

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	EMERGENCY ORDER
KEVIN J. O'ROURKE	}	AND
License No. 15064	}	COMPLAINT AND
Respondent	}	STATEMENT OF CHARGES

NOW on this 24th day of August, 1990, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1977, by examination.

2. Respondent was employed as the pharmacist in charge at Ellsworth Municipal Hospital, 110 Rocksylvania Avenue, Iowa Falls, Iowa 50126, from June 4, 1990, to August 9, 1990.

3. Respondent has admitted to the Board that while practicing pharmacy during the period of June 15, 1990, through August 10, 1990, he used, without prescriber authorization, the following approximate amounts of schedule II controlled substances which he obtained from the Ellsworth Municipal Hospital Pharmacy: 50 tablets of Dilaudid 1mg; 25 tablets of Dilaudid 2mg; 20 tablets of Demerol 50mg; 25 capsules of Tylox; 15 tablets of Methadone 5mg; and 20 grams of Cocaine HCl. Respondent has indicated that he did occasionally take narcotics while on duty as a pharmacist to relieve pain associated with his multiple sclerosis and to "get through the day." Respondent resigned from his position as pharmacist in charge at the Ellsworth Municipal Hospital on August 10, 1990.

4. Respondent was hospitalized as an inpatient at Mary Greeley Medical Center in Ames, Iowa, from August 13, 1990, to August 17, 1990. Respondent's final medical diagnosis was (1) atypical depression and (2) narcotic abuse and use.

5. The Board has received an investigative report from Pharmacy Investigator Charles H. Vandenburg dated August 20, 1990. That report indicates that Pharmacy Investigator Gary D. Ebeling and Investigator Vandenburg conducted an accountability audit of all schedule II controlled substances kept at the Ellsworth Municipal Hospital Pharmacy for the time period beginning June 4, 1990, and ending August 21, 1990. The accountability audit revealed the following shortages of schedule

II controlled substances:

- (a) 5 tablets of Ritalin 5mg
- (b) 4 vials of Cocaine HCl topical solution 4ml
- (c) 9 tablets of Methadone 5mg
- (d) 129 tablets of Meperidine 50mg
- (e) 30 tablets of Levo-Dromoran 2mg
- (f) 14 tablets of Dilaudid 2mg
- (g) 64 tablets of Dilaudid 1mg
- (h) 20.51 grams of Cocaine HCl flakes
- (i) 10 tablets of MS Contin 30mg
- (j) 3 capsules of Seconal Sodium 50mg
- (k) 175 ml of Morphine Oral Solution 10mg/5ml

6. Respondent currently resides at 404 Rocksylvana Avenue, Iowa Falls, Iowa 50126.

7. Respondent's license to practice pharmacy in Iowa is current until June 30, 1991.

8. This information, along with additional 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 Kevin J. O'Rourke 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 Kevin J. O'Rourke 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 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:

9. 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.

10. 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 information and allegations contained in paragraphs 3, 4, and 5.

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 prescription 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, forg-

ery, deception or subterfuge;...

11. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the information and allegations contained in paragraphs 3, 4, and 5.

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:...

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 10 and 11 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 sections 155A.12(1), 155A.12(5), 155A.23(1)(a), 204.308(1), 204.402(1)(a), 204.403(1)(c), and 657 Iowa Administrative Code sections 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u).

IT IS HEREBY ORDERED that Kevin J. O'Rourke appear before the Iowa Board of Pharmacy Examiners on Tuesday, October 9, 1990, 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 Kevin J. O'Rourke on July 1, 1977, 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


Lloyd R. Jessen
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist License of	)	DIA No. 90PHB-13
KEVIN J. O'ROURKE)	
License No. 15064	)	FINDINGS OF FACT
Respondent	)	CONCLUSIONS OF LAW
	)	DECISION AND ORDER

TO: KEVIN J. O'ROURKE

An Emergency Order and Complaint and Statement of Charges was filed by Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners on August 24, 1990. The Complaint alleged that Respondent had violated a number of pharmacy-related statutes and rules and alleged that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa. The Board found that the public health, safety, and welfare made emergency summary license suspension imperative, and directed the Executive Secretary to issue such an order.

