

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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Re: Pharmacy License of	}	
MAIN AT LOCUST PHARMACY	}	
License No. 774	}	
Lisa C. Burke,	}	
Pharmacist in charge,	}	
Respondent	}	
		<b>COMPLAINT AND STATEMENT OF CHARGES</b>

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COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 11th day of July, 1990, and files this Complaint and Statement of Charges against Main at Locust Pharmacy, a pharmacy 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 is licensed to operate a pharmacy at 129 West Locust in Davenport, Iowa, and holds license number 774.

3. General pharmacy license number 774, issued in the name of Main at Locust Pharmacy, with Lisa C. Burke as pharmacist in charge, was renewed on December 28, 1989, and is current until December 31, 1990.

4. An inspection of Main at Locust Pharmacy was conducted on November 14, 1989, by Pharmacy Investigators E. Ray Sheldon and James P. Theis. That inspection revealed recordkeeping discrepancies for schedule II controlled substances. As a result, Investigator Sheldon conducted an investigation and accountability audit of selected controlled substances at Main at Locust Pharmacy.

5. The Board has received investigative reports dated December 6, 1989, and February 28, 1990, from Investigator Sheldon. Those reports allege the following:

a. Controlled substance records maintained by Respondent fail to establish receipt and distribution of all controlled substances.

b. Controlled substance records maintained by Respondent are not maintained in a readily retrievable manner in accordance with federal requirements.

c. Controlled substance records maintained by Respondent fail to provide complete accountability between May 1, 1989, and February 22, 1990, for the following schedule II controlled substances:

- (1) Oxycodone ASA tablets;
- (2) Demerol 50mg tablets;
- (3) Dilaudid/Hydromorphone 2mg tablets;
- (4) Dilaudid/Hydromorphone 3mg tablets;
- (5) Dilaudid/Hydromorphone 4mg tablets;
- (6) Codeine 30mg tablets;
- (7) Methylphenidate 20mg tablets;
- (8) Methadone 5mg tablets;
- (9) Seconal 100mg capsules;
- (10) Injectable forms of Demerol 50mg/ml
- (11) Morphine 30mg tablets;
- (12) Morphine powder; and
- (13) Injectable forms of Dilaudid

d. Failure by the pharmacist in charge to properly transfer a schedule II controlled substance between registrants and to properly execute DEA order form 222.

e. Failure by the pharmacist in charge and staff pharmacists to record the amount of medication dispensed on prescriptions.

f. Failure by the pharmacist in charge and staff pharmacists to obtain the prescriber's signature on prescriptions for schedule II controlled substances.

g. Failure by the pharmacist in charge and staff pharmacists to follow regulations pertaining to the dispensing of schedule II controlled substances upon oral authorization of a prescriber in emergency situations.

h. Failure by the pharmacist in charge to provide adequate security over drugs in the prescription department.

i. Failure by the pharmacist in charge to provide effective controls and procedures to guard against theft and diversion of controlled substances. Specifically, laboratory analysis of the following schedule II controlled substances obtained from the Main at Locust Pharmacy revealed the following:

(1) A vial labeled as cocaine hydrochloride powder having a net weight of 24.78 grams was found to be only 52% cocaine hydrochloride;

(2) A vial labeled as cocaine hydrochloride powder having a net weight of 2.52 grams was found to

be only 3% cocaine hydrochloride;

(3) A vial labeled as cocaine flakes having a net weight of 12.8 grams was found to be only 78.9% cocaine.

6. The Board acknowledges receipt of a letter from pharmacist in charge, Lisa C. Burke, dated April 5, 1990. In that letter Ms. Burke attempts to refute many of the allegations made in Investigator Sheldon's reports and offers an explanation for some of the record keeping discrepancies and shortages of schedule II controlled substances.

7. Respondent is guilty of violations of 1989 Iowa Code sections 155A.15(2)(c), 155A.15(2)(h), 155A.15(2)(i), 155A.27(c), 204.306, 204.307, and 204.308 by virtue of the allegations in paragraph 5.

Iowa Code section 155A.15 provides, in part, the following:

2. 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:

....

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

....

h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

Iowa Code section 155A.27 provides the following:

Each prescription drug order issued or filled in this state:

1. If written, shall contain:

a. The date of issue.

b. The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

c. The name, strength, and quantity of the drug, medicine, or device prescribed.

d. The directions for use of the drug, medicine, or device prescribed.

e. The name, address, and signature of the practitioner issuing the prescription.

f. The federal drug enforcement administration number, if required under chapter 204.

2. If oral, the practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner. Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to a written format by recording the information required in a written prescription.

Iowa Code section 204.306 provides, in part, the following:

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.

Iowa Code section 204.307 provides the following:

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

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.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 204.306.

8. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.8, 10.10, 10.11, 10.13(1), and 10.13(4) by virtue of the allegations in paragraph 5.

657 Iowa Administrative Code section 6.8 provides, in part, the following:

Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

(1) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances;

....

