

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	EMERGENCY ORDER
DAVID M. HOLCOMB	}	AND
License No. 17076	}	COMPLAINT AND
Respondent	}	STATEMENT OF CHARGES
	}	AND
	}	NOTICE OF HEARING

NOW on this 14th day of January 1992, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on August 3, 1988, by examination.

2. Respondent is currently employed as a pharmacist at Holcomb Pharmacy, 601 1st Street, Perry, Iowa, and at the Dallas County Hospital Pharmacy, Perry, Iowa.

3. On January 13, 1992, the Board received information which alleges that the Respondent obtained, without authorization, various controlled substances including Morphine Sulfate, Meperidine Hydrochloride, Dilaudid, Dolophine Hydrochloride, and Cocaine Hydrochloride from the Dallas County Hospital Pharmacy in Perry, Iowa, between December 17, 1991, and January 9, 1992, for his own personal use. It is also alleged that Respondent's unathorized use of these drugs has impaired his ability to practice pharmacy with reasonable skill and safety.

4. The Board has also received information which indicates that on or about January 13, 1992, Respondent was admitted to the Powell Chemical Dependency Center in Des Moines, Iowa, for inpatient treatment of chemical dependency.

5. Respondent currently resides at 419 Second Street, Perry, Iowa 50220.

6. Respondent's license to practice pharmacy in Iowa is current until June 30, 1992.

7. The information contained in paragraphs 3 and 4, together with other confidential information in the possession of the Board, indicates that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa and thereby have access to controlled substances.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if David M. Holcomb were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. Therefore, the Board finds that the public health, safety, and welfare makes emergency summary license suspension imperative, and so directs the Executive Secretary/Director to issue such order.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of David M. Holcomb to practice pharmacy in Iowa be temporarily suspended until such time as a hearing before the Board of Pharmacy Examiners can be conducted.

With this notice, the Board also directs the Executive Secretary/Director of the Iowa Board of Pharmacy Examiners to file a Complaint and Statement of Charges against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges, the secretary/director alleges that:

8. Melba L. Scaglione, Chairperson; Alan M. Shepley, Vice Chairperson; Rollin C. Bridge; Donna J. Flower; Phyllis A. Olson; Marian L. Roberts; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

9. Respondent is guilty of violations of 1989 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(1), 204.402(1)(a), and 204.403(1)(c) by virtue of the allegations in paragraphs 3 and 4.

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.

...

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

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

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a drug by:

a. Fraud, deceit, misrepresentation, or subterfuge....

Iowa Code section 204.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations in paragraphs 3 and 4.

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:...

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

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:...

(2) The excessive use of drugs which may impair a pharmacist's ability to practice pharmacy with reasonable skill or safety.

....

h. Distribution of...drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of Iowa Code chapters 155A, 203, 203A, and 204.

...

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

...

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 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 1991 Iowa Code sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(1), 204.402(1)(a), and 204.403(1)(c), and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h); 9.1(4)(m), 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 David M. Holcomb appear before the Iowa Board of Pharmacy Examiners on Tuesday, February 11, 1992, at 1:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

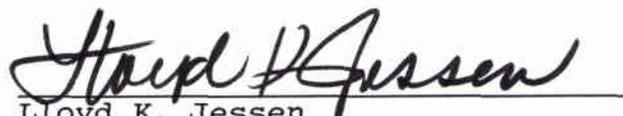
The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to David M. Holcomb on August 3, 1988, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his license.

The hearing will be presided over by the Board which will be assisted by an administrative law judge from the Iowa Department of Inspections and Appeals. The office of the Attorney General is responsible for the public interest in these proceedings.

Information regarding the hearing may be obtained from Lynette A. F. Donner, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8760). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS


Lloyd K. Jessen
Executive Secretary/Director

Pharmacy, Perry, Iowa, for any reason unless all schedule II controlled substances have been adequately secured through the changing of the lock on the schedule II cabinet in the presence of a Board designee; Respondent shall not have contact or access to schedule II controlled substances. Further, during the six month actual suspension, Respondent shall submit monthly reports consistent with the requirements of paragraph 6(b).

