

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of : EMERGENCY ORDER
: :
Ben C. Hudgens (15159) : LICENSE SUSPENSION

Now on this 29th day of October, 1985, the chairman of the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. That Ben C. Hudgens was issued a license to practice pharmacy in Iowa on December 6, 1977, by reciprocity from the State of Nebraska.

2. That Ben C. Hudgens was licensed to practice pharmacy in Nebraska by examination on June 24, 1976, and in California by examination on July 20, 1977.

3. That Ben C. Hudgens was employed as pharmacist-manager of Martin Drug, 700 First Avenue, Council Bluffs, Iowa, during calendar year 1985 and was fired from that position on October 15, 1985.

4. That Ben C. Hudgens voluntarily surrendered his license to practice pharmacy in Nebraska on November 29, 1982, acknowledging in that surrender that he violated provisions of Nebraska statute Section 77-147(3) "Habitual intoxication or dependency on, or addiction to the use of alcohol or habituation, dependency on, or addiction to the use of any kind of controlled substance or narcotic drug."

5. That the State of Nebraska advised Ben C. Hudgens on August 6, 1984, that they would reinstate his license to practice pharmacy.

6. That an audit of the records at Martin Drug revealed shortages of the following Schedule II controlled substances:

- a. 35 grams of Cocaine Hydrochloride flakes.
- b. 3400 doses of Dilaudid 4 mg tablets.
- c. 30 grains of Dilaudid powder.
- d. 500 doses of Dilaudid 3 mg tablets.
- e. 200 doses of Levo Dromoran 2 mg tablets.
- f. 1000 doses of Morphine Sulfate 30 mg soluble tablets.
- g. 283 doses of Oxycodone with aspirin tablets.
- h. 137 doses of Oxycodone with APAP tablets.
- i. 1331 doses of Percocet tablets.

- j. 622 doses of Tylox capsules.
- k. 70 doses of Nembutal 100 mg capsules.
- l. 64 doses of Nembutal 50 mg capsules.
- m. 83 doses of Seconal 100 mg capsules
- n. 36 doses of Demerol 50 mg tablets.
- o. 84 doses of Demerol 100 mg tablets.
- p. 99 doses of Ritalin 10 mg tablets.
- q. 29 doses of Methylphenidate 5 mg tablets.
- r. 14 doses of Methylphenidate 10 mg tablets.

7. That a urine specimen was obtained voluntarily from Ben C. Hudgens on October 17, 1985. The results of tests performed on that urine sample showed a high concentration of Cocaine.

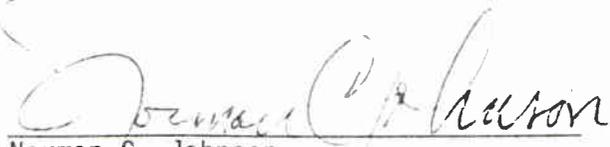
Based upon the above evidence, the chairman of the Iowa Board of Pharmacy Examiners, acting for the Board, finds that public health and safety would be jeopardized if Ben C. Hudgens were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. The chairman finds that the public health and safety therefore makes emergency license suspension imperative and so directs the executive secretary to issue such order.

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

IT IS FURTHER ORDERED that Ben C. Hudgens appear before the Iowa Board of Pharmacy Examiners on January 14, 1986, at 9:30 a.m. in the second floor conference room, 1209 East Court, Executive Hills West, Des Moines, Iowa. The order for temporary suspension and notice of

hearing are issued pursuant to the authority granted the Iowa Board of Pharmacy Examiners under Iowa Code Chapters 17A, 155, 204 and 258A.

You may bring counsel to the hearing and cross-examine any witness and call witnesses of your own. Failure to appear could result in suspension or revocation of your license. Detailed information of charges will be forwarded to you prior to the hearing date. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, State Capitol, Des Moines, Iowa.


Norman C. Johnson
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS

OF THE STATE OF IOWA

In the Matter of the Complaint :
and Statement of Charges Against : COMPLAINT AND
BEN CHARLES HUDGENS, Pharmacist : STATEMENT OF CHARGES
Respondent :

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 13th day of December 1985, and files this Complaint and Statement of Charges against Ben Charles Hudgens, a pharmacist licensed pursuant to Iowa Code Chapter 155, and alleges:

1. That John F. Rode, chairperson; Margo L. Underwood, vice chairperson; Rollin C. Bridge; Jerry M. Hartleip; Melba L. Scaglione; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. That Respondent is a resident of Omaha, Nebraska, and was issued license number 15159 to practice pharmacy in the State of Iowa on December 6, 1977.

3. That Respondent's license to practice pharmacy is current until June 30, 1986.

4. That Respondent was employed as pharmacist-manager of Martin Drug, 700 First Avenue, Council Bluffs, Iowa, during the period June 22, 1984, to October 15, 1985.

