

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

Re:)	COMPLAINT
Pharmacist License of)	AND STATEMENT
HARVEY A. BERGREN)	OF CHARGES
License No. 12750)	AND
Respondent)	NOTICE
)	OF HEARING

COMES NOW, Lloyd K. Jessen, Executive Secretary-Director of the Iowa Board of Pharmacy Examiners, on the 5th day of October, 1993, and files this Complaint and Statement of Charges and Notice of Hearing against Harvey A. Bergren, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; 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 November 15, 1961, by reciprocity.
3. Respondent was also licensed to practice pharmacy in the state of Michigan (license number 53-02-018313).
4. Respondent currently resides at 1179 Whitehall Road, Muskegon, Michigan 49442.

5. Respondent's license to practice pharmacy in Iowa was current until June 30, 1963. It is now delinquent.

6. On September 21, 1992, the Board received certified copies of an Administrative Complaint, Proposal for Decision, and Superseding Final Order titled In the Matter of Harvey A. Bergren, D.O., R.Ph., Docket Nos. 89-0201 and 89-0231, from the Michigan Board of Pharmacy.

a. The Administrative Complaint dated March 7, 1989, provides, in part, the following:

...Count One: Respondent's indiscriminate prescribing practices...evidence that Respondent has not maintained effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses...

Count Two: Respondent's indiscriminate prescribing practices...evidence that Respondent is not in compliance with applicable federal, state, and local laws...

Count Three: Respondent's indiscriminate prescribing practices...evidence that Respondent has manufactured, distributed, or dispensed a controlled substance for other than legitimate or professionally recognized therapeutic, scientific, or industrial uses or outside the scope of practice of Respondent's license...

b. The Proposal for Decision dated July 17, 1991, provides, in part, the following:

...On February 22, 1989, an Administrative Complaint was filed with the Board of Osteopathic Medicine and Surgery. On March 7, 1989, a second Administrative Complaint was filed with the Board of Pharmacy. These two (2) Complaints were consolidated...

By Order of Summary Suspension dated February 23, 1989, the Board [of Osteopathic Medicine and Surgery] summarily suspended Respondent's license to practice medicine in the State of Michigan.

By Order of Summary Suspension dated March 8, 1989, the Board of Pharmacy summarily suspended Respondent's drug control and controlled substances licenses.

...Findings of Fact: This matter concerns allegations by the State that Respondent, an Osteopathic Physician practicing in Muskegon, Michigan, routinely over-prescribed and over-dispensed from his in-office pharmacy controlled substances to his patients. The State further alleges that Respondent has departed from, or failed to conform to, minimal standards of acceptable and prevailing practice...Respondent's arrest and conviction on narcotics violations was the direct result of an undercover investigation commenced in August, 1988...

c. The Superseding Final Order dated June 19, 1992, provides, in part, the following:

...WHEREAS, on or about October 23, 1991, the Board of Osteopathic and Surgery issued a Final Order revoking Respondent's license to practice osteopathic medicine in the State of Michigan, and assessing a fine;...IT IS HEREBY ORDERED that Respondent's pharmacist, controlled substances, and drug control licenses shall be and hereby are revoked...IT IS FURTHER ORDERED that...Respondent shall be and hereby is assessed a fine in the total amount of Five Thousand Dollars...IT IS FURTHER ORDERED that this order shall be effective January 16, 1992.

7. As evidenced in the Superseding Final Order of the Michigan Board of Pharmacy, Respondent's license to practice pharmacy in Michigan was revoked effective January 16, 1992.

8. A copy of the Michigan Board's Superseding Final Order is attached hereto as Exhibit 1 and is incorporated by reference into this Complaint and Statement of Charges and Notice of Hearing as if fully set forth herein.

9. Respondent failed to report to the Board that disciplinary action had been taken by the Michigan Board of Pharmacy against his Michigan pharmacist license number 53-02-018313.

10. Respondent is guilty of violations of 1993 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10) by virtue of the allegations contained in paragraphs 6, 7, 8, and 9.

1993 Iowa Code section 155A.12 provides, in part, the following:

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

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

....

5. Violated any provision of the controlled substances Act or rules relating to that Act.

....

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for

conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

11. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u) by virtue of the allegations contained in paragraphs 6, 7, 8, and 9.

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:...

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.

....

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

....

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 10 and 11 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 1993 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), and 155A.12(10) and 657 Iowa Administrative Code sections 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Harvey A. Bergren appear before the Iowa Board of Pharmacy Examiners on Tuesday, January 11, 1994, at 9:00 a.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

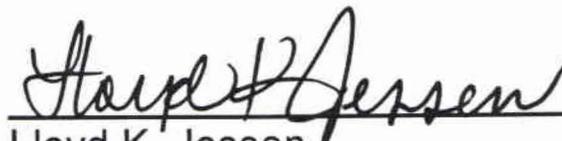
The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Harvey A. Bergren on November 15, 1961, and take whatever additional action that they deem necessary and appropriate.

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 Theresa O'Connell Weeg, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-6858). Copies of all filings with the Board should also be served on counsel.

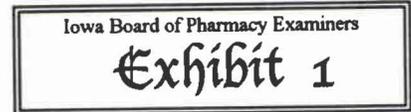
IOWA BOARD OF PHARMACY EXAMINERS

A handwritten signature in cursive script, appearing to read "Lloyd K. Jessen", written over a horizontal line.

Lloyd K. Jessen

Executive Secretary/Director

STATE OF MICHIGAN
DEPARTMENT OF COMMERCE
BOARD OF PHARMACY



In the Matter of:

HARVEY A. BERGREN, D.O.

Docket Nos. 89-0201
89-0231

SUPERSEDING
FINAL ORDER

WHEREAS, the Attorney General, on or about February 22, 1989, filed an administrative complaint with the Board of Osteopathic Medicine and Surgery charging Harvey A. Bergren (hereinafter Respondent) with having acted in violation of sections 16221(1)(a), 16221(1)(b)(1), 16221(1)(b)(vi), 16221(1)(c)(iv), 16221(1)(e)(1) and 16221(1)(g) of the Public Health Code, 1978 PA 368, as amended; and

WHEREAS, the Attorney General, on or about March 7, 1989, filed a second administrative complaint with the Board of Pharmacy (hereinafter Board) charging Respondent with having acted in violation of sections 7311(1)(e), 7311(1)(f), 7311(1)(g), 16221(1)(g) and 7311(6), 16221(1)(g) and 7311(6) of the Public Health Code, supra; and

WHEREAS, said administrative complaints were consolidated by an administrative law judge by order dated April 18, 1989, pursuant to AACRS R 338.968; and

WHEREAS, upon review of said administrative complaints, the Board of Osteopathic Medicine and Surgery and the Board issued orders

of summary suspension on or about February 23, 1989, and March 8, 1989 respectively; and

WHEREAS, an administrative hearing was held on March 2, 7, 8, 9, 22 and 27, 1989, before an administrative law judge who, on July 17, 1991, filed a Proposal for Decision, setting forth recommended findings of fact and conclusions of law, a copy of which is attached hereto; and

WHEREAS, the Attorney General, on or about August 10, 1990, filed administrative complaints with the Board of Osteopathic Medicine and Surgery and the Board alleging that on November 8, 1989, Respondent was convicted on a plea of no contest in Muskegon County Circuit Court of two counts of unlawful delivery of Schedule 3 controlled substance, contrary to MCL 333.7401(2)(b) (paragraph 7 of the administrative complaints), and that on January 12, 1990, in the United States District Court for the Western District of Michigan, Respondent was convicted of two felony offenses of unlawful distribution of Schedule 3 controlled substances, contrary to 21 USC 841(A)(1), 21 USC 841(B)(1)(d) and 18 USC 2 (paragraph 8 of the administrative complaints); and

WHEREAS, pursuant to 1980 AACS, R 338.974, on or about October 30, 1990, Respondent and the Attorney General filed a stipulation setting forth that the administrative complaints filed with both Boards on August 10, 1990, should be consolidated with Docket Nos. 89-0201 and 89-0231; and

WHEREAS, Respondent, through his attorney, has stipulated that the convictions as alleged in paragraphs 7 and 8 of the respective administrative complaints are true; and

WHEREAS, the Attorney General filed exceptions to the administrative law judge's Proposal for Decision on or about August 7, 1991; and

WHEREAS, on or about October 23, 1991, the Board of Osteopathic Medicine and Surgery issued a Final Order revoking Respondent's license to practice osteopathic medicine in the State of Michigan, and assessing a fine; and

