

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

IN THE MATTER OF THE COMPLAINT *
*
AND STATEMENT OF CHARGES AGAINST * **ORDER**
*
PAUL H. ROSE, D.O. * **03-87-504**
*
RESPONDENT *
*

NOW ON February 1, , 1994 BE IT REMEMBERED:

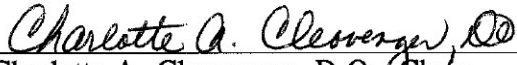
1. That on December 16, 1988, an Order was issued by the Director of Public Health of the State of Iowa, placing the license to practice osteopathy, number R00267 issued to Paul H. Rose, D.O. (hereafter the Respondent) on January 14, 1954, on probation under certain terms and conditions effective January 31, 1989; and,
2. That the Respondent has successfully completed probation as directed; and:
3. That the Board having directed that the probation placed upon the Respondent's license to practice osteopathy should be terminated:

**PAUL H. ROSE, D.O.
PO-87-504**

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IT IS HEREBY ORDERED:

That the probation placed upon the Respondent's license to practice osteopathy shall be terminated effective at 0001 hours January 31, 1994, and the said license shall then be returned to its full privileges free and clear of all restrictions.


Charlotte A. Cleavenger, D.O., Chair
IOWA STATE BOARD OF MEDICAL EXAMINERS
1209 East Court Avenue
Des Moines, Iowa 50319-0180

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

* * * * *

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST : ORDER
PAUL H. ROSE, D.O., : 03-87-504
RESPONDENT :

* * * * *

NOW on Dec. 16 1988, the above entitled matter having
been filed with the Director of Public Health, of the State of
Iowa, and the said Director of Public Health, having reviewed the
file and being fully advised in the premises FINDS:

A. That the Respondent was issued a license to practice
Osteopathy, on January 14, 1954, as evidenced by certificate
number 00267, which is recorded in the permanent records in the
office of the Iowa State Board of Medical Examiners.

B. That a Complaint and Statement of Charges was filed
against the Respondent, Paul H. Rose, D.O., on July 14, 1988, and
was scheduled to be heard before the Iowa State Board of Medical
Examiners.

C. That the Iowa State Board of Medical Examiners has
jurisdiction of the parties and the subject matter herein.

D. That the Director of Public Health is authorized to
enter an order herein under the provisions of sections 148.6(1)
and 148.7(7)(a), and (c) of the 1987 Code of Iowa and rule 653-
12.50(31), of the Iowa Administrative Code.

E. That pursuant to the provisions of sections 17A.10 and 258A.3(4) of the 1987 Code of Iowa, the Respondent and the Iowa State Board of Medical Examiners have entered into an Informal Settlement providing that the undersigned should enter an order imposing discipline against the Respondent's license to practice Osteopathy, in the state of Iowa.

THEREFORE, IT IS HEREBY ORDERED:

1. That license number 00267 issued to the Respondent, Paul H. Rose, D.O., on January 14, 1954 to practice Osteopathy in the state of Iowa, is hereby suspended for a period of thirty (30) days commencing January 1, 1989.

2. Upon expiration of the thirty (30) day suspension imposed herein, the Respondent's license to practice Osteopathy in the state of Iowa shall be placed on probation for a period of five (5) years under the following terms and conditions:

A. The Respondent shall not hold or apply for a state or federal Drug Enforcement Administration (DEA) registration without prior approval of the Board until April, 1989.

B. The Respondent shall not possess or use any controlled or prescription drug in any form unless prescribed for him by a duly licensed, treating physician. The Respondent shall inform any treating physician of the terms of the Informal Settlement and this Order prior to accepting any medication.

C. The Respondent shall abstain from the use of alcohol.

D. The Respondent shall submit to witnessed blood or urine samples on demand by a designee of the Board. The samples shall be used for alcohol and drug screening all costs of which

shall be paid by the Respondent.

E. The Respondent shall, within thirty (30) days of the execution of the Informal Settlement (December 15, 1988), submit to the Board for approval the names and curriculum vitae of three psychiatrists or counselors practicing in Iowa.

(1) As a condition of approval the psychiatrists or counselors shall agree to report to the Board on a quarterly basis or upon request.

(2) The Respondent shall continue psychiatric treatment or counseling until discharged from treatment by the psychiatrist or counselor.

F. The Respondent shall attend a support group, such as Alcoholics Anonymous, at least weekly. The support group shall be subject to the prior approval of the Board. The Respondent shall obtain documentation of attendance and make the documentation available to the Board or its designee on request.

G. The Respondent shall submit quarterly reports under penalty of perjury stating that there has been compliance with all the conditions of the Informal Settlement and this Order.

H. The Respondent shall make appearances annually or upon request before the Board or a committee. The Respondent shall be given reasonable notice of the date, time and place for the appearance.