(5) Copy 1 of DEA Order Form 222C, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution;

(6) Copy 3 of DEA Order Form 222C shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents;

657 Iowa Administrative Code section 10.10 provides, in part, the following:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

657 Iowa Administrative Code section 10.11 provides, in part, the following:

All prescriptions for controlled substances shall be dated as of, and manually signed on, the day when issued and shall bear the full name and address and registration number of the practitioner. A practitioner must manually sign a prescription in the same manner the practitioner would sign a check or legal document. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by those regulations.

657 Iowa Administrative Code section 10.13 provides, in part, the following:

In the case of an emergency situation, as defined

by 10.13(5), a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription manually signed by the prescribing individual practitioner);

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required except for the signature of the prescribing individual practitioner;

.....

(4) Within 72 hours after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the board if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to do so shall void the authority conferred by this subrule to dispense without a written prescription of a prescribing individual practitioner.

The Iowa Board of Pharmacy Examiners finds that paragraphs 7 and 8 constitute grounds for which Respondent's license to operate a pharmacy in Iowa can be suspended or revoked.

**WHEREFORE**, the undersigned charges that Respondent Main at Locust Pharmacy has violated 1989 Iowa Code sections 155A.15(2)(c), 155A.15(2)(h), 155A.15(2)(i), 155A.27(c), 204.306, 204.307, and 204.308 and 657 Iowa Administrative Code sections 6.8, 10.10, 10.11, 10.13(1), and 10.13(4).

**IT IS HEREBY ORDERED** that Lisa C. Burke appear on behalf of Main at Locust Pharmacy before the Iowa Board of Pharmacy Examiners on Tuesday, August 14, 1990, at 2:00 o'clock 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, revoke, or not renew the license to operate a pharmacy issued to Main at Locust Pharmacy on December 28, 1989, 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 its own. The failure of Respondent to appear could result in the permanent suspension or revocation of its 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



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Lloyd K. Jessen  
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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RE: Pharmacy License of	)	DIA No. 90PHB-8
Main at Locust Pharmacy	)	
License No. 774	)	FINDINGS OF FACT
Lisa C. Burke	)	CONCLUSIONS OF LAW,
Pharmacist in Charge	)	DECISION AND ORDER
Respondent	)	

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A Complaint and Statement of Charges was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on July 11, 1990. The Complaint alleged that the 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 August 14, 1990. The hearing was continued by the Board to October 9, 1990.

A joint hearing on this Complaint and Statement of Charges and a nearly identical Complaint and Statement of Charges filed against the pharmacist license of Lisa C. Burke, was held on October 9, 1990 at 2:00 p.m. Present were the following members of the Board: Melba L. Scaglione, Chairperson; John F. Rode; Phyllis Olson; Rollin Bridge; Marian Roberts; and Alan Shepley. Thomas D. McGrane, Assistant Attorney General, appeared on behalf of the State. The Respondent, Lisa C. Burke, was present and was represented by her counsel, Clarence Christiansen. 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 Licensee, 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, as contained in Findings of Fact, Conclusions of Law, and Order concurrently issued to the pharmacist license of Lisa C. Burke, DIA No. 90PHB-7, and attached hereto, are hereby incorporated as though fully set forth.

FINDINGS OF FACT

The Findings of Fact, as contained in Findings of Fact, Conclusions of Law, and Order concurrently issued to the pharmacist license of Lisa C. Burke, DIA No. 90PHB-7, and attached hereto, are hereby incorporated as though fully set forth.

CONCLUSIONS OF LAW

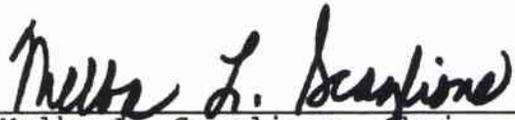
The Conclusions of Law, as contained in Findings of Fact, Conclusions of Law, and Order concurrently issued to the pharmacist license of Lisa C. Burke, DIA No. 90PHB-7, and attached hereto, are hereby incorporated as though fully set forth.

DECISION AND ORDER

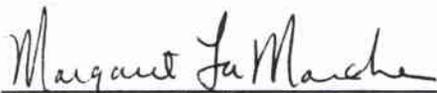
WHEREFORE, IT IS THE ORDER of the Iowa Board of Pharmacy Examiners that License no. 774 issued to Main at Locust Pharmacy, Davenport, Iowa, shall be placed on probation for a period of one year, subject to the following terms and conditions:

1. Within thirty (30) days of the date of this Order, Respondent shall remit a \$1,500.00 civil penalty to the Board office. Failure to pay the penalty within thirty (30) days shall result in a \$100.00 per day penalty.
2. During the period of probation, Respondent shall cooperate with quarterly inspections of Main at Locust Pharmacy by a board investigator. The board investigator shall submit written inspection reports to the Board.
3. A perpetual inventory shall be maintained and monthly audits performed of all schedule II controlled drugs. Any discrepancies shall be immediately reported to the Board office.

Dated this 25<sup>th</sup> day of October, 1990.



Melba L. Scaglione, Chairperson  
Iowa Board of Pharmacy Examiners



Margaret LaMarche  
Administrative Law Judge