5. That Respondent was fired as pharmacist-manager of Martin Drug on October 15, 1985.

6. That Respondent was licensed to practice pharmacy in Nebraska on June 24, 1976, and in California on July 20, 1977.

7. That Respondent voluntarily surrendered his license to practice pharmacy in Nebraska on November 29, 1982, acknowledging in that surrender that he violated provisions of Nebraska statute section 77-147(3) "Habitual intoxication or dependency on, or addiction to the use of alcohol or habituation, dependency on, or addiction to the use of any kind of controlled substance or narcotic drug."

8. That Respondent's license to practice pharmacy in Nebraska was reinstated on August 6, 1984.

9. That six audits of the records of Martin Drug, 700 First Avenue, Council Bluffs, Iowa, were conducted by Morrell Spencer, who is a duly authorized agent of the Board.

10. Audit B involved 32 Schedule II drug dosage forms and covered the time period September 4, 1984, to October 15, 1985. The results

of that audit revealed the following:

- a. Shortages of 35 grams of Cocaine HCl flakes.
- b. Shortages of 36 doses of Demerol tablets 50mg.
- c. Shortages of 84 doses of Demerol tablets 100mg.
- d. Shortages of 3400 doses of Dilaudid tablets 4mg.
- e. Shortages of 30 grains of Dilaudid powder.
- f. Shortages of 500 doses of Dilaudid tablets 3mg.
- g. Shortages of 200 doses of Levo Dromoran tablets 2mg.
- h. Shortages of 1000 doses of Morphine Sulfate Soluble tablets 30mg.
- i. Shortages of 64 doses of Nembutal capsules 50mg.
- j. Shortages of 283 doses of Oxycodone with aspirin tablets.
- k. Shortages of 137 doses of Oxycodone with APAP tablets.
- l. Shortages of 1331 doses of Percocet tablets.
- m. Shortages of 622 doses of Tylox capsules.

11. Audit C involved two Schedule III drug dosage forms and two Schedule IV drug dosage forms and covered the time period May 1, 1985, to October 15, 1985. The results of that audit revealed the following:

- a. Shortages of 387 doses of Valium tablets 5mg, a Schedule III controlled substance.
- b. Shortages of 817 doses of Valium tablets 10mg, a Schedule III controlled substance.
- c. Shortages of 306 doses of Tussionex SA tablets, a Schedule IV controlled substance.
- d. Shortages of 510 cc of Tussionex suspension, a Schedule IV controlled substance.

12. That results of a test on a sample of Respondent's urine taken on October 17, 1985, indicated the presence of Cocaine, Benzoyllecgonine and Diphenhydramine.

13. That Respondent did order the drugs identified in paragraphs 10 and 11 and did accept receipt of those drugs when they were delivered to Martin Drug, 700 First Avenue, Council Bluffs, Iowa.

14. That Respondent, as pharmacist-manager of Martin Drug, bears full responsibility for the shortages of drugs identified in paragraphs 10 and 11.

15. That Respondent is guilty of violations of Iowa Code Sections 155.13(3) and (8), 155.30, 204.306, 204.308(1) and (3) and 204.401(1)"a," "b," and "c" by virtue of the allegations in paragraphs 10, 11, 12, 13 and 14.

Section 155.13(3) and (8) read as follows:

"...The board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regulations promulgated hereunder, or the violation thereof, and in addition, the board shall have the power to deny, suspend or revoke a license, when the applicant or licensee, or any employee, providing the offense is committed on licensed premises or is in the conduct of the business licensed, is guilty of any of the following facts or offenses:...

3. Distributing on the premises of...drugs for any other than lawful purposes.

8. Violations of the provisions of this chapter."

Section 155.30 reads as follows:

"...any person who violates a provision of Section 155.29 or who sells, gives away or administers to another person any prescription drug shall be guilty of a public offense...."

Section 204.306 reads as follows:

"Records of registrants. Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board...."

Federal regulations in this regard can be found in Code of Federal Regulations (CFR) Title 21. Pertinent parts of those regulations are 1304.03, 1304.04, and 1304.11.

Part 1304.03 reads, in part, as follows:

"Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section...."

Part 1304.04 reads, in part, as follows:

"Maintenance of records and inventories.

(a) Every inventory and other records required to be kept under this Part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration...."

Part 1304.11 reads, in part, as follows:

"General requirements for inventories.

(a) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken...."

Section 204.308(1) and (3) read as follows:

"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.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under Section 155.3 subsections 9 and 10, shall not be dispensed without a written or oral prescription of a practitioner...."