I. The Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.

J. In the event the Respondent leaves Iowa to reside

or to practice outside the state, the Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside Iowa will not apply to the duration of the Informal Settlement or this Order.

K. In the event the Respondent violates or fails to comply with any of the terms of provisions of the Informal Settlement or this Order, the Board may initiate appropriate action to revoke or suspend the Respondent's license or to impose other licensee discipline as authorized in section 258A.3(2) of the Iowa Code and 653-I.A.C. 12.2 of the Iowa Administrative Code.

L. Upon full compliance with the terms and conditions set forth in the Informal Settlement and this Order and upon expiration of the period of probation, Respondent's license shall be restored to its full privileges free and clear of the terms of the probation.



Mary L. Ellis, Director
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	
)	
COMPLAINT AND STATEMENT)	
)	
OF CHARGES AGAINST)	NO. 03-87-504
)	
PAUL H. ROSE, D.O.)	
)	INFORMAL SETTLEMENT
RESPONDENT.)	

COME NOW the Iowa Board of Medical Examiners [the Board] and Paul H. Rose, D.O., [the Respondent] and, pursuant to Iowa Code §§ 17A.10 and 258A.3(4), enter into the following Informal Settlement of the contested case currently on file:

1. The Respondent was issued license no. 00267 to practice medicine and surgery in Iowa on January 14, 1959, as recorded in Book A, page 65, of the permanent records in the office of the Board.

2. A Complaint and Statement of Charges was filed against the Respondent on July 14, 1988.

3. The Board has jurisdiction of the parties and the subject matter.

4. The Director of Public Health shall take appropriate action to suspend the Respondent's license for thirty (30) days commencing on JANUARY 1, ¹⁹⁸⁹1988. At the expiration of thirty (30) days, the Respondent's license shall be placed on probation

for a period of five (5) years under the following terms and conditions:

- A. The Respondent shall not hold or apply for a state or federal Drug Enforcement Administration (DEA) registration without the prior approval of the Board. No application for approval shall be made to the Board until April, 1989.
- B. The Respondent shall not possess or use any controlled or prescription drug in any form unless prescribed for him by a duly licensed, treating physician. The Respondent shall inform any treating physician of the terms of this Informal Settlement prior to accepting any medication.
- C. The Respondent shall abstain from the use of alcohol.
- D. The Respondent shall submit to witnessed blood or urine samples on demand by a designee of the Board. The samples shall be used for alcohol and drug screening all costs of which shall be paid by the Respondent.
- E. The Respondent shall, within thirty (30) days of the execution of this Informal Settlement, submit to the Board for approval the names and curriculum vitae of three psychiatrists or counselors practicing in Iowa.

(1) As a condition of approval the psychiatrists or counselors shall agree to report to the Board on Respondent's treatment on a quarterly basis or upon request.

(2) The Respondent shall continue psychiatric treatment or counseling until discharged from treatment by the psychiatrist or counselor.

F. The Respondent shall attend a support group, such as Alcoholics Anonymous, at least weekly. The support group shall be subject to the prior approval of the Board. The Respondent shall obtain documentation of attendance and make the documentation available to the Board or its designee on request.

G. The Respondent shall submit quarterly reports under penalty of perjury stating that there has been compliance with all the conditions of this Informal Settlement.

H. The Respondent shall make appearances annually or upon request before the Board or a committee. The Respondent shall be given reasonable notice of the date, time and place for the appearances.

I. The Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.

5. In the event the Respondent leaves Iowa to reside or to practice outside the state, the Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside Iowa will not apply to the duration of the Informal Settlement.

6. In the event the Respondent violates or fails to comply with any of the terms of provisions of this Informal Settlement, the Board may initiate appropriate action to revoke or suspend the Respondent's license or to impose other licensee discipline as authorized in Section 258A.3(2) of the Iowa Code and 653-I.A.C. 12.2 of the Iowa Administrative Code.

7. Upon full compliance with the terms and conditions set forth in this Informal Settlement and upon expiration of the period of probation, Respondent's license shall be restored to its full privileges free and clear of the terms of the probation.

8. This Informal Settlement is subject to approval of the Board. If the Board fails to approve this Informal Settlement, it shall be of no force or effect to either party.

9. This Informal Settlement is voluntarily submitted on
this 14 day of Nov., 1988.

Paul H. Rose D.O.
PAUL H. ROSE, D.O.

Subscribed and sworn to before me on this 14th day of
NOVEMBER, 1988.

Carol L. Burner
Notary Public in and for the
State of Iowa

This Informal Settlement is accepted by the Iowa Board of
Medical Examiners on the 15th day of December, 1988.

John R. Anderson M.D.
JOHN ANDERSON, M.D., Chairman
Iowa Board of Medical Examiners

Subscribed and sworn to before me on this 15th day of
December, 1988.