6. Upon completion of the six month actual suspension, Respondent's license shall be placed on probation for a period of five (5) years. During the first eighteen months of the probation, Respondent shall not work in any hospital pharmacy or any other pharmacy which stocks or dispenses injectable schedule II controlled substances. During the entire probationary period the Respondent shall:

a. Obey all federal and state laws and regulations substantially related to the practice of pharmacy.

b. Report to the Board or its designee quarterly. Said report shall be in person or in writing, as directed. The report shall include the Respondent's place of employment, current address, information and documentation regarding compliance with paragraph (c), and any further information deemed necessary by the Board from time to time.

c. Comply with after-care recommendations of the Powell Chemical Dependency Center, Iowa Methodist Medical Center, Des Moines, Iowa, including any required attendance at Alcoholics Anonymous or Narcotics Anonymous.

d. Immediately submit to random biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.

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

f. Notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this document. Within thirty (30) days after the approval of this Stipulation and Informal Settlement, and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read this document.

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

h. Not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereafter licensed by the Board and shall not own any pharmacy.

7. As an additional term of probation, within thirty days after approval of this Stipulation and Informal Settlement by the Board, Respondent shall submit to the Board written specific and formal recommendations for after-care treatment from the Powell Chemical Dependency Center, Iowa Methodist Medical Center.

8. Should Respondent leave Iowa to reside or practice outside this State, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or

practice outside the State shall not apply to reduction of the probationary period.

9. Respondent is assessed a civil penalty in the amount of \$2500. Within thirty (30) days after approval of this Stipulation and Informal Settlement by the Board, Respondent shall pay at least a portion of the civil penalty, but not less than \$1250, by delivering a check made payable to the Treasurer of Iowa to the Executive Secretary of the Board. Any remaining amount shall be similarly paid by delivering a check to the Board within ninety days after approval of this Stipulation and Informal Settlement. The civil penalty shall be deposited into the general fund.

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

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

12. This Stipulation and Informal Settlement is subject to approval of the Board. If the Board approves this Stipulation and Informal Settlement, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Informal Settlement, it shall be of no force or effect to either party.

13. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 3 day of March, 1992.

David M. Holcomb
DAVID M. HOLCOMB
Respondent

Signed and sworn to before me this 3 day of March, 1992.



Sally L. Wright
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

Approved as to form:

Kathleen A. Davoren
KATHLEEN A. DAVOREN
Jones, Hoffman & Huber
Attorneys at Law
500 Liberty Building
Des Moines, Iowa 50309
ATTORNEY FOR RESPONDENT

Lynette A. F. Donner
LYNETTE A. F. DONNER
Assistant Attorney General
Iowa Department of Justice
Second Floor, Hoover Bldg.
Des Moines, Iowa 50319
ATTORNEY FOR THE
STATE INTEREST

14. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 4th day of March, 1992.

Melba L. Scaglione
MELBA L. SCAGLIONE, Chairperson
Iowa Board of Pharmacy Examiners

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

Re:)
Pharmacist License of)
DAVID M. HOLCOMB)
License No. 17076)
Respondent)

**ORDER FOR
SUMMARY SUSPENSION**

The Iowa Board of Pharmacy Examiners, acting upon a complaint before the Board, has determined that under the provisions of Iowa Code Sections 17A.18(3), 155A.12, and 272C.10(3) (1995), it should summarily suspend your pharmacist license until such time as a hearing can be held in the matters outlined within said complaint.

The summary suspension is ordered because the Board believes that the public health, safety and welfare imperatively requires emergency action in that your unauthorized use of controlled substances has impaired your ability to practice pharmacy with reasonable skill and safety. You would pose a threat to the public health and safety if you were allowed to continue to practice pharmacy in Iowa and thereby have access to controlled substances.

You are therefore commanded to immediately surrender your current pharmacist license No. 17076 to the Board. You are reminded that while your license is suspended, you may not practice pharmacy in the State of Iowa and you may not enter any pharmacy prescription area, manage any pharmacy, administer any pharmacy, or engage in any pharmacy-related service or activity.

