

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

Re:	Pharmacist License of)	COMPLAINT
	KENNETH H. BLYTHE II)	AND
	License No. 16125)	STATEMENT
	Respondent)	OF CHARGES
)	AND
)	NOTICE OF HEARING

COMES NOW, the complainant, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 4th day of May, 1994, and files this Complaint and Statement of Charges and Notice of Hearing against Kenneth H. Blythe II, a pharmacist licensed pursuant to Iowa Code Chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; 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 July 21, 1982, by examination.

3. Respondent currently resides at 540 N.W. Prairie Creek Drive, Grimes, Iowa 50111.

4. Respondent's license to practice pharmacy in Iowa is current until June 30, 1994.

5. The board has received investigative information pertaining to Respondent's pharmacy practice which alleges that Respondent has made numerous dispensing errors, has disclosed confidential methadone patient information, and has repeatedly engaged in unethical and unprofessional conduct. The allegations include the following:

a. While employed at the pharmacy department of Broadlawn's Hospital in Des Moines, Iowa, between October 17, 1982, and August 23, 1989, Respondent was disciplined for (1) injuring a co-worker through unprofessional conduct; (2) behaving unprofessionally toward a physician by being verbally abusive; (3) behaving unprofessionally toward a pharmacist-intern by using obscene and profane language; and (4) violating hospital policies regarding computer security by gaining unauthorized access to the pharmacy's computer password system and other restricted access areas in the pharmacy computer.

b. Between August 18, 1993, and October 4, 1993, Respondent made eight dispensing errors while practicing pharmacy and filling prescriptions at the Phar-Mor Pharmacy located in Clive, Iowa. The errors involved the following: the dispensing of an incorrect drug (twice); the dispensing of an incorrect strength of a drug (four times); the dispensing of a drug with incorrect label directions (one time); and the dispensing of an incorrect quantity of a drug (one time). The dispensing errors involved eight different patients.

c. While employed at the Wal-Mart Pharmacy located at 1001 73rd Street in Des Moines, Iowa, between October 11, 1993, and October 22, 1993, Respondent repeatedly behaved unprofessionally toward co-workers (other pharmacists and pharmacist-interns) by using obscene, profane, and offensive language and by harassing female co-workers. In addition, Respondent made unauthorized changes to certain files in the pharmacy computer system in violation of company policy.

d. While employed by the Mid-City Addiction Team Pharmacy located in Des Moines, Iowa, Respondent sent eight or nine pages of confidential patient information from a methadone treatment program via computerized facsimile transmission to unauthorized personnel at Iowa Lutheran

Hospital in Des Moines, Iowa, on December 26, 1993. On November 30, 1993, and December 26, 1993, respondent sent other printed material via facsimile transmission to the pharmacy department of Iowa Lutheran Hospital which was inappropriate and unsolicited.

6. Respondent is guilty of violating 21 C.F.R. section 1304.28(d) (1993) by virtue of the allegations in paragraph 5(d).

21 C.F.R. section 1304.28(d) provides, in relevant part, the following:

Records of identity, diagnosis, prognosis, or treatment of any patients which are maintained in connection with the performance of a narcotic treatment program shall be confidential, . . .

7. Respondent is guilty of violations of 1993 Iowa Code sections 155A.12(1)-(3) and 272C.10(2) and (3) by virtue of the allegations in paragraph 5.

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

. . . The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. 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.

Iowa Code section 272C.10 provides, in relevant part, the following:

. . . A licensing board . . . shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:

2. Professional incompetency.
3. (E)ngaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 8.5(5) and (9), 8.18(4), and 9.1(4)(b) and (c) by virtue of the allegations in paragraph 5.

657 Iowa Administrative Code section 8.5(5) provides, in part, the following:

. . . In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacist shall not divulge or reveal to any person . . . the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber. . . .

657 Iowa Administrative Code section 8.5(9) provides, in relevant part, the following:

. . . A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy Unprofessional behavior shall include, but is not

limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

657 IAC section 8.18(4) provides the following:

Information in the patient medication record shall be deemed to be confidential and may be released to the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized by law to receive such information. Information in the patient medication record may be released to others only on written release of the patient.