Jimmie Carr
Notary Public in and for the
State of Iowa

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT	:	COMPLAINT AND STATEMENT
AND STATEMENT OF CHARGES	:	OF CHARGES
PAUL H. ROSE, DO	:	03-87-504
RESPONDENT	:	

COMES NOW William S. Vanderpool, Executive Director of the Iowa Board of Medical Examiners, on July 14, 1988, and files this Complaint and Statement of Charges against Paul H. Rose, D.O., a physician licensed pursuant to Chapter 147, Code of Iowa and alleges:

1. That Mary L. Ellis is the duly appointed and qualified Director of Public Health of the State of Iowa.

2. That John R. Anderson, MD, Chairman; C. L. Peterson, DO, Vice Chairman; Marian Bourek, Secretary; Charlotte Cleavenger, DO; Dorothy J. Gildea, MD; John W. Olds, MD; Ann O'Neill; Hormoz Rassekh, MD; and Robert B. Stickler, MD, are the duly appointed and qualified officers and members of the Iowa State Board of Medical Examiners.

3. That the Respondent is a resident of Henry County, Iowa, and was issued license number 00267 to practice osteopathy in the State of Iowa on January 14, 1959, as recorded in Book A Page 65 of the permanent records in the office of the Iowa State Board of Medical Examiners.

4. That the Respondent's license is current until October 1, 1988.

5. That the Respondent inappropriately obtained for his own use 44,000 dosage units of APAP with codeine, a schedule III controlled drug, between June 14, 1984 and November 10, 1987.

6. That the Respondent inappropriately obtained for his own use 6,000 dosage units of Phenobarbital tablets 1/2 grain, a schedule IV controlled drug, between July 8, 1985 and June 22, 1987.

7. That the Respondent inappropriately obtained for his own use 4,000 dosage units of Restoril capsules 30 mg, a schedule IV controlled drug, between June 16, 1986 and November 10, 1987.

8. That the Respondent inappropriately obtained for his own use 1,500 dosage units of Diazepam tablets 10 mg, a schedule IV controlled drug, between August 21, 1986 and November 10, 1987.

9. That the Respondent inappropriately obtained for his own use 1,000 dosage units of Meprobamate tablets 400 mg, a schedule IV controlled drug, on August 21, 1986.

10. That between June 14, 1984 and November 10, 1987 the Respondent ordered 44,000 dosage units of APAP with codeine, a schedule III controlled drug; 6,000 dosage units of Phenobarbital tablets, a schedule IV controlled drug; 4,000 dosage units of Restoril, a schedule IV controlled drug; 1,500 dosage units of Diazepam, a schedule IV controlled drug; and 1,000 dosage units of Meprobamate, a schedule IV controlled drug, and did fail to maintain any records of dispensing or administering the drugs as required by the provisions of section

204.306 of the Code of Iowa.

11. That during the years 1984 to 1987 the Respondent practiced osteopathy under the influence of drugs.

12. That the Iowa State Board of Medical Examiners is authorized to take disciplinary action against the Respondent pursuant to the provisions of Sections 148.6(1), 148.6(1)(c), 148.6(1)(h) and 148.6(1)(i) of the Code of Iowa which state in whole or in part:

148.6(1) - "In addition to the provisions of Sections 147.58 to 147.71, the medical examiners after due notice and hearing may direct the director of public health to issue an order to revoke or suspend a license to practice ...osteopathy or to discipline a person licensed to practice ...osteopathy if, after a hearing, the medical examiners determine that a physician licensed to practice ...osteopathy is guilty of any of the following acts or offenses:"

148.6(1)(c) - "Violating a statute or law of this state...without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine."

148.6(1)(h) - "Inability to practice...osteopathy with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material..."

148.6(1)(i) "Willful or repeated violation of lawful rule or regulation promulgated by the board..."

13. That the Iowa State Board of Medical Examiners is authorized to take disciplinary action against the Respondent

EXHIBIT A

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE)	FILE NOS. 02-98-202, 02-98-695
STATEMENT OF CHARGES AGAINST)	DIA NO. 02DPHMB019
)	
DEBRA K. RAINEY, M.D.)	PROPOSED DECISION
)	OF THE PANEL
Respondent)	
)	

TO: DEBRA K. RAINEY, M.D.

On September 27, 2002, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Debra K. Rainey, M.D. (Respondent), charging her with two counts:

COUNT I: Violating a lawful order of the Board, in violation of Iowa Code section 148.6(2)(i) (2001) and 653 IAC 12.3(7) and 12.4(34).

COUNT II: Inability to practice medicine and surgery with reasonable skill and safety as a result of a mental or physical condition, in violation of Iowa Code section 148.6(2)(h) (2001) and 653 IAC 12.4(5).