WHEREAS, the Board, having read the administrative record, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on November 27, 1991, and at said meeting approved the administrative law judge's Proposal for Decision, and adopted said administrative law judge's finding and fact and conclusions of law; now, therefore

IT IS HEREBY ORDERED that Respondent's pharmacist, controlled substances and drug control licenses shall be and hereby are revoked for violation of sections 16221(1)(a), 16221(1)(b)(1), 16221(1)(b)(vi), 16221(1)(c)(iv) and 16221(1)(g) of the Public Health Code, supra, based on the Proposal for Decision, pages 31 through 35, and the controlled substance convictions stipulated to by Respondent.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is

assessed a fine in the total amount of Five Thousand Dollars (\$5,000.00), said fine to be paid by check, payable to the State of Michigan, not later than one (1) year from the effective date of this order.

IT IS FURTHER ORDERED that the timely payment of the fine as herein required shall be Respondent's responsibility, and the failure to pay said fine within the time limitation herein provided shall be deemed a violation of an order of the Board.

IT IS FURTHER ORDERED that the aforesaid payment shall be mailed to the Board, c/o Licensing Coordinator, Office of Legal Services, Department of Commerce, P.O. Box 30018, Lansing, Michigan 48909.

IT IS FURTHER ORDERED that the sanctions herein imposed shall run concurrently, commencing on the effective date of this order.

IT IS FURTHER ORDERED that the Order summarily suspending Respondent's license filed by the Board on or about March 8, 1989, shall be and hereby is dissolved on the effective date of this order.

IT IS FURTHER ORDERED that reinstatement of a license which has been revoked is not automatic and, in the event Respondent applies for reinstatement of his license, application for reinstatement shall be in accordance with 1980 AACRS R 338.986. Further, Respondent shall supply to the Board, pursuant to section 16247 of

the Public Health Code, supra, clear and convincing evidence that Respondent is of good moral character, is mentally and physically able to practice the profession with reasonable skill and safety, and that it is in the public interest for Respondent to resume practice.

IT IS FURTHER ORDERED that this order shall be effective January 16, 1992.

Signed this 19th day of JUNE, 1992.

MICHIGAN BOARD OF PHARMACY

By Herman Fishman
Herman Fishman, Acting Director
Office of Health Services

This is the last and final page of a Superseding Final Order in the matter of Harvey A. Bergren, D.O., Docket Nos. 89-0201 and 89-0231, before the Michigan Board of Pharmacy, consisting of five (5) pages, this page included.

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BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist License of)	FINDINGS OF FACT,
HARVEY A. BERGREN)	CONCLUSIONS OF LAW,
License No. 12750)	DECISION AND ORDER
)	
Respondent)	DIA NO. 94PHB-1

TO: HARVEY A. BERGREN

On October 5, 1993, the Executive Secretary-Director for the Iowa Board of Pharmacy Examiners (Board) filed a Complaint and Statement of Charges and Notice of Hearing against Harvey A. Bergren (Respondent) alleging that the Respondent's license to practice pharmacy in the state of Michigan had been revoked effective January 16, 1992 and the Respondent failed to report the disciplinary action taken by the Michigan Board to the Iowa Board. The Complaint and Statement of Charges further alleged that the Respondent had violated Iowa Code section 155A.12(1), (5), (8) and (10) and 657 IAC 9.1(4)(j), (k) and (u).

The hearing was held before the full Board on January 11, 1994 at 9:30 a.m., in the second floor conference room, Executive Hills West, 1209 East Court, Des Moines, Iowa. The following members of the Board were present: Marian L. Roberts, Chairperson; Phyllis A. Olsen, Vice Chairperson; Phyllis A. Miller, Mary Pat Mitchell, Matthew C. Osterhaus and Arlan D. VanNorman. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. Margaret LaMarche, an Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

The Respondent did not appear, nor was he represented by counsel. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1). The entire proceedings were recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f) and instructed the administrative law judge to prepare their Findings of Fact, Conclusions of Law, Decision and Order.