The Emergency Order and Complaint and Statement of Charges included the Notice of Hearing which set the hearing for October 9, 1990 at 10:00 a.m. in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa. Present were the following members of the Board: Melba L. Scaglione, Chairperson; John F. Rode; Phyllis Olson; Rollin Bridge; Alan M. Shepley; and Marian L. Roberts. Thomas D. McGrane, Assistant Attorney General, appeared on behalf of the State. The Respondent, Kevin J. O'Rourke, appeared but was not represented by counsel. Respondent was accompanied by his personal physician Joseph A. Brunkhorst. 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 the 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 Board returned to open session to take their final action, and were then informed that additional information which they were requesting was available. The Board reopened the record to accept Exhibits D and E and heard explanatory testimony. The Board then reconvened in closed session to further 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 Emergency Order and Complaint and Statement of Charges, the recorded testimony of the witnesses, and the following exhibits:

- State's Exhibit A: Investigative Report of Charles H. Vandenburg dated August 20, 1990.
- State's Exhibit B: Records from Mary Greeley Medical Center.
- State's Exhibit C: MMP1-2 Adult Clinical System Interpretive Report.
- State's Exhibit D: Psychological notes from Mary Greeley Medical Center.
- State's Exhibit E: MMP1-2, Progress and Nursing Notes from Mary Greeley Medical Center.

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on July 1, 1977, by examination. Respondent's license is current until June 30, 1991. (Official file).
2. Respondent has admitted to the Board that while practicing pharmacy during the period of June 15, 1990, through August 10, 1990, he used, without prescription authorization, the following approximate amounts of schedule II controlled substances which he obtained from the Ellsworth Municipal Hospital Pharmacy: 50 tablets of Dilaudid 1mg; 25 tablets of Dilaudid 2mg; 20 tablets of Demerol 50mg; 25 capsules of Tylox; 15 tablets of Methadone 5mg; and 20 grams of Cocaine HCl. Respondent has indicated that he did occasionally take narcotics while on duty as a pharmacist to relieve pain associated with his multiple sclerosis and to "get through the day." Respondent resigned from his position as pharmacist in charge at the Ellsworth Municipal Hospital on August 10, 1990. (Testimony of Respondent; State's Exhibit A).
3. Respondent was hospitalized as an inpatient at Mary Greeley Medical Center in Ames, Iowa, from August 13, 1990, to August 17, 1990. Respondent's final medical diagnosis was (1) atypical depression and (2) narcotic abuse and use. (Testimony of Respondent; Joseph Brunkhorst, M.D., State's Exhibits B, C, D, E).
4. The Board has received an investigative report from Pharmacy Investigator Charles H. Vandenburg dated August 20, 1990. That report indicates that Pharmacy Investigator Gary D. Ebeling and Investigator Vandenburg conducted an accountability audit of all schedule II controlled substances kept at the Ellsworth Municipal Hospital Pharmacy for the time period beginning June 4, 1990, and ending August 21, 1990. The accountability audit revealed the following shortages of schedule II controlled substances:

- (a) 5 tablets of Ritalin 5mg
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- (i) 10 tablets of MS Contin 30 mg
- (j) 3 capsules of Seconal Sodium 50mg
- (k) 175 ml of Morphine Oral Solution 10mg/5ml

(State's Exhibit A).

5. Respondent testified that he has not taken any schedule II controlled drugs since his hospitalization. Both Respondent and his personal physician stated that they felt the drug use would not re-occur. Respondent attributed his drug use to his pain from MS, financial pressures, work and family related stress. If allowed to return to the practice of pharmacy, he would not seek a high stress position such as a directorship of a hospital pharmacy. Respondent feels that he has learned from this experience, and would know where to go for help when he experiences the same pressures in the future. (Testimony of Respondent; Joseph Brunkhorst, M.D.).

6. Following evaluation, Respondent's physician at Mary Greeley Medical Center recommended that Respondent's license to practice pharmacy be placed on a period of probation with random screenings of urine. He concluded that "it would make some sense to allow him (Respondent) to return to pharmacy practice in a supervised manner fairly quickly." (State's Exhibit B).

CONCLUSIONS OF LAW

1. 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 an 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 prescription 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; . . .

2. 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: . . .

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.

3. The preponderance of the evidence established that Respondent has violated Iowa Code sections 155A.12(1) and (5), 155A.23(1)(a), 204.308(1), 204.402(1)(a) and 204.403(1)(c) and 657 Iowa Administrative Code 9.1(4)"h" when he diverted schedule

II controlled substances from the pharmacy where he worked for his own use, and without a prescription from a duly licensed practitioner.

