

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	:	EMERGENCY ORDER
	:	AND
BENJY G. KREMENAK	:	COMPLAINT
Lic. No. 15435	:	AND
Respondent	:	STATEMENT OF CHARGES
	:	

Now on this 28th day of October, 1988, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa (license number 15435) on April 10, 1979, by examination.
2. Respondent was issued a license to practice pharmacy in Illinois (license number 051-036707) on August 23, 1987, by reciprocity.
3. Respondent was employed as a staff pharmacist at the Illini Hospital Pharmacy in Silvis, Illinois, beginning December 22, 1987.
4. The Board has received an investigative report from Pharmacy Investigator Eugene K. Lenz of the Illinois Department of Professional Regulation in Chicago, Illinois. That report indicates that Respondent was found in Illinois to be in possession of numerous types and quantities of Schedule II, III, IV, and V controlled substances and noncontrolled prescription drugs which Respondent admitted he had taken without authorization from the Illini Hospital Pharmacy in Silvis, Illinois, and from another Illinois hospital and various pharmacies located in Iowa where Respondent had previously been employed. As a result, Respondent was found to have engaged in the illegal distribution or disposition of controlled substances and noncontrolled prescription drugs in Illinois and Iowa.
5. The same investigative report indicates, to the Board's satisfaction, that the Respondent has admitted to having a history of alcohol abuse and drug dependency.
6. Respondent's license to practice pharmacy in Illinois was voluntarily surrendered to the Illinois Department of Professional Regulation on October 18, 1988, by Respondent. Respondent failed to report this action to the Iowa Board of Pharmacy Examiners.
7. Respondent was terminated as an employee of the Illini Hospital Pharmacy in Silvis, Illinois, on October 4, 1988.
8. On October 5, 1988, Respondent voluntarily admitted himself for

treatment of drug and alcohol dependence to the Riverside Retreat Center at 2701 17th Street in Rock Island, Illinois 61201.

9. Respondent currently resides at 1249 48th Street, Apartment #24, in East Moline, Illinois 61244, and continues to live in that Illinois community which is in close proximity to Scott County, Iowa.

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

11. The information in paragraphs 4 and 5, 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.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Benjy G. Kremenak 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 to issue such order.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Benjy G. Kremenak 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 has also directed the Executive Secretary 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 alleges that:

12. 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.

13. Respondent is guilty of violations of 1987 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), 204.308(3), 204.401(1), 204.402(1), and 204.403(1)(c) 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.

....

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

....

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.

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 prescription drug by:

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

Iowa Code section 204.308(3) provides, in part, the following:

...[A] controlled substance included in schedule III or IV, which is a prescription drug...shall not be dispensed without a written or oral prescription of a practitioner.

Iowa Code section 204.401(1) provides, in part, the following:

Except as authorized by this chapter, it is unlawful for any person to...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...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.

Iowa Code section 204.402(1) provide, 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;...

14. 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.

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

....

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 13 and 14 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(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), 204.308(3), 204.401(1), 204.402(1), and 204.403(1)(c), 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 Benjy G. Kremenak appear before the Iowa Board of Pharmacy Examiners on November 29, 1988, 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 Benjy G. Kremenak on April 10, 1979, 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

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the Emergency)
Order and Complaint and)
Statement of Charges Against)

BENJY G. KREMENAK)
License No. 15435)

Respondent)

DECISION AND ORDER

TO: BENJY G. KREMENAK

An Emergency Order and Complaint and Statement of Charges was filed by the Executive Secretary of the Iowa Board of Pharmacy Examiners on October 28, 1988, alleging that:

1. Respondent was employed as a staff pharmacist at the Illini Hospital Pharmacy in Silvis, Illinois, beginning December 22, 1987.

2. The Board has received an investigative report from Pharmacy Investigator Eugene K. Lenz of the Illinois Department of Professional Regulation in Chicago, Illinois. That report indicates that Respondent was found in Illinois to be in possession of numerous types and quantities of Schedule II, III, IV, and V controlled substances and noncontrolled prescription drugs which Respondent admitted he had taken without authorization from the Illini Hospital Pharmacy in Silvis, Illinois, and from another Illinois hospital and various pharmacies located in Iowa where Respondent had previously been employed. As a result, Respondent was found to have engaged in the illegal distribution or disposition of controlled substances and noncontrolled prescription drugs in Illinois and Iowa.