THE RECORD

The record includes the Complaint and Statement of Charges and Notice of Hearing, the testimony of the witnesses, and the following exhibit:

State's Exhibit 1: Copies of the Superseding Final Order, Proposal for Decision, and Administrative Complaint, Docket No. 89-0201, 0231, State of Michigan, Department of Licensing and Regulation

FINDINGS OF FACT

1. The Respondent was issued a license to practice pharmacy in Iowa on November 15, 1961, by reciprocity. His Iowa license was current until June 30, 1963. It is now delinquent. Respondent was also licensed to practice pharmacy in the state of Michigan. (Board file)
2. The Respondent currently resides at 3316 W. River Road, Muskegan, Michigan 49445. (Board file)
3. On September 21, 1992, the Board received certified copies of an Administrative Complaint, Proposal for Decision, and Superseding Final Order titled In The Matter of Harvey A. Bergren, D.O., R.Ph., Docket Nos. 89-0201 and 89-0231, from the Michigan Board of Pharmacy. (testimony of Lindy Pearson; Exhibit 1)
4. The Administrative Complaint, dated March 7, 1989, alleged that the Respondent's indiscriminate prescribing practices were evidence that 1) Respondent had not maintained effective controls against diversion of controlled substances, 2) Respondent is not in compliance with applicable federal, state and local laws, and 3) Respondent has manufactured, distributed, or dispensed a controlled substance for other than legitimate or professionally recognized therapeutic, scientific, or industrial uses or outside the scope of practice of Respondent's license. (testimony of Lindy Pearson; Exhibit 1)
5. The Respondent was also licensed to practice osteopathic medicine and surgery in Michigan. An Administrative Complaint filed with the Board of Osteopathic Medicine and Surgery was consolidated with the Administrative Complaint filed with the Board of Pharmacy. The Respondent's license to practice osteopathic medicine and surgery and his license to practice pharmacy were both summarily suspended pending the hearing. (testimony of Lindy Pearson; Exhibit 1)
6. An administrative hearing was held and an administrative law judge issued a Proposal for Decision on July 17, 1991. The Michigan Board of Pharmacy approved the administrative law judge's Proposal for Decision and revoked the Respondent's pharmacist, controlled substances, and drug control licenses, effective January 16, 1992. In addition, the Michigan Board assessed a \$5,000.00 fine. (testimony of Lindy Pearson; Exhibit 1)
7. The Michigan Board of Osteopathic Medicine and Surgery also revoked Respondent's license to practice osteopathic medicine and surgery and assessed a fine. (testimony of Lindy Pearson; Exhibit 1)

8. The Iowa Board of Pharmacy Examiners sent the Complaint and Statement of Charges and Notice of Hearing dated October 5, 1993, to the Respondent by certified mail, return receipt requested. It was delivered on October 23, 1993 and signed for by "J. Bergren." (Board file)

CONCLUSIONS OF LAW

1. 657 IAC 9.5 provides in relevant part:

9.5(4) Delivery of the notice shall be by personal service or by certified mail, return receipt requested.

• • •

9.5(6) Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

657 IAC 9.13 provides:

Failure by respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board may proceed with the conduct of the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

The Respondent was properly served with notice of hearing by certified mail, more than 30 days before the hearing, but failed to appear. The Respondent is bound by this decision of the Board to the same extent as if he had appeared.

2. Iowa Code section 155A.12(1), (5), (8) and (10) (1993) provide 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.

• • •

5. Violated any provision of the controlled substances Act or rules relating to that Act.

• • •

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

• • •

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

3. 657 IAC 9.1(4) provides in relevant part:

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:

• • •

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.

• • •

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

• • •

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.

4. The preponderance of the evidence established that the Respondent has violated Iowa Code section 155A.12(1), (5), (8) and (10) and 657 IAC 9.1(4)(j), (k) and (u) by virtue of the disciplinary action taken by the Michigan Board of Pharmacy revoking Respondent's license to practice pharmacy, and Respondent's failure to report that disciplinary action to this Board.

DECISION AND ORDER

IT IS HEREBY ORDERED, that pharmacist license number 12750, issued to Harvey A. Bergren, is hereby REVOKED.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 9.27, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary of the Board shall bill the Respondent for any transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

DIA No. 94PHB-1
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Dated this 31st day of January, 1994.

Marian Roberts

Marian L. Roberts, Chairperson
Iowa Board of Pharmacy Examiners

ML/jmm

cc: Theresa O'Connell Weeg, AAG