4. The preponderance of the evidence established that the Respondent violated 657 Iowa Administrative Code 9.1(4)"m" by his illegal use of schedule II controlled drugs while he was working as a pharmacist.

DECISION AND ORDER

WHEREFORE, IT IS THE ORDER of the Iowa Board of Pharmacy Examiners that License Number 15064 issued to the Respondent, Kevin J. O'Rourke, shall be placed on probation for a period of three (3) years, subject to the following terms and conditions:

1. Respondent shall continue under the psychiatric care of Dr. Jack Dodd, M.D., or a board-certified psychiatrist, until Dr. Dodd or the psychiatrist recommend the discontinuance of treatment, and that recommendation is accepted by the Board.
2. Respondent shall abstain from the use of controlled drugs except those prescribed by a duly licensed practitioner. Respondent shall notify the Board of any controlled drugs so prescribed.
3. Respondent shall initiate counseling for stress reduction and substance abuse. Respondent shall continue such counseling until the counselor recommends discontinuance of counseling and that recommendation is accepted by the Board.
4. Within thirty days of the date of this Order, Respondent shall submit the names of all counselors and a detailed aftercare program to the Board.
5. Respondent shall attend any aftercare support groups as recommended by his counselor.
6. Respondent shall submit to random urine screenings at the following frequency: Monthly for the first year of probation, quarterly for the second year, and at the discretion of the Board thereafter. The costs of the urine screenings will be paid by the Respondent.
7. Respondent and all of his counselors shall submit quarterly written progress reports to the Board.
8. Respondent is prohibited from serving as the pharmacist-in-charge during his period of probation.
9. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

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

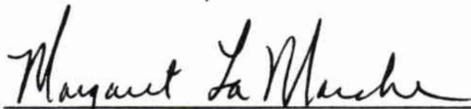
13. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation, and issue other disciplinary sanctions. If a petition to revoke probation is filed against the Respondent during probation, the Board shall have continuing 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 October, 1990.



Melba L. Scaglione, Chairperson
Iowa Board of Pharmacy Examiners



Margaret LaMarche
Administrative Law Judge

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

Re:	)	Case No. 2006-104
Pharmacist License of)	
KEVIN J. O'ROARKE,	)	STATEMENT OF CHARGES
License No. 15064,)	
Respondent.)	

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners (hereinafter referred to as the "Board") and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2005).
3. On July 1, 1977, the Board issued Respondent, Kevin J. O'Roarke, by examination, a license to engage in the practice of pharmacy in Iowa, as evidenced by license number 15064, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license is current and active through June 30, 2007.
5. Respondent's address is 404 Rocksylvana, Iowa Falls, IA 50126 or 11719 269th Avenue Northwest, Zimmerman, MN 55398.

A. CHARGES

COUNT I – VIOLATING ANOTHER STATE'S LAWS RELATING TO PHARMACY

Respondent is charged with violating the laws of the state of Minnesota which relate to the practice of pharmacy and the distribution of prescription drugs in violation of Iowa Code §§ 155A.12(1) and 155A.12(8) (2007) and 657 Iowa Administrative Code §§ 36.1(4)(j) and 36.1(4)(ad).

COUNT II – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

COUNT III – INABILITY TO PRACTICE PHARMACY DUE TO CHEMICAL ABUSE

Respondent is charged with the inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse in violation of Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code §§ 36.1(4)(d) and 36.1(4)(m).

B. CIRCUMSTANCES

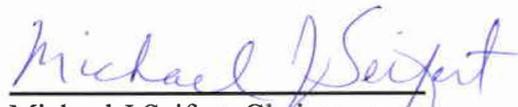
Circumstances supporting the above charges are set forth in Attachment A.

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.



Lloyd K. Jessen
Executive Secretary/Director

On this 13th day of March 2007, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Michael J Seifert, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

VOLUNTARY SURRENDER OF PHARMACIST LICENSE

I, Kevin J. O'Roarke, a resident of Zimmerman, MN., of my own free will and without any mental reservation and not as a result of any inducement, promise or threat on the part of anyone, do hereby voluntarily surrender my State of Iowa pharmacist license, number 15064, to the Iowa Board of Pharmacy Examiners, for an indefinite period of time. This surrender of license shall become effective upon my notarized signature being affixed to this voluntary surrender document.

I, Kevin J. O'Roarke, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat by any representative, officer, or employee of the Iowa Board of Pharmacy Examiners, or by any other state official, do hereby further acknowledge that by signing this surrender statement I am knowingly and willingly giving up my right to exercise the following legal rights:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy Examiners on the matter of my continued licensure as a pharmacist pursuant to Iowa Code Chapter 155A (2007).
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) My right to submit evidence and to have witnesses called on my own behalf at formal hearing.

I, Kevin J. O'Roarke, do hereby further acknowledge that, pursuant to 657 Iowa Administrative Code § 36.15, a pharmacist license which has been voluntarily surrendered shall be considered a revoked license with respect to any future request for reinstatement. Any request for reinstatement will be handled under terms established by 657 Iowa Administrative Code § 36.13, which provides:

Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for

reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

36.13(2) Pharmacist license revoked or surrendered--examinations required. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multi-state Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license, registration, or permit. The application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or surrendered. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 36.14(17A, 124B, 147, 155A, 272C).

36.13(4) Burden of proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) Order. An order for reinstatement shall be based upon a decision that incorporates findings of facts and conclusions of law and shall be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657--Chapter 14.

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

Re:	)	ORDER
Pharmacist License of	)	ACCEPTING
KEVIN J. O'ROARKE	)	SURRENDER OF
License No. 15064	)	PHARMACIST LICENSE

COMES NOW, Paul Abramowitz, Chairperson of the Iowa Board of Pharmacy, on the 5th day of June, 2007, and declares that:

1. On May 22, 2007, Respondent executed a voluntary surrender of his pharmacist license number 15064.

3. On June 5, 2007, the Board reviewed Respondent's voluntary surrender of his pharmacist license and agreed to accept it.

This surrender, pursuant to 657 Iowa Administrative Code § 36.15, shall be considered a revoked license with respect to any future request for reinstatement. Any request for reinstatement will be handled under terms established by 657 Iowa Administrative Code § 36.13.

WHEREFORE, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacist license number 15064 is hereby accepted.

IOWA BOARD OF PHARMACY



PAUL ABRAMOWITZ, Chairperson

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	CASE NO: 2006-104
Pharmacist License of	)	DIA NO: 11PHB015
)	
KEVIN J. O'ROURKE	)	FINDINGS OF FACT,
License No. 15064	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On June 28, 2011, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Kevin J. O'Rourke (Respondent). The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; DeeAnn Wedemeyer Oleson; Mark Anliker; James Miller; and LaDonna Gratias. Respondent appeared and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2011), and was recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the written decision for Board approval, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; testimony of Respondent; and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

1. On July 1, 1977, the Board issued Respondent license number 15064 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. On October 25, 1990, the Board issued Findings of Fact, Conclusions of Law, Decision and Order that placed Respondent's license on probation for three (3) years, subject to terms and conditions. This discipline was based on findings that Respondent diverted Schedule II controlled substances from the pharmacy where he worked and illegally used the controlled substances while working as a pharmacist. Respondent was required to abstain from the use of controlled substances unless properly prescribed, to continue under psychiatric care and to continue to obtain counseling, to

attend aftercare support groups, and to have random urine screenings. (State Exhibits 1, 2)

2. On March 13, 2007, the Board filed a second Statement of Charges asserting that Respondent: violated Minnesota law while practicing in that state as a pharmacist, was professionally incompetent, and was unable to practice pharmacy with reasonable skill and safety due to chemical abuse. The Statement of Charges alleged that Respondent opened capsules of Adderal (a controlled substance) and removed the active ingredient prior to dispensing the capsules to patients. Respondent surrendered his Minnesota license on August 11, 2006. On June 5, 2007, the Iowa Board accepted Respondent's voluntary surrender of his Iowa license. The Order Accepting Surrender of Pharmacist License states that the surrender shall be considered a revoked license with respect to any future request for reinstatement. (State Exhibits 3, 4, 5; 657 IAC 36.15)

3. On May 3, 2011, Respondent filed a request to reinstate his Iowa pharmacist license. (State Exhibit 6).

4. Respondent appeared before the Board at a reinstatement hearing on June 28, 2011. Respondent provided only his own testimony to support his reinstatement application. In his testimony at hearing, Respondent:

- Admitted that he removed the active ingredient from Adderal capsules, used the controlled substance himself, and put the capsules back together prior to dispensing them to patients. Respondent reported that he tampered with ten bottles containing 100 capsules each over a period of about three weeks before his activities were detected on a security tape. Respondent pled guilty to a federal felony (Tampering with Drugs) and was sentenced to two years' probation;
- Reported that he attended treatment at Recovery Plus in St. Cloud, Minnesota for six or seven weeks beginning in July 2006, as a condition of his probation. Respondent reports that after completing treatment he lost his desire to use drugs through prayer. Respondent does not attend Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) because he has not found the meetings to be helpful to his recovery. Respondent attends church and bible study and meets with his physician every six months;

- Denied any current use of drugs or alcohol. Respondent reports that he passed all drug tests during his probation and two pre-employment drug tests after his release from probation. Respondent did not submit any documentation of drug testing;
- Reported that he has worked a variety of manual labor jobs over the past five years. When Respondent was laid off from a construction job for five months starting in late November 2007, his probation officer asked him to return to treatment to help avoid a relapse. Respondent reports that he complied with this request and completed a three-week outpatient treatment program even though he was not using drugs;
- Reported that he received an early discharge from probation in May 2008. Respondent did not submit any records of his discharge from probation;
- Recently started a new sales job in a field unrelated to pharmacy. Respondent has no plans to return to the practice of pharmacy if his license is reinstated. When asked why he wanted to reinstate his license if he had no plans to use it, Respondent replied that he had been receiving pressure from his relatives to seek reinstatement, that he did not like the feeling that he has failed, and that he wanted to clear his name.

(Testimony of Respondent)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if the license...was voluntarily surrendered, an initial application for

reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

36.13(2) *Pharmacist license revoked or surrendered-examinations required.* A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) *Proceedings.* The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board...

36.13(4) *Burden of Proof.* An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) *Order.* An order for reinstatement shall be based upon a decision that incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

The Board's rules establish a heavy burden on persons seeking reinstatement of a revoked or surrendered license. The person seeking reinstatement must present persuasive evidence that they have fully addressed the problems leading to the loss of their license and that it is in the public interest for the license to be reinstated. Respondent's presentation at hearing failed on both counts. Although Respondent testified that he has been discharged from his criminal probation, has twice completed chemical dependency treatment, and has been drug free for five years, he presented no documentation to support his testimony. Respondent did not provide his treatment records or the aftercare recommendations made by his treatment programs. Respondent is not attending NA or AA, which are typically the cornerstone of any substance abuse recovery program. In addition, Respondent expressed no desire or plan to return to the practice of pharmacy if he succeeds in having his license reinstated.

DIA No. 11PHB015

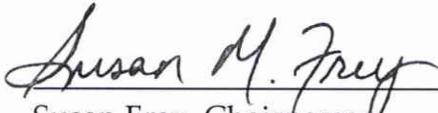
Page 5

Respondent has failed to establish, by a preponderance of the evidence, that the reason for the voluntary surrender of his license no longer exists or that it is in the public interest for his license to be reinstated.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for reinstatement, filed by Respondent Kevin J. O'Rourke, is hereby DENIED.

Dated this 13th day of July, 2011.



Susan Frey, Chairperson
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
	)	Docket No. 2006-104
Request for Reinstatement of	)	DIA No. 13PHB057
Pharmacist License)	
KEVIN J. O'ROURKE)	
License No. 15064,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On January 13, 2014, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Kevin J. O'Rourke. The following members of the Board presided at the hearing: Edward Maier, Chairperson; James Miller; LaDonna Gratias; Susan Frey; Judith Trumpy; and Sharon Meyer. Respondent appeared and was self-represented. Assistant attorney general Meghan Gavin represented the State. The hearing was closed to the public at the election of Respondent, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Laura Lockard assisted the Board in conducting the hearing and was instructed to prepare the Board's written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Revised Notice of Hearing; the testimony of Respondent; State's Exhibits 1 through 8; Respondent's letter requesting reinstatement; and Respondent's Exhibit A.

FINDINGS OF FACT

Respondent was issued a license to practice pharmacy in Iowa on July 1, 1977, by examination. Respondent was employed as the pharmacist in charge at Ellsworth Municipal Hospital in Iowa Falls, Iowa from June, 1990 to August, 1990. (Exh. 1).

On August 24, 1990, the Board issued an Emergency Order and Complaint and Statement of Charges. The Emergency Order alleged that Respondent had admitted to the Board that he used, without prescriber authorization, a large amount of schedule II controlled substances that he obtained from the Ellsworth Municipal Hospital Pharmacy. Respondent also admitted to the Board that he occasionally took narcotics while on duty as a pharmacist to relieve pain associated with multiple sclerosis and to "get through the day." (Exh. 1).