657 IAC 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: . . . (3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

c. . . . (E)ngaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

The Iowa Board of Pharmacy Examiners finds that paragraphs 6, 7, and 8, constitute grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent has violated 1993 Iowa Code sections 155A.12(1) to (3), 272C.10(2) and (3), and 657 Iowa Administrative Code sections 8.5(5) and (9), 8.18(4), and 9.1(4)(b) and (c).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Kenneth H. Blythe II appear before the Iowa Board of Pharmacy Examiners on Wednesday, June 8, 1994 at 2:00 p.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 Kenneth H. Blythe II on July 21, 1982, 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 disciplinary action, including the permanent suspension or revocation of his license.

The hearing will be presided over the 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 representing the public interest in these proceedings. Information regarding the hearing may be obtained from Linny Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS

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

Lloyd K. Jessen
Executive Secretary/Director

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

Re:
Pharmacist License of
KENNETH H. BLYTHE II
License No. 16125
Respondent

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**STIPULATION
AND
CONSENT ORDER**

On this 20 day of September, 1995, the Iowa Board of Pharmacy Examiners and Kenneth H. Blythe II, R.Ph., 540 N.W. Prairie Creek Drive, Grimes, Iowa, each hereby agree with the other and stipulate as follows:

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Complaint and Statement of Charges and Notice of Hearing filed against Respondent on May 4, 1994, 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 on the 21st day of July, 1982, as evidenced by License Number 16125, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That Iowa Pharmacist License Number 16125 issued to and currently held by Respondent is current and active until June 30, 1996.
3. That a Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on May 4, 1994.

4. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

5. The Respondent understands that there is no admission on his part of the truth of the allegations specified in the Complaint and Statement of Charges, but merely an agreement that the Board may treat the allegations as true solely for the purpose of this Stipulation and Consent Order. This Stipulation and Consent Order is executed as a compromise settlement of disputed claims.

SECTION I

Upon approval of this Stipulation and Consent Order by the Board, Respondent's license to practice pharmacy shall be placed on probation for one (1) year. During the probationary period the Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

Within one (1) year of the effective date of this Stipulation and Consent Order, the Respondent shall complete two (2) continuing education courses or other formal, structured courses in the following areas: interpersonal relations and/or sensitivity training for the workplace and stress management. Each course shall be *not less than* four (4) hours in length and shall be pre-approved by the Board. Documentation of 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.

In addition, during the probationary period the Respondent shall:

1. 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.
2. Provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing pharmacy education (CPE) as directed by the Board.

3. Obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and the distribution of controlled substances.

4. 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 approval of this Stipulation and Consent Order by the Board, 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.

SECTION II

1. Should Respondent leave Iowa to reside or practice in another state, he shall notify the Board in writing fourteen (14) days prior to his departure and within fourteen (14) days of his return. Periods of residency or practice outside the State of Iowa shall not apply to reduction of the probationary period.

2. Respondent may serve as a pharmacist in charge during probation so long as he shows progress toward completing the courses required in Section I of this Stipulation and Consent Order.

3. Respondent shall fully and promptly comply with all Orders of the Board and the statutes and rules regulating the practice of pharmacy in Iowa. Any violation of the terms of this Order is grounds for further disciplinary action, upon notice and opportunity for hearing, for failure to comply with an Order of the Board, in accordance with Iowa Code section 272C.3(2)(a).

4. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and impose additional disciplinary sanctions, including the revocation of Respondent's license to practice pharmacy. 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.

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

6. This Stipulation and Consent Order is subject to approval of a majority of the full Board. If the Board approves this Stipulation and Consent Order, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Consent Order, it shall be of no force or effect to either party.

7. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 18th day of September, 1995.



KENNETH H. BLYTHE II, R.Ph.
Respondent

Subscribed and Sworn to before me on this 18th day of September, 1995.



NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

6. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 20 day of September, 1995.



MARIAN L. ROBERTS, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319