A Notice of Hearing was issued scheduling a hearing for November 13, 2002. The hearing was continued three times, twice at the Respondent's request. On January 10, 2003, the state filed a Motion to Amend the Statement of Charges. The motion was not resisted and was granted on May 6, 2003. The amendment added two additional factual circumstances to the Statement of Charges.

The hearing was held on August 26, 2003 at 8:30 a.m. in the conference room at the offices of the Board of Medical Examiners, 400 SW 8th Street, Des Moines, Iowa. The hearing was held before a panel of the Board, which included: Bruce Hughes, M.D.; Susan Johnson, M.D.; Michael Byrne and Sally Schroeder, public members. The Respondent appeared for the hearing and was represented by her counsel, Matthew Boles. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 12.26(12). The hearing was recorded by a certified court reporter. Margaret LaMarche,

misdemeanor, which statute or law relates to the practice of medicine."

653-12.4(14) - "Inability to practice...osteopathy with reasonable skill and safety by reason of...chemical abuse."

653.12(4)(15) - "Willful or repeated violation of lawful rule or regulation promulgated by the board."

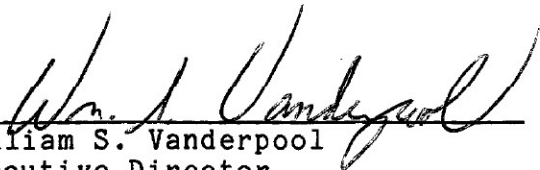
653-12.4(28) - "Violating any of the grounds for the revocation or suspension of license listed in Iowa Code sections...148.6."

14. That paragraphs 12 and 13 constitute grounds for the Iowa State Board of Medical Examiners to revoke, suspend or otherwise discipline the license to practice osteopathy issued to the Respondent on January 14, 1959.

WHEREFORE the undersigned charges that Paul H. Rose, D.O., is subject to disciplinary action pursuant to the provisions of Sections 148.6(1), 148.6(1)(c), 148.6(1)(h) and 148.6(1)(i) of the Code of Iowa and Rules 653-12.4, 653-12.4(3), 653-12.4(3)(c), 653-12.4(9), 653-12.4(14), 653-12.4(15), and 653-12.4(28) of the Iowa Administrative Code and the undersigned prays that the Board enter an order fixing a time and place of hearing for the Complaint and Statement of Charges. The undersigned further prays that upon final hearing, the board enter its findings of fact and decision to revoke, suspend or otherwise discipline the license to practice osteopathy issued to Paul H. Rose, D.O., on January

14, 1959, and for such other relief as the Board deems just in the premises.

IOWA BOARD OF MEDICAL EXAMINERS



William S. Vanderpool
Executive Director
Executive Hills West
Des Moines, IA 50319
Telephone: (515) 281-5171

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

* * * * *

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST :
PAUL H. ROSE, D.O. :
RESPONDENT :

ORDER

03-92-078

* * * * *

BE IT REMEMBERED:

1. That the Paul H. Rose, D.O., (hereafter the Respondent) was issued license number R0067 to practice osteopathic medicine and surgery in the state of Iowa, on January 14, 1954, as recorded in the permanent records in the office of the Iowa State Board of Medical Examiners (hereafter the Board).

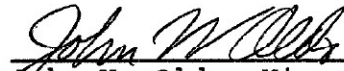
2. That a Complaint and Statement of Charges was filed against the Respondent, on April 16, 1992, and a hearing was held on the said Complaint and Statement of Charges before a three member panel of the Board on August 5, 1992.

3. That a Findings of Fact, Conclusions of Law and Proposed Decision and Order of the panel was issued on September 1, 1992. The said Findings of Fact, Conclusions of Law, Decision and Order of the panel was accepted without appeal by the Board on September 3, 1992.

4. That on September 4, 1992, a copy of the said Findings of Fact, Conclusions of Law, Decision and Order of the panel was served upon the Respondent via restricted U.S. First Class certified mail return receipt requested.

5. That pursuant to 653 I.A.C. 12.50(29), thirty (30) days having passed and no appeal of the said proposed decision having been filed by the Respondent or any other party to the proceeding, the said Findings of Fact, Conclusions of Law, Decision and Order of the panel became a final order of the Board.

THEREFORE IT IS HEREBY ORDERED that the Complaint and Statement of Charges filed against the Respondent on April 16, 1992 is DISMISSED.