The Emergency Order also alleged that Respondent resigned from his position as pharmacist in charge at Ellsworth Municipal Hospital on August 10, 1990. He was hospitalized as an inpatient at Mary Greeley Medical Center in Ames, Iowa from August 13 through August 17, 1990 with diagnoses of atypical depression and narcotic abuse and use. (Exh. 1).

Via the Emergency Order, the Board temporarily suspended Respondent's license until such time as a hearing before the Board could be conducted. (Exh. 1).

A hearing before the Board was held on October 9, 1990. Respondent admitted that he had taken the controlled substances that were found missing when the pharmacy where he was employed conducted an audit. The Board issued an order dated October 25, 1990 placing Respondent's license on probation for a period of three years with a number of conditions, including continued psychiatric care, abstention from use of controlled substances, counseling for stress reduction and substance abuse, and random urine screenings. (Exh. 2).

On August 11, 2006, Respondent surrendered his Minnesota pharmacist license. In conjunction with the surrender, Respondent admitted that, while practicing in Minnesota, he violated Minnesota state law regulating the dispensation of controlled substances. Specifically, Respondent was alleged to have violated Minnesota law by opening capsules of Adderal, a controlled substance, and removing the active ingredient prior to dispensing the capsules. (Exh. 3).

The Board filed a Statement of Charges against Respondent on March 13, 2007 charging him with three counts: 1) violating another state's laws relating to pharmacy; 2) lack of professional competency; and 3) inability to practice pharmacy due to chemical abuse. The Board accepted Respondent's voluntary surrender of his Iowa pharmacist license by order dated June 5, 2007. (Exh. 3, 4, 5).

Respondent previously filed an Application for Reinstatement in May, 2011. At the hearing regarding that application, Respondent admitted that during his employment in Minnesota he removed the active ingredient from Adderal capsules, used the controlled substance himself, then put the capsules back together prior to dispensing them to patients. Respondent reported that he tampered with 10 bottles each containing 100 capsules over a period of approximately three weeks before his activities were detected on a security tape. Respondent pled guilty to a federal felony (Tampering with Drugs) and was sentenced to two years' probation. (Exh. 8).

Respondent asserted at the 2011 reinstatement hearing that he had no plans to return to the practice of pharmacy if his license was reinstated. Respondent stated he had been receiving pressure from his relatives to seek reinstatement, that he did not like the feeling that he had failed, and that he wanted to clear his name. (Exh. 8).

The Board denied Respondent's 2011 application for reinstatement by decision dated July 13, 2011. The Board noted that Respondent had not presented any documentation to support his testimony regarding discharge from probation, chemical dependency

treatment, and his allegedly drug-free status. Respondent did not provide any treatment records or aftercare recommendations made by the treatment programs. The Board concluded that Respondent failed to establish by a preponderance of the evidence that the reason for the voluntary surrender of his license no longer exists or that it is in the public interest for his license to be reinstated. (Exh. 8).

On September 12, 2013, Respondent filed the Application for Reinstatement that is the subject of this proceeding. In his application, Respondent asserts that permission to have his license reinstated has become very important to him. Along with the application, Respondent submitted a one-page Recovery Plus Admission Note from St. Cloud hospital and a three-page discharge summary from St. Cloud Hospital. Both documents show a date of admission of July 10, 2006 and a date of discharge of August 17, 2006. (Exh. A).

The admission note indicates that Respondent attended full-day intensive outpatient treatment. The discharge summary indicates that immediately prior to admission Respondent's drug of choice was amphetamines; prior to his use of amphetamines, Respondent had been a daily cocaine user. He also reported using other opiates, non-prescribed methadone, benzodiazepines, and marijuana. Respondent was given a UA at admission and random UAs throughout his stay, which were all negative. The summary indicates that Respondent identified that dispensing any medications would be a "relapse sign" for him. (Exh. A).

The discharge summary made the following continuing care recommendations for Respondent: 1) remain clean and sober, attend AA/NA and find a sponsor; 2) read recovery materials; 3) find meaningful employment; 4) attend continuing care at Recovery Plus on Tuesday evenings. With regard to prognosis, the discharge summary provides:

Prognosis for this client is good in the short-term, should he follow through with his continuing care plan. His long-term prognosis is fully contingent on his developing a lifestyle that incorporates a