditions of reinstatement included, in part, completion of courses on the following topics within six months: appropriate workplace behavior and/or professional boundaries; sexual harassment; and anger management. Respondent was also required to take and pass the Iowa edition of the Multistate Pharmacy Jurisprudence Examination (MPJE) within one year. (Respondent Exhibit 1) However, Respondent never followed through with reinstating his license. (Respondent testimony)

4. On June 1, 2009, Respondent filed a request for reconsideration of the October 25, 2006 Order to Reinstate, and the Board scheduled a formal reinstatement hearing. (Notice of Hearing)

5. Respondent is currently residing in Henderson, Colorado, and he has not been employed as a pharmacist since February 2003. Respondent has earned continuing

education credits on-line. During the past several years, Respondent has been actively involved in obtaining a patent and marketing a product that he invented. Since April 2005, Respondent has been employed by Heritage College, where he teaches pharmacy technician students. This was initially a part-time position but has been full-time for the past year. Respondent teaches six modules of the pharmacy technician curriculum, which includes 7½ months of class room work and a six week externship. (Respondent testimony; Respondent Exhibit 3)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been ... suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of ... suspension or court proceedings as they apply to that ... suspension. If the order of ...suspension did not establish terms or conditions upon which reinstatement might occur, or if the license...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...

36.13(2) Pharmacist license revoked or surrendered-examinations required. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit 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...

36.13(4) Burden of Proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to

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

36.13(5) Order. An order for reinstatement shall be based upon a decision that incorporates findings of fact 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.

Respondent carries a heavy burden to convince the Board that his suspended pharmacist license should be reinstated. Respondent's prior pharmacy practice was riddled with serious violations of pharmacy statutes and rules, and it has now been more than six years since Respondent last practiced pharmacy. Respondent's employment as an instructor of pharmacy technician students and his on-line continuing education is insufficient to establish that he is adequately prepared to resume the practice of pharmacy in a competent and ethical manner. In order to establish that the reason for the suspension of his pharmacist license no longer exists and that it is in the public interest for his license to be reinstated, Respondent must fully comply with the requirements set out in this Decision and Order.

DECISION AND ORDER

IT IS THEREFORE ORDERED that in order to reinstate pharmacist license number 14848, Respondent John Zortman must:

1. Take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition. Respondent must pass all components in Iowa within a period of one year beginning with the date Respondent passed an initial component, as provided in 657 IAC 2.1;
2. Register as an intern, pay the applicable fee, and complete a 1000 hour internship at an Iowa site pre-approved by the Board. Respondent must complete and submit the internship booklet, as defined in 657 IAC 4.1; and
3. Respondent must complete courses in appropriate workplace behavior and/or professional boundaries; sexual harassment; and anger management.

Each course shall be a minimum of two (2) contact hours and shall be pre-approved by the Board.

All of the above requirements must be completed within eighteen (18) months of the date of this Decision and Order. Respondent's successful and timely completion of these requirements will establish that the basis for the suspension of his license no longer exists and that it is in the public interest for his license to be reinstated. Upon timely completion of all three requirements, Respondent's pharmacist license no. 14848 shall be REINSTATED and immediately placed on PROBATION for a term of five (5) years. Periods when Respondent is not employed as a pharmacist shall not count toward satisfaction of the five-year probationary period.

IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

- A. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The reports shall be filed not later than March 5, June 5, September 5 and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.
- B. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- C. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.
- D. Respondent shall promptly notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause his employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

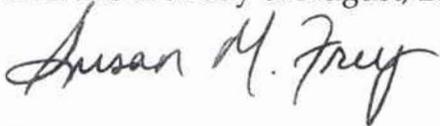
E. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.

F. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

G. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

H. Should the Respondent violate or fail to comply with any of the terms or conditions of probation, 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.

Dated this 17th day of August, 2009.



Susan M. Frey, Vice Chair
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General

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.