

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	:	
JOHN EDMUND HEREK	:	COMPLAINT
Lic. No. 16445	:	AND
Respondent	:	STATEMENT OF CHARGES
	:	

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on this 28th day of October, 1988, and files this Complaint and Statement of Charges against John Edmund Herek, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa (license number 16445) on July 1, 1984, by reciprocity.

3. Respondent was issued a license to practice pharmacy in Illinois (license number 051-036426) on October 20, 1986, by endorsement.

4. The Board has received investigative reports from Pharmacy Investigator Robert Crawford of the Illinois Department of Professional Regulation in Chicago, Illinois, concerning Respondent. In summary, those investigative reports indicate the following: (a) that Respondent was arrested in Illinois and charged with DUI in June or July 1987; (b) that Respondent was employed as a pharmacist at the Walgreens Pharmacy located on East Main Street in Galesburg, Illinois, from May 11, 1987, to August 25, 1987, and was observed to be practicing pharmacy while intoxicated on July 30, 1987; (c) that Respondent was employed as a pharmacist at Venture Pharmacy located at 901 West Lake Street in Peoria, Illinois, from January 15, 1987, to March 5, 1987, and was observed, on at least one occasion, to be practicing pharmacy while intoxicated; (d) that while Respondent was employed as a pharmacist at Venture Pharmacy in Peoria, Illinois, a significant shortage of various controlled substances occurred; and (e) that Respondent was employed as a pharmacist at Super X Drugs located at 603 South Fourth Street in Chillicothe, Illinois, from October 13, 1986, to December 7, 1986, and that during this time period a significant shortage of two controlled substances (Phentermine and Ionamin) occurred.

5. The same investigative reports indicate that the Respondent has admitted to having a history of alcohol abuse.

6. Respondent's license to practice pharmacy in Illinois was suspended indefinitely by the Illinois Department of Professional Regulation on February 17, 1988, for alcohol abuse which rendered him unfit to practice pharmacy in Illinois. Respondent failed to report this action to the Iowa Board of Pharmacy Examiners, and this information came to the attention of Board staff in October 1988, at which time the investigative reports referred to in paragraphs 4 and 5 above were obtained.

7. Respondent currently resides at 917 Locust Street, Apartment #105, Des Moines, Iowa 50309.

8. Respondent's license to practice pharmacy in Iowa is current until June 30, 1990.

9. Respondent is guilty of violations of 1987 Iowa Code sections 155A.12(1), 155A.12(8), and 155A.12(10) by virtue of the allegations in paragraphs 4, 5, and 6.

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.

....

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.

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u) by virtue of the allegations in paragraphs 4, 5, and 6.

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)...when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis....

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, and 1987 Iowa Code supplement sections 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 9 and 10 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

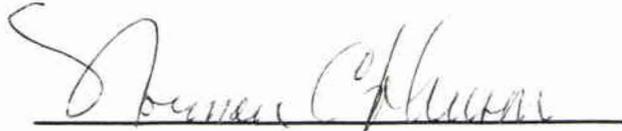
WHEREFORE, the undersigned charges that Respondent has violated 1987 Iowa Code sections 155A.12(1), 155A.12(8), and 155A.12(10), and 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u).

IT IS HEREBY ORDERED that John Edmund Herek appear before the Iowa Board of Pharmacy Examiners on November 28, 1988, at 1:00 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 John Edmund Herek on July 1, 1984, 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. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

State's Exhibit 2 - investigative report dated 8-28-87

State's Exhibit 3 - investigative report dated 8-31-87

State's Exhibit 4 - discharge narrative dated 3-15-88

FINDINGS OF FACT

1. The Respondent, John Edmund Herek, is a pharmacist licensed in Iowa and was issued license number 16445 which is current until June 30, 1990. The Respondent is also licensed in Nebraska. (official file)
2. The Respondent was licensed to practice pharmacy in Illinois. On February 17, 1988, the Respondent entered into a Consent Order with the Illinois Department of Professional Regulation. In the Consent Order, the Respondent admitted to being guilty of habitual intemperance in the use of alcohol to such a degree as to render him unfit to practice pharmacy, and the Respondent's license was suspended indefinitely. The Respondent did not report this disciplinary action by the Illinois Board to the Iowa Board. (State's Exhibit 1; testimony of Mr. Herek)
3. The Respondent was arrested in Illinois for driving under the influence of alcohol in March 1987. (State's Exhibit 1)
4. The Respondent is an alcoholic. He testified he had his last drink in August 1988 and has "slipped" a couple of times. By "slipping," he meant that once every three to six months he had a beer or a shot of alcohol. When asked whether that was acceptable for an alcoholic, he answered that that was not what an alcoholic wants to do. The Respondent's testimony at the hearing showed that he has not fully accepted the fact that he is an alcoholic and can never drink at all. (testimony of Mr. Herek; State's Exhibit 1)
5. In 1987, the Respondent worked at Venture Pharmacy for approximately a month and a half. One of Respondent's fellow employees at Venture observed that he was intoxicated when he came to work on one occasion, and came to work with alcohol on his breath on numerous occasions. Mr. Herek testified at the hearing that he drank so often he was not sure when he was intoxicated. Mr. Herek's fellow employee also observed that Mr. Herek filled several prescriptions in which he put no medication into the bottles. Another fellow employee observed that the Respondent had alcohol on his breath nearly all the time they were working together, that he "had the shakes really bad a lot," and that at times he was very slow in filling prescriptions and was really inconsiderate of customers. Mr. Herek testified most of his drinking was done after work, but he also drank before going to work. Mr. Herek still gets "the shakes." This happens more when he is under stress. (testimony of Mr. Herek; State's Exhibits 1, 2, 3).

6. On February 8, 1988, the Respondent was admitted to an intensive outpatient program for alcoholism. At discharge, the Respondent was referred to a halfway house for further treatment. He did not follow through with this referral as scheduled. He was supposed to enter the halfway house on March 17, 1988 but did not keep his admission appointment. He later entered the halfway house in April 1988. At discharge from treatment from the intensive outpatient program, the Respondent's prognosis was marginal. (testimony of Mr. Herek; State's Exhibits 1, 4)

7. The Respondent is currently living in Des Moines. As of the date of the hearing, the Respondent was living with a woman who he physically abused. Mr. Herek testified the two reinforced each other's problems. He testified he planned to move out on December 1, 1988, although he does not want to. He still has hopes the two can work out their differences and continue the relationship. (testimony of Mr. Herek)

8. At the hearing Mr. Herek blamed his problems on a nasty divorce. Mr. Herek is not currently working. The last time Mr. Herek worked as a pharmacist was August 1987. He attends AA meetings. He saw a counselor twice while in Des Moines: once on September 12 and once on September 21, 1988. Those two sessions were spent gathering historical information. He had another appointment scheduled for December 5, 1988. (testimony of Mr. Herek; Respondent's Exhibit A)

9. As far as the Respondent knows, his Illinois license is still suspended. (testimony of Mr. Herek)

CONCLUSIONS OF LAW

1. Iowa Code section 155A.12 provides that the Board may take disciplinary action if it finds that the Respondent has done any of the following:

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

. . .

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.

The preponderance of the evidence showed that the Respondent violated Iowa Code sections 155A.12(1),(8), and (10). (Findings of fact numbers 2, 3, 4, 5)

2. 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) . . . when the board determines that the licensee or registrant is guilty of the following acts or offenses: . . .

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis . . .

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, and 1987 Iowa Code supplement sections 155A.12 and 155A.15.

The preponderance of the evidence showed that the Respondent violated 657 Iowa Administrative Code sections 9.1(4)(d), (j), (k), and (u). (Findings of fact 2, 3, 4, 5, 6, 7, 8, 9)

ORDER

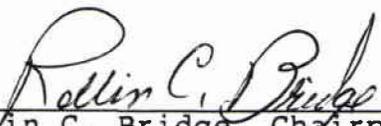
The Respondent is an alcoholic who still does not realize he is an alcoholic. He has continued to drink, and does not clearly accept the fact that he can never take a drink. His working as a pharmacist in Illinois while under the influence of alcohol is a particularly dangerous violation of Iowa statute and Board rules. The Respondent needs further counseling and treatment for his alcoholism before he can practice pharmacy safely. The Respondent wants to remain in a relationship which caused him stress, exacerbated his alcoholism, and in which he was physically abusive. He has fallen off the wagon as late as August 1988. He has not practiced pharmacy since August 1987.

His discharge prognosis from the treatment center was marginal. He was habitually intoxicated and used alcohol prior to going to work. The Respondent has a serious problem which he has not recognized or solved. Safety of the public requires that the Respondent obtain further treatment before he can practice safely.

It is therefore the ORDER of the Iowa Board of Pharmacy Examiners that certificate number 16445 issued to the Respondent, John Edmund Herek, is hereby revoked. The Respondent may not apply for reinstatement for a period of at least two years beginning on the date of receipt of this Order. The Respondent must surrender all licenses and appear before the Board prior to reinstatement.

The Board office will notify the Nebraska Board of this decision.

Dated this 22ND day of December, 1988.



Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners



Amy Christensen Couch
Administrative Law Judge
Iowa Department of Inspections and Appeals

ACC/jmm