John W. Olds, Vice-Chairman
Iowa State Board of Medical Examiners
1209 East Court Avenue
Des Moines, IA 50319-0180

10/13/92
DATE

c. On April 4, 2000, Dr. Deiker responded to a Board subpoena for documentation relevant to its investigation. Dr. Deiker provided correspondence and a copy of a patient's check which reveal that the staff had concerns that the Respondent may have been separately billing outpatients while she was employed by MHI. In May 1998, the Cherokee MHI received a check for \$717.50 payable to Cherokee MHI and the Respondent, however the patient only had a balance of \$236.59. Upon inquiry, the patient's wife told Cherokee MHI that he had received a separate billing from the Respondent which accounted for the discrepancy in the amount. Cherokee MHI returned the check to the patient and asked that it be rewritten for the amount owed. (State Exhibit 8, Attachment B)

8. The Board's investigator gathered documents, interviewed witnesses, provided the Respondent with an opportunity to respond to the allegations, and prepared an investigative report, which is dated July 31, 2001. (State Exhibit 8)

a. The Respondent admitted to the Board's investigator and to the panel that she had a personal relationship with three former patients, JC, VL, and RM. All three patients were plaintiffs in a lawsuit against their former employer and had been referred to the Respondent by their attorney for psychiatric evaluation and treatment. RM was also a waitress at a restaurant frequented by the Respondent and her family.

The Respondent testified that she did not feel these were boundary violations because they were former patients and because she does not feel that she had done anything that was harmful to them. When asked what she has learned from this experience, the Respondent replied that she would never have any interaction with former patients, no matter how small the town is in which she is practicing. (Testimony of Respondent; Steven Nourse)

b. According to the MHI records, JC had 52 therapy sessions with the Respondent from June 22, 1995 through April 24, 1997. (State Exhibit 8-C) VL had 52 therapy sessions with the Respondent from June 21, 1995 through January 19, 1998. (State Exhibit 8-D) RM had 26 therapy sessions with the Respondent from September 5, 1995 through June 23, 1997. (State Exhibit 8-E)

- State's Exhibit D: Laboratory results, DCI Laboratory, March 4, 1992
- State's Exhibit E: Laboratory results, IMMC Laboratory, March 9, 1992
- State's Exhibit F: Letter dated March 20, 1992 (Snyder to Beebe)
- State's Exhibit G: Findings of Fact, Conclusions of Law, and Order, Missouri State Board of Registration for the Healing Arts, January 25, 1964
- Respondent's Exhibit 1: Letter from Jeremy Grant
- Respondent's Exhibit 2: MedTox Laboratory results dated July 2, 1992
- Respondent's Exhibit 3: Letter dated June 11, 1992 (Towler-ton to Heslinga)
- Respondent's Exhibit 4: Diagnostic interview report - Menninger Clinic
- Respondent's Exhibit 5: Letter dated September 13, 1991 (VanGilder to Readinger)

FINDINGS OF FACT

1. The Respondent was issued license number R0067 to practice osteopathy in the state of Iowa on January 14, 1954, as recorded in the permanent records in the office of the Board. The Respondent's license is current until October 1, 1993. (Official file)
2. On December 16, 1988, an Order was issued by the Director of Public Health of the state of Iowa, placing the Respondent's license to practice osteopathy in the state of Iowa on probation for a period of five (5) years, under certain terms and conditions. The said Order was issued at the direction of the Board in a license discipline action. (Exhibit C)
3. Two of the specific terms of probation as outlined in the above referenced Order require in whole or in part that:
 - a. "The Respondent shall not possess or use any controlled or prescription drug in any form unless prescribed for him by a duly licensed, treating physician."

b. "The Respondent shall submit to witnessed blood or urine samples on demand by a designee of the Board. The samples shall be used for alcohol and drug screening . . ."
(Exhibit C; testimony of Gail Beebe)

4. On February 13, 1992, an agent of the Board obtained a urine specimen from the Respondent. Laboratory analysis of the urine specimen showed the presence of Hydrocodone, a controlled drug.
(Exhibit D; testimony of Richard Snyder, PhD., Gail Beebe)

5. On March 6, 1992, after obtaining a second urine specimen from the Respondent, the Board's investigator told the Respondent that the first specimen contained Hydrocodone. Respondent vehemently denied using Hydrocodone. The second urine specimen was tested at the Iowa Methodist laboratory and showed the presence of Benzodiazepin, a controlled drug. (Exhibit E; testimony of Richard Snyder, PhD., Gail Beebe)

6. The Board's investigator confronted Respondent on March 18, 1992. The Respondent told the investigator that he was taking Xanax, a Benzodiazepin, which had been prescribed for him by his physician. Following a fall in 1987, the Respondent suffered chronic neck pain which required a posterior laminectomy in February 1987. He has a severe kyphotic deformity of the cervical spine with limited motion. The surgery was performed by John C. VanGilder, M.D., Professor of Neurosurgery, University of Iowa. In September 1991, Dr. VanGilder prescribed Xanax, .5 mg. b.i.d., in the hope it would be helpful in controlling his pain. (Exhibits 4 and 5; testimony of Respondent, Gail Beebe)