3. The same investigative report indicates, to the Board's satisfaction, that the Respondent has admitted to having a history of alcohol abuse and drug dependency.

4. Respondent's license to practice pharmacy in Illinois was voluntarily surrendered to the Illinois Department of Professional Regulation on October 18, 1988, by Respondent. Respondent failed to report this action to the Iowa Board of Pharmacy Examiners.

5. Respondent was terminated as an employee of the Illini Hospital Pharmacy in Silvis, Illinois, on October 4, 1988.

6. On October 5, 1988, Respondent voluntarily admitted himself for treatment of drug and alcohol dependence to the Riverside Retreat Center at 2701 17th Street in Rock Island, Illinois 61201.

The Emergency Order and Complaint and Statement of Charges alleged violations of Iowa Code Sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), 204.308(3), 204.401(1), 204.402(1), and 204.403(1)(c) (1987) and 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(k) and 9.1(4)(u).

A hearing on the above Emergency Order and Complaint and Statement of Charges was held on November 29, 1988 at 2:00 p.m. in the State Board Conference Room, Second Floor, Executive Hill West, 1209 E Court, Des Moines, Iowa 50319. Present were the members of the Board, and Thomas McGrane, Assistant Attorney General, who appeared for the State. The Respondent, Benjy G. Kremenak, did not appear, nor was he represented by counsel. Present also were members of the staff of the Board, James Axt, Administrative Law Judge from the Iowa Department of Inspections and Appeals, and a court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was open to the public.

After examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code Section 21.5(1)(f) (1987) to deliberate. The Administrative Law Judge was instructed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Emergency Order and Complaint and Statement of Charges, and the following exhibits:

- Board Exhibit 1: Proof of Service of Emergency Order and Complaint and Statement of Charges.
- Board Exhibit 2: Letter dated November 21, 1988 to the Board from Respondent.
- Board Exhibit 3: Illinois Department of Registration and Education - File Initiation Report dated September 29, 1988 re: Respondent.

FINDINGS OF FACT

1. The Respondent, Benjy G. Kremenak, is a pharmacist licensed under the State of Iowa and issued pharmacist's license number 15435, which is currently under summary suspension and expires June 30, 1990.
(official file)
2. Respondent was issued a license to practice pharmacy in Illinois on August 23, 1987 by reciprocity.
(official file; Exhibit 3)

3. Respondent was employed as a staff pharmacist at the Illini Hospital Pharmacy in Silvis, Illinois, beginning December 22, 1987.

(official file, Exhibit 3)

4. On September 24, 1988 Respondent's roommate, Daniel Owen O'Keefe, left their apartment and took with him a VCR, a television, and a suitcase full of drugs. O'Keefe took the suitcase of drugs from Respondent as compensation for his overpayment of rent to Respondent. After discussing the matter with a priest, O'Keefe gave the suitcase of drugs to the East Moline Police Department. The police inventoried the contents of the suitcase and found 133 containers of prescription drugs. Of the 133, 104 were controlled drugs. The drugs had an average retail prescription price of \$6,108.40. The controlled drugs had an estimated street value of \$22,289.74.

(Exhibit 3)

5. Respondent was interviewed by an investigator from RDCI at the East Moline Police Department on October 4, 1988. Respondent gave the investigator the following information concerning his employment history:

<u>PLACE OF EMPLOYMENT AND DATE</u>	<u>REASON FOR LEAVING</u>
1 - Your Super Drug Ft. Madison, IA Sept. 79 to March 1980	Quit voluntarily to work in a hospital.
2 - Mary Greeley Mem. Hosp. Ames, IA March 1980 to Nov. 1981	Disagreement with supervisor. Asked to resign or be fired.
3 - Broadlawns Mem. Hosp. Des Moines, IA Sept. 1980 to Dec. 1981	Worked part time and voluntarily resigned to work full time.
4 - Marion Health Center Sioux City, IA Dec. 1981 to January 1987	Asked to resign or be fired.
5 - Leeds Pharmacy Sioux City, IA April 1982 to May 1987	Worked part time only. Resigned voluntarily.
6 - Freeman Pharmacy Whiting, IA Jan. 1987	Only worked 4 or 5 times due to the death of the owner.
7 - Gerdes Pharmacy LeMars, IA Jan. 1984 to Sept. 1985	Worked part time only. Left to find full time. No problems.