Section 204.401(1)"a," "b" and "c" read as follows:

"1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

a. A substance classified in Schedule I or II which is a narcotic drug is guilty of a Class "C" felony.

b. Any other controlled substance classified in Schedules I, II or III is guilty of a Class "D" felony.

c. A substance classified in Schedule IV is guilty of a serious misdemeanor."

16. That Respondent is guilty of a violation of Board rules, Iowa Administrative Code §620--6.5(1), 10.1(4)c, d(2), h, j and u.

Rule 6.5(1) reads as follows:

"Misrepresentative deeds. It is unethical for a practitioner of the profession of pharmacy to...be party to or an accessory to, any fraudulent or deceitful practice or transaction in pharmacy or in the operation of a pharmacy."

Rule 10.1(4) reads as follows:

"10.1(4) The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1000.00, 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 impair a pharmacist's ability to practice pharmacy with reasonable skill or safety.

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

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.

u. Violating any of the grounds for revocation or suspension of a license listed in section...155.13 of The Code."

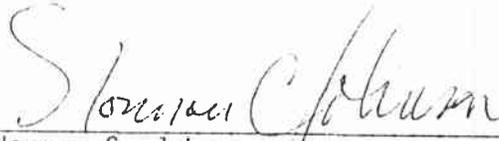
17. That paragraphs 15 and 16 constitute grounds for which Respondent's license to practice pharmacy in the State of Iowa can be suspended or revoked.

WHEREFORE the undersigned charges that Ben C. Hudgens has violated Section 155.13(3); 155.13(8); 155.30; 204.306; 204.308(1); 204.308(3); 401(1) "a," "b" and "c" of the Code of Iowa and Board Rules §620--6.5(1); 10.1(4)"c"; 10.1(4)"d"(2); 10.1(4)"h"; 10.1(4)"j" and 10.1(4)"u" of the Iowa Administrative Code.

IT IS HEREBY ORDERED that Ben C. Hudgens appear before the Iowa Board of Pharmacy Examiners on January 14, 1986, at 9:30 a.m. in the second floor conference room, 1209 East Court, Executive Hills West, 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 Ben C. Hudgens on the 6th day of December 1977, or take whatever additional steps they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of :
BEN C. HUDGENS : STIPULATION
License No. 15159 :

WHEREAS, Ben C. Hudgens, hereinafter referred to as the Licensee, has had certain allegations made against him by the Board of Pharmacy Examiners, hereinafter referred to as the Board, concerning his professional conduct as a pharmacist, and

WHEREAS, the Licensee admits to the allegations made against him, and

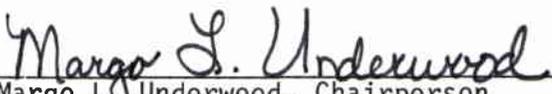
WHEREAS, both the Licensee and the Board desire to arrive at a mutually agreeable informal settlement of this matter,

IT IS MUTUALLY AGREED AND STIPULATED as follows between the Licensee and the Board:

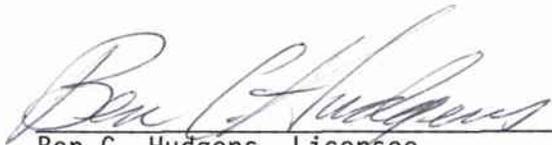
1. That the Board and the Licensee, by and through his attorney Joseph F. McGinn, have entered into settlement discussions and have agreed upon a disposition of this matter.
2. That the Licensee desires to avoid the uncertainty and the expense of a trial and desires to consent to the disciplinary action to be taken by the Board as specified in paragraph 4, infra.
3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1985 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1985 Code of Iowa and the rules of the Board of Pharmacy Examiners promulgated in accordance and pursuant thereto, particularly Section 17A.12 as it relates to contested cases and provides notice of hearing and records, and Section 17A.18, as it relates to the requirements concerning notice of the suspension and revocation of licenses.
4. It is the understanding of both the Licensee and the Board that they will enter into an Order and Consent to Order which will provide for the following:
 - a. Licensee's license to practice pharmacy in Iowa is hereby revoked. Licensee may not request reinstatement before five years. Licensee must surrender all licenses.

- b. Licensee shall take and pass the National Association of Boards of Pharmacy Examination (NABPLEX), or its equivalent, and the Federal Drug Law Exam (FDLE) before his license will be reinstated.
- c. Prior to reinstatement Licensee shall undergo psychiatric evaluation by a Board-appointed psychiatrist who shall furnish a psychiatric report to the Board. The cost of the psychiatric evaluation shall be paid by the Licensee.

THE ABOVE AND FOREGOING CONSTITUTE THE FULL AND COMPLETE STIPULATION AND AGREEMENT OF THE PARTIES HERETO.



Margo L. Underwood, Chairperson
Iowa Board of Pharmacy Examiners



Ben C. Hudgens, Licensee