7. The Board's investigator spoke to Richard Snyder, Ph.D., of the Iowa Methodist laboratory concerning the Xanax. Snyder told the investigator that with the screening test used by Methodist, Xanax would appear as "suspicious for Benzodiazepin," but not positive. Therefore, Snyder concluded that the specimen tested on March 7, 1992, contained a Benzodiazepin other than Xanax. (Exhibits E and F; testimony of Richard Snyder, Gail Beebe)

8. The Board's investigator collected a third urine specimen from the Respondent on March 18, 1992, which tested "suspicious of Benzodiazepin." This result was consistent with the Respondent's use of the prescribed drug "Xanax." (Exhibit E; testimony of Gail Beebe, Richard Snyder)

9. On March 25, 1992, Mrs. Naomi Rose, the Respondent's wife, called one of the Respondent's attorneys and told him that she had given the Respondent Anexsia, a Hydrocodone, without his knowledge, on February 12, 1992. The attorney told Mrs. Rose to immediately call the Board's investigator, which she did the following day. (testimony of Naomi Rose, George Lind, Gail Beebe)

10. The Respondent lives with his wife, Naomi Rose, who provides care to him. Mrs. Rose also cares for Respondent's 91 year old mother and her own 75 year old mother, both of whom live with the Roses. Mrs. Rose's brother also lives in the home. Respondent's mother is fed pureed foods and must be turned every two hours around the clock to prevent bedsores. She is catheterized. Mrs. Rose is solely responsible for administering her mother-in-law's medications. (testimony of Respondent, Mrs. Rose)

11. On approximately February 12, 1992, Respondent and his wife engaged in sexual intercourse. Mrs. Rose placed her hand behind her husband's neck and accidentally pulled his neck to one side, injuring him. The Respondent cried out and became nauseous due to the pain. Mrs. Rose felt very guilty about the pain she had caused him and decided to give him one of his mother's pain pills. Mrs. Rose grinded up a capsule of Anexsia, which is a Hydrocodone, and placed it in a cup of cocoa. Mrs. Rose urged the Respondent to drink the cocoa, but did not tell him that she had put the Anexsia in it. (testimony of Respondent, Mrs. Rose)

12. After realizing that the Anexsia had been detected in the urine specimen taken on February 13, 1992, Mrs. Rose felt very guilty. She did not tell her husband about the Anexsia until March 25, 1992. (testimony of Mrs. Rose, Respondent)

13. The Respondent strongly suspected that the laboratory results showing that he had ingested a Benzodiazepin other than Xanax were in error. On June 30, 1992, the Respondent had all three urine samples sent to the MedTox laboratory in St. Paul, Minnesota, for independent testing. The testing methods used by MedTox were more sensitive than those previously used by the Methodist laboratory. The Respondent paid \$1,250.00 for the testing and his attorneys received the results on July 7, 1992. The results showed not only that the previous results were correct, but that the February 13, 1992 sample had been positive for Benzodiazepin as well as Hydrocodone. The Respondent was shocked by these results. (Exhibit 2; testimony of Respondent)

14. On July 9, 1992 at 8:10 p.m., after considering all of the possible explanations for these test results, one of the Respondent's attorneys called the Respondent and told him to ask his wife if she could explain it. The Respondent called the attorney at 10:10 p.m. and told him that his wife admitted that she had given him Restoril, a Benzodiazepin, on three occasions without his knowledge. The Respondent was devastated by this information. (testimony of George Lind, Respondent, Naomi Rose)

15. Mrs. Rose testified that on February 12, 1992, she gave her husband both Anexsia and Restoril. Within a few hours of giving the Respondent his mother's Anexsia, it was clear that it was not relieving his pain. The Respondent was restless and not sleeping

and was keeping Mrs. Rose awake. Due to her around the clock care schedule with her mother-in-law, Mrs. Rose could not afford to lose sleep or take sleeping medications herself. Mrs. Rose gave the Respondent one of his mother's Restoril tablets, dissolved in hot tea with sugar and milk, to help him sleep. Mrs. Rose had also done this on a previous occasion in January and again on March 5, 1992. The Restoril was one of Respondent's mother's medications. During her testimony, Mrs. Rose expressed great remorse for her actions. (testimony of Mrs. Rose, George Lind, Respondent)

16. The Respondent's counselor, James Towlerton, concludes that the Respondent has done a remarkable job with his recovery. At no time has the counselor doubted the stability of his recovery. (Exhibit 3)

17. The Respondent attends at least one Alcoholics Anonymous (AA) meeting each week. His wife drives him to the meetings. Each year the Roses celebrate the anniversary of the Respondent's sobriety. (testimony of Respondent, Mrs. Rose)

18. The Respondent arranged for a psychiatric evaluation at the Menninger Clinic in Topeka, Kansas on June 9, 1992, and a fourteen-page report was submitted to the Board. Based on a four-hour evaluation, Dr. William S. Logan, M.D., found no emotional disturbance or pattern of substance abuse that would interfere with the Respondent's ability to competently practice psychiatry. Dr. Logan further concluded that the risk that the Respondent would return to substance abuse or prescribe controlled substances inappropriately is relative low. (Exhibit 4)

CONCLUSIONS OF LAW

1. Iowa Code section 148.6(1)(1991) provides in relevant part:

148.6(1) The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 258A, or this subsection

... Pursuant to this section the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

148.6(1)(i) ... violating a lawful order of the board, previously entered by the board in a disciplinary ... hearing ...