- | | |
|-----------------------------------------------------------------------|------------------------------------------------------------------------|
| 8 - Mount Drug
LeMars, IA
March 1987 to May 1987 | Left voluntarily, with no problems. Assisted in computer installation. |
| 9 - Freeport Mem. Hosp.
Freeport, IL.
May 1987 to Oct. 1987 | Exceeded legal limits. Asked to resign or be fired. |
| 10- Illini Hosp.
Silvis, IL
Dec. 1987 to present
(Exhibit 3) | Dir. of Phcy. RPh. James Burke not aware of any problems. |

6. The labels on the bottles of the drugs seized indicated that some of them had come from the pharmacies which had employed Respondent. Many of the bottles were unmarked as to origin. Respondent admitted that he had not paid for the drugs and used the phrases "walking off with" "stole," and "theft" to describe his method of obtaining the drugs. Respondent admitted that he had a drug and drinking problem, and stated that his problem with drugs began in 1981.
(Exhibit 3)

7. At the time of the interview, Respondent had never been through any drug or alcohol rehabilitation program. On October 5, 1988 Respondent admitted himself to the Riverside Retreat Center at 2701 17th Street in Rock Island, Illinois for treatment.
(Exhibit 3)

8. On October 18, 1988 Respondent voluntarily surrendered his license to practice pharmacy in Illinois to the Illinois Department of Professional Regulation. Respondent did not report the surrender of his Illinois license to the Iowa Board of Pharmacy Examiners.
(Exhibit 3; official file)

9. On October 28, 1988 the Iowa Board of Pharmacy Examiners issued an Emergency Order and Complaint and Statement of Charges concerning Respondent's license to practice pharmacy in Iowa. The Complaint stated that Respondent currently resides at 1249 48th Street, Apartment #24, East Moline, Illinois, which is in close proximity to Scott County, Iowa. The Board found that the public health, safety, and welfare would be jeopardized if Respondent were allowed to continue in the practice of pharmacy until a hearing could be conducted, and therefore emergency summary license suspension was imperative.
(Exhibit 1)

10. Respondent was served with the Emergency Order and Complaint and Statement of Charges while he was a patient at Riverside Retreat Center on October 31, 1988. On November 23, 1988, the Iowa Board of Pharmacy Examiners received a letter from Respondent acknowledging receipt of the notice. Respondent

stated that he would not be attending the hearing, but asked the Board to consider the surrender of his license.
(Exhibits 1 and 2)

CONCLUSIONS OF LAW

1. Respondent was served with proper notice of hearing but failed to appear at the hearing. The Board proceeded with the hearing and Respondent is bound by the results of the hearing to the same extent as if he was present. 657 Iowa Administrative Code 9.1(12).

2. The Board found that the public health, safety, and welfare imperatively required that the summary suspension of Respondent's license to practice pharmacy in the State of Iowa be continued until this Decision and Order could be prepared and served. Iowa Code Section 17A.18(3).

3. 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.

. . .

5. Violated any provision of the Controlled Substances Act or rules relating to that Act.

. . .

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.

4. 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 prescription drug by:

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

5. Iowa Code section 204.308(3) provides, in part, the following:

. . . [A] controlled substance included in schedule III or IV, which is a prescription drug . . . shall not be dispensed without a written or oral prescription of a practitioner.

6. Iowa Code section 204.401(1) provides, in part, the following:

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

7. 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; . . .

8. Iowa Code section 240.403(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; . . .

9. 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.

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

. . .

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.

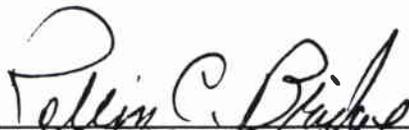
10. The evidence established that Respondent has violated Iowa Code Sections 155A.12(1),(5),(8), and (10); 155A.23(1)(a); 204.308(3); 204.401(1), 204.402(1), and 204.403(1)(c) (1987) and 657 Iowa Administrative Code Sections 9.1(4)(d),(j),(k) and (u).

DECISION AND ORDER

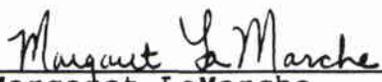
Now, therefore, it is the ORDER of the Iowa Board of Pharmacy Examiners that the license of the Respondent, Benjy G. Kremenak, License No. 15435, is hereby REVOKED. It is further ORDERED that the Respondent may not apply for reinstatement of said license for a period of ten (10) years.

Re: License No. 15435
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Dated this 8th day of December, 1988.



Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners



Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals