

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	COMPLAINT
PAUL T. JACOBSON	}	AND
License No. 14556	}	STATEMENT
Respondent	}	OF CHARGES

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 13th day of December, 1990, and files this Complaint and Statement of Charges against Paul T. Jacobson, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Melba L. Scaglione, Chairperson; Alan M. Shepley, Vice Chairperson; Rollin C. Bridge; Donna J. Flower; Phyllis A. Olson; Marian L. Roberts; and John F. Rode 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 1, 1975, by examination.

3. Respondent currently resides at 593 Columbine Drive, Norwalk, Iowa 50211.

4. Respondent was employed as a pharmacist at Easter's Pharmacy, Lake Center Mall, Centerville, Iowa, from August 26, 1990, to November 5, 1990. Respondent is currently employed as a pharmacist at Cassady Pharmacy, 4505 S.W. 9th, Des Moines, Iowa.

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

6. The Board has received information which indicates that between August 26, 1990, and November 5, 1990, Respondent practiced pharmacy at Easter's Pharmacy in Centerville while under the influence of alcohol. Respondent was discharged from employment at Easter's Pharmacy on November 5, 1990, as a result of those allegations.

7. Respondent is guilty of violating 1989 Iowa Code section 155A.12(1) by virtue of the information contained in paragraph 6.

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.

8. Respondent is guilty of violating of 657 Iowa Administrative Code section 9.1(4)(d)(1) by virtue of the information contained in paragraph 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.

The Iowa Board of Pharmacy Examiners finds that paragraphs 7 and 8 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 1989 Iowa Code section 155A.12(1) and 657 Iowa Administrative Code section 9.1(4)(d)(1).

IT IS HEREBY ORDERED that Paul T. Jacobson appear before the Iowa Board of Pharmacy Examiners on Wednesday, January 16, 1991, at 10:00 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 Paul T. Jacobson on July 1, 1975, 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 (telephone 515/281-6774).

IOWA BOARD OF PHARMACY EXAMINERS

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

Lloyd W. Jessen
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist License of:)	DIA NO. 90 PHB-16
)	
PAUL T. JACOBSON)	FINDINGS OF FACT,
License No. 14556)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

TO: Paul T. Jacobson

A Complaint and Statement of Charges was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners (Board) on December 13, 1990. The complaint alleged that Paul T. Jacobson (Respondent) had violated a number of pharmacy-related statutes and rules. The Complaint and Statement of Charges included the Notice of Hearing which set the hearing for January 16, 1991.

A hearing on the above Complaint and Statement of Charges was held on January 16, 1991, at 10:00 a.m. Present were the following members of the Board: Melba L. Scaglione, Chairperson; John F. Rode; Phyllis Olson; Rollin Bridge, Marian Roberts, and Donna Flower. Thomas McGrane, Assistant Attorney General, appeared on behalf of the state. The Respondent appeared, but was not represented by counsel. Present also were members of the staff of the Board and a court reporter. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, presided. The hearing was closed to the public at the request of the Respondent, pursuant to Iowa Code Section 258A.6(1). After hearing the testimony and examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code Section 21.5(1)"f" (1989) to deliberate. The undersigned administrative law judge was instructed to prepare this Board's Decision and Order.

THE RECORD

The record in this case includes the Complaint and Statement of Charges and Notice of Hearing; the recorded testimony of the witnesses, and the following exhibits:

- State's Exhibit 1: Statement of Larry Phillips, R.Ph.
- State's Exhibit 2: Medicine bottle containing liquid
- State's Exhibit 3: Statement of Vanessa Nicoletto
- State's Exhibit 4: Statement of Mary Susin
- State's Exhibit 5: Investigative Report dated 12/18/90
- State's Exhibit 6: Statement of Debbie Thomas
- State's Exhibit 7: Medical records- Mercy Hospital Medical Center

Licensee's Exhibit A: Consent To Release Alcohol and Drug Abuse Patient Information
Licensee's Exhibit B: Results of urine screen, 12/14/90
Licensee's Exhibit C: Statement of William G. Shirley, M.D.
Licensee's Exhibit D: Laboratory results, Shirley Medical Clinic, 1/15/91
Licensee's Exhibit E: Statement of Don Cassady, R.Ph.
Licensee's Exhibit F: Statement of Donald Cassady, R.Ph.
Licensee's Exhibit G: Statement of Janet Jacobson

FINDINGS OF FACT:

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1975, by examination. Respondent's license is current until June 30, 1992. (official file)

2. Respondent has been employed as a pharmacist at Cassady Pharmacy, 4505 S.W. Ninth, Des Moines, Iowa, since December 10, 1990. He was previously employed at Easter's Pharmacy, Lake Center Mall, Centerville, Iowa, from August 26, 1990, to November 5, 1990.

(Testimony of Respondent, Larry Phillips; Licensee's Exhibits E, F.)

3. In November 1990 the Board received information from employees of Easter's Pharmacy in Centerville, Iowa, that Respondent was suspected of using alcohol while at work. While employed at Easter's, Respondent kept cans of V-8 juice in the refrigerator. Throughout the day he would drink from the cans. Three different employees of Easter's reported smelling alcohol on Respondent's breath on several occasions. Respondent made frequent unexplained trips to his car during the day. He kept a medicine bottle in his suit coat, contents unknown, and wore his coat whenever he went out, regardless of the temperature.

(Testimony of Charles Vandenburg; Kent McMullen; Vanessa Nicoletto; Larry Phillips, Mary Susin; State's Exhibits 1, 3, 4, 6)

4. Two different employees tasted the liquid in the V-8 juice cans and felt it contained mostly vodka. One employee put a sample of the liquid in a medicine bottle and gave it to her boss, Larry Phillips. Mr. Phillips also tasted the liquid and felt it contained alcohol. The medicine bottle was admitted in evidence. The liquid inside had a strong alcohol odor. One employee observed Respondent buying a bottle of vodka at the Hy-Vee store in Centerville on his lunch hour.

(Testimony of Vanessa Nicoletto; Mary Susin; Larry Phillips; State's Exhibits 2, 3, 4, 6)

5. A pharmacist who worked with Respondent at Dahl's Pharmacy from January to August 1990 testified that he had smelled alcohol on Respondent's breath on several occasions. The pharmacist searched for a bottle of alcohol in the pharmacy and found a medicine bottle, which he believed to contain alcohol, after

Respondent left Dahl's employ. A friend of the pharmacist tasted the contents and said it tasted like alcohol. The pharmacist testified that he had no reason to suspect that the bottle belonged to anyone except Respondent.

(Testimony of Kent McMullen)

6. When confronted about his alcohol use by his supervisors at Easter's, Respondent stated that he had not had a drink in several years. Respondent later admitted that he did buy a bottle of vodka at Hy-Vee, but left it in his car to drink in his motel after work. Respondent was terminated at Easter's for his alcohol use. Respondent admits he is an alcoholic, but continues to deny that he used alcohol while he was working. The Board found the testimony of the Easter's employees to be more credible than Respondent's testimony. The employees had no motivation to lie, and their testimony was consistent. Respondent consumed alcohol while he was working. This conclusion is also supported by records from the treatment center.

(Testimony of Larry Phillips, Respondent; Mary Susin, Vanessa Nicoletto, State's Exhibits 1-6)

7. Respondent was unemployed from November 5 to December 10, 1990. Respondent reported to Mercy Alcohol and Drug Recovery Program (MADRP) on November 15, 1990, for screening. Detoxification and treatment were recommended. On November 26, 1990, Respondent admitted himself to MADRP for detoxification. Respondent was intoxicated at the time of admission, having consumed two ounces of alcohol that day. Respondent admitted to being an alcoholic, consuming an average of a pint of alcohol a day, but sometimes as much as a fifth of alcohol. His liquor of choice was vodka, followed by bourbon and gin. At the hearing, Respondent testified that prior to detoxification, he had never stopped drinking, but had merely "slowed down" various times. In 1986, Respondent was convicted of Operating a Motor Vehicle While Intoxicated. He would hide his drinking from his wife, since she disapproved. During detoxification, Respondent suffered alcohol withdrawal syndrome. He was given librium to help the withdrawal symptoms.

(Testimony of Respondent, State's Exhibit 7)

8. Respondent insisted on being discharged from MADRP's inpatient program on November 30, 1990. Respondent refused inpatient treatment referral. Since his release from MADRP, Respondent has not had any individual counseling or treatment. Respondent has attended between one and six Alcoholics Anonymous (AA) meetings each week, depending on what his schedule would allow. He denies that he needs further treatment and feels he can remain sober through attendance at AA, with some individual counseling. In the opinion of the physician at MADRP, Respondent is still in denial of his alcoholism.

(Testimony of Respondent; Charles Vandenburg; State's Exhibit 7)

CONCLUSIONS OF LAW:

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

. . .the Board shall refuse to issue a pharmacist license for failing to meet the requirement 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. 657 Iowa Administrative Code section 9.1(4)(d)(1) provides:

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 addictions 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.

3. 657 Iowa Administrative Code section 9.1(1) and (2) provide in relevant part:

9.1(1) The Board has the authority to impose discipline for any violations of Iowa Code chapters 147, 155A 203, 203A, 204, 205 and 258A or the rules promulgated thereunder.

9.1(2) The Board has the authority to impose the following disciplinary sanctions:

b. Suspension of a registration or of a license to operate a pharmacy or to practice pharmacy until further order of the Board or for a specified period.

d. Prohibit permanently, until further order of the Board, or for a specified period, the engaging in specified procedures, methods, or acts.

e. Probation.

f. Require additional education or training.

h. Order a physical or mental examination.

i. Impose civil penalties not to exceed \$25,000.

k. Such other sanctions allowed by law as may appropriate.

See also Iowa Code Section 155A.15 (1989)

4. The preponderance of the evidence established that the Respondent has violated Iowa Code Section 155A.12 (1989) and 657 I.A.C. 9.1(4)(d)(1) by his habitual intoxication and use of alcohol while working. Respondent's efforts to control his alcoholism have been clearly insufficient given the scope of his problem.

DECISION AND ORDER

THEREFORE, IT IS THE ORDER of the Iowa Board of Pharmacy Examiners that License Number 14556 issued to the Respondent, Paul T. Jacobson, is suspended for a period of one (1) year. However, the suspension is stayed and Respondent is placed on probation for a period of five (5) years upon the following terms and conditions:

1) Within five (5) working days after receipt of the Board's decision, the Respondent shall readmit himself to the Mercy Alcohol and Drug Recovery Program (MADRP) for evaluation, treatment, and structured aftercare, as recommended by the staff of MADRP, and approved by the Board.

Documentation of Respondent's readmission to MADRP shall be forwarded to the Board office within five working days after receipt of the Board's decision. A written plan of the treatment and aftercare program recommended for respondent shall be submitted to the Board for its approval by Respondent and MADRP as soon as it is available.

2) Respondent shall submit to biological fluid testing, at Respondent's cost, at any time it is requested by the Board or its designee.

3) Respondent shall submit monthly written reports to the Board in which he documents, in detail, his progress and verification of his aftercare attendance.

4. MADRP and/or any other counselors involved in Respondent's aftercare program shall submit quarterly written reports to the Board detailing Respondent's progress until he is successfully discharged from their program. MADRP shall promptly notify the Board if Respondent is transferred to any other treatment or aftercare program.

5) Respondent shall be fined two thousand five hundred dollars (\$2,500.00). Within thirty (30) days after receipt of this decision, Respondent shall submit a payment of at least one thousand two hundred and fifty dollars (\$1,250.00). Within ninety (90) days of receipt of this decision, the remainder of the fine shall be paid. If the fine is not paid as ordered, a one hundred dollar (\$100.00) per day penalty will be assessed to the Respondent.

6) Respondent shall not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereinafter licensed by the Board and shall not own any pharmacy.

7) Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

8) Respondent shall submit to peer review as deemed necessary by the Board.

9) Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

10) Respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions, and restrictions imposed on Respondent by said decision.

Within thirty (30) days of the effective date of this decision, 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 the decision in this case.

11) Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

12) Should Respondent leave Iowa to reside or practice outside this state, Respondent must 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.

13) 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 disciplinary order which was stayed. If a petition to revoke probation is filed against the 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.

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

DATED THIS 25th DAY OF JANUARY 1991

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

Margaret LaMarche
Margaret LaMarche
Administrative Law Judge

ML/lcg