2. 653 IAC 12.4(16) and (28) provide in relevant part:

653-12.4 Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to

exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

653-12.4(16) Violating a lawful order of the board previously entered by the board in a disciplinary . . . hearing . . .

653-12.4(28) Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections . . . 148.6.

3. The two urine specimens collected from the Respondent on February 13, 1992, and March 6, 1992, contained controlled substances, Hydrocodone and Benzodiazepin, which were not prescribed for the Respondent by a duly licensed treating physician.

The defense, offered by the Respondent, is that he did not voluntarily or intentionally ingest those drugs; they were surreptitiously given to him by his wife. This is an issue of credibility. The burden of proof is on the state; the standard of proof is a preponderance of the evidence. Eaves v. Board of Medical Examiners, 467 NW2d 234 (Iowa 1991).

The panel has carefully evaluated the credibility of the witnesses and in doing so has considered their demeanor, bias or self-interest, and the consistency of their testimony and their actions. The emotional responses of Mrs. Rose during her testimony appeared genuine. As a caretaker, she was sensitive to the needs of those she cared for. The Respondent's insistence of further testing of the urine samples, even at considerable expense, was consistent with his apparent belief that the laboratory results had to be erroneous. The panel concluded that the testimonies of the Respondent and Mrs. Rose were truthful.

The greater weight of the evidence supports the conclusion that the Respondent did not take the drugs Anexsia and Restoril voluntarily. The panel does not believe that the unintentional ingestion of these substances, under the unique circumstances presented in this case, constitutes a violation of the Respondent's probation.

DECISION AND ORDER

It is therefore ORDERED that, if this decision of the panel becomes a final decision, the Complaint and Statement of Charges filed on April 16, 1992, shall be DISMISSED.

Dated this 1st day of Sept , 1992.

THE PANEL:

John W. Olds M.D.
John W. Olds, M.D.

George F. Spellman Sr. M.D.
George Spellman, Sr., M.D.

Laura Stensrud
Laura Stensrud

ML/jmm

cc: Julie Pottorff
Garold Heslinga

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

* * * * *

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST : COMPLAINT AND STATEMENT
PAUL H. ROSE, D.O. : OF CHARGES
RESPONDENT : 03-92-078

* * * * *

COMES NOW William S. Vanderpool, Executive Director of the Iowa State Board of Medical Examiners, (hereafter the Board), on April 16 1992, and at the direction of the Board, files this Complaint and Statement of Charges against Paul H. Rose D.O., (hereafter the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That Christopher G. Atchison is the duly appointed and qualified Director of Public Health of the State of Iowa.

2. That C.L. Peterson, D.O., Chairman; John W. Olds, M.D., Vice Chairman; Edra Broich, Secretary; Charlotte Clevenger, D.O.; James D. Collins, Jr. M.D.; George G. Spellman, Sr., M.D.; Laura Stensrud; Robert B. Stickler, M.D.; and Johanna B. Whalen, M.D., are the duly appointed and qualified officers and members of the Board.

3. That the Respondent is a resident of Des Moines County, Iowa and was issued license number R0067 to practice osteopathy in the state of Iowa on January 14, 1954, as recorded in the permanent records in the office of the Board.

4. That the Respondent's license is current until Octo-

ber 1, 1993.

5. That on or about December 16, 1988, an Order was issued by the Director of Public Health of the state of Iowa, placing the Respondent's license to practice osteopathy in the state of Iowa on probation for a period of five (5) years, under certain terms and conditions. The said Order was issued at the direction of the Board in a license discipline action.

6. That two of the specific terms of probation as outlined in the above referenced Order require in whole or in part that:

a. "The Respondent shall not possess or use any controlled or prescription drug in any form unless prescribed for him by a duly licensed, treating physician."

b. " The Respondent shall submit to witnessed blood or urine samples on demand by a designee of the Board. The samples shall be used for alcohol and drug screening..."

7. That on or about February 13, 1992, an agent of the Board obtained a urine specimen from the Respondent. Laboratory analysis of the said urine specimen showed the presence of Hydrocodone, a controlled drug.

8. That on or about March 6, 1992, an agent of the Board obtained a urine specimen from the Respondent. Laboratory analysis of the said urine specimen showed the presence of Benzodiazepin, a controlled drug.

9. That the Respondent has used Hydrocodone and Benso-diazepin, both controlled drugs, without the said drugs being prescribed for him by another duly licensed treating physician.