As a result of the summary suspension, the Board is required to offer to hold a hearing promptly in this matter. The time scheduled for your hearing can be found in the accompanying Notice of Hearing. Should this hearing time be a problem, you may request a postponement so that the hearing may be re-scheduled for a later date by contacting Lloyd Jessen, Executive Secretary/Director, at 515/281-5944.

Dated this 24th day of May, 1995.



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

cc: Lanny Emrich
Assistant Attorney General

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

Re:)
Pharmacist License of)
DAVID M. HOLCOMB) **STATEMENT OF CHARGES**
License No. 17076)
Respondent)

COMES NOW, the Complainant, Lindy A. Pearson, and states:

1. She is the Chief Investigator for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in her official capacity.

2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 124, 155A, and 272C (1995).

3. On August 3, 1988, David M. Holcomb, the Respondent, was issued license number 17076 by the Board to engage in the practice of pharmacy, subject to the laws of the State of Iowa and the rules of the Board.

4. License number 17076 is current and active until June 30, 1996.

5. Respondent currently resides at 419 Second Street, Perry, Iowa 50220.

6. Respondent is currently employed as a staff pharmacist at Holcomb Pharmacy, 601 South First, Perry, Iowa 50220.

7. Respondent's license to practice pharmacy was suspended by emergency order on January 14, 1992. Respondent was accused of unlawfully obtaining various Schedule II controlled substances for his own personal use. It was also alleged that his unauthorized use of these drugs impaired his ability to practice pharmacy with reasonable skill and safety. Respondent and the Board reached an informal settlement on March 4, 1992, in which Respondent agreed to pay a civil penalty of \$2,500 and his pharmacist license was suspended for a period of two years beginning March 4, 1992, with all but the first six months of

the suspension stayed. Suspension was to be followed by probation with conditions for five years. Respondent is currently on probation until September 4, 1997.

COUNT I

The Respondent is charged with violating the terms of his probation as set forth in paragraph 6 of Respondent's Stipulation and Informal Settlement approved by the Board on March 4, 1992, by failing to make required reports to the Board and by failing to obey all federal and state laws and regulations substantially related to the practice of pharmacy.

COUNT II

The Respondent is charged under Iowa Code Sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 124.308(1), 124.402(1)(a), and 124.403(1)(c) (1995) with obtaining prescription drugs by misrepresentation, fraud, forgery, deception, or subterfuge and without a valid prescription of an authorized practitioner.

COUNT III

The Respondent is charged with the inability to practice pharmacy with reasonable skill and safety by reason of his unauthorized use of drugs, in violation of 657 Iowa Administrative Code Sections 9.1(4)(c), 9.1(4)(d)(2), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u).

THE CIRCUMSTANCES

1. On May 12, 1995, the Board received information which alleges that on May 11, 1995, the Respondent was under the influence of drugs. It was also alleged that Respondent's use of drugs impaired his ability to practice pharmacy with reasonable skill and safety on May 11, 1995.

2. On Monday, May 15, 1995, the Board obtained a urine specimen from Respondent at the Holcomb Pharmacy in Perry, Iowa, while Respondent was on duty as a pharmacist. On May 17, 1995, this specimen was analyzed by a clinical laboratory. The laboratory analysis detected the following controlled substances in Respondent's urine: butalbital (Schedule III); amphetamine (Schedule II), and methamphetamine (Schedule II). The laboratory also indicated a suspicious finding of benzodiazepine (Schedule IV).

3. On or before May 11, 1995, Respondent obtained and ingested the following controlled substances without prescriber authorization: butalbital (Schedule III); amphetamine (Schedule II); methamphetamine (Schedule II); and benzodiazepine (Schedule IV).

4. Respondent has failed to obey all federal and state laws and regulations substantially related to the practice of pharmacy during his probation as required by paragraph 6(a) of the Stipulation and Informal Settlement approved by the Board on March 4, 1992.

5. Respondent has failed to file quarterly reports with the Board during his probation as required by paragraph 6(b) of the Stipulation and Informal Settlement approved by the Board on March 4, 1992.

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



Lindy A. Pearson
Chief Investigator

On this 24th day of May, 1995, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



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

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