10. That the Respondent has violated the terms of the probation placed upon his license to practice osteopathy in the state of Iowa.

11. That the Board is authorized to take disciplinary action against the Respondent pursuant to the provisions of sections 148.6(1) and 148.6(1)(i) of the 1991 Code of Iowa, which state in whole or in part:

148.6(1) - "The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 258A, or this subsection...

"Pursuant to this section the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:"

148.6(1)(i) - "...violating a lawful order of the board, previously entered by the board in a disciplinary...hearing..."

12. That the Board is authorized to take disciplinary action against the Respondent pursuant to 653 I.A.C. 12.4, 12.4(16) and 12.4((28) which state in whole or in part:

653-12.4 - "Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:"


653-12.4(16) - Violating a lawful order of the board previously entered by the board in a disciplinary...hearing..."

653-12.4(28) - "Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections... 148.6."

13. That paragraphs 11 and 12 constitute grounds for the Board to revoke, suspend or otherwise discipline the license to practice osteopathy issued to the Respondent, on January 14, 1954.

WHEREFORE the undersigned charges that the Respondent is subject to disciplinary action pursuant to the provisions of sections 148.6(1) and 148.6(1)(i) of the 1991 Code of Iowa and rules 653 I.A.C. 12.4, 12.4(16) and 12.4(28). The undersigned prays that the Board enter an order fixing a time and place of hearing for the Complaint and Statement of Charges. The undersigned further prays that upon final hearing, the Board enter its findings of fact and decision to revoke, suspend or otherwise discipline the license to practice osteopathy issued to the Respondent on January 14, 1954.

Iowa State Board of Medical Examiners



William S. Vanderpool
Executive Director
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319
(515) 281-5171

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE CONFIDENTIAL INVESTIGATION INVOLVING

PAUL H. ROSE, DO, RESPONDENT

No. 03-95-270 & 03-96-094

ORDER OF SUMMARY SUSPENSION AND ORDER FOR HEARING

On October 7, 1997, the Iowa Board of Medical Examiners (the Board), having been presented with evidence which established probable cause to believe that Paul H. Rose, DO (the Respondent), is unable to practice osteopathic medicine and surgery with reasonable skill and safety as alleged in a Statement of Charges, **FOUND** that the Respondent's continuing diversion of drugs from his medical practice for his own personal use, and habitual use of and addiction to alcohol and drugs, constitutes an immediate threat to the public health, safety and welfare:

IT IS HEREBY ORDERED that, until further order of the Board, pursuant to the provisions of section 17A.18(3) of the 1997 Code of Iowa, the Respondent's license to practice osteopathic medicine and surgery, number 00267, issued January 14, 1959, is hereby summarily suspended. A hearing on the summary suspension is set for 1:00 p.m., on NOVEMBER 13, 1997. The hearing will held in a conference room at the Board's office 1209 East Court Avenue [Executive Hills - west building], Des Moines, Iowa. **IT IS FURTHER ORDERED** that the license suspension as outlined herein shall become effective immediately upon service of a copy of this order on the Respondent. Service of the within order shall be by U. S. restricted certified mail, return receipt requested, or in the manner of service of an Original Notice.

IOWA BOARD OF MEDICAL EXAMINERS

Teresa A Mock MD
Teresa A. Mock, MD, Chairperson

Dated: OCTOBER 7, 1997.

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PAUL H. ROSE, DO, RESPONDENT

No. 03-95-270 & 03-96-094

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa Board of Medical Examiners (hereafter the Board), on October 7, 1997, and at the direction of the Board, files this Statement of Charges against Paul H. Rose, DO, (hereafter the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. The Respondent was issued license number 00267 to practice Osteopathic medicine and surgery in Iowa on January 14, 1959. The license is current and will next expire on January 1, 1999.

2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

COUNT I

The Respondent is charged under section 148.6(2)(g) of the 1997 Code of Iowa and section 653 Iowa Administrative Code Section 12.4(13) with failing to conform to the minimal standards of acceptable and prevailing practice of osteopathic medicine and surgery due to his diverting of drugs from his medical practice for his personal use.

COUNT II

The Respondent is charged under section 148.6(2)(h) of the 1997 Code of Iowa and 653 Iowa Administrative Code Sections 12.4(4) and 12.4(14) with inability to

practice osteopathic medicine and surgery with reasonable skill and safety due to the excessive use of drugs and alcohol.

THE CIRCUMSTANCES

1. From March 1995 and continuing through the present the Respondent has diverted large quantities of controlled substances intended for patient use to himself for his own personal use.

2. For a period of several years the Respondent has habitually used, and is addicted to, drugs and alcohol.

3. Respondent has previously been disciplined by this Board for habitual intoxication due to drug use. Respondent's probation from this prior discipline expired on January 31, 1994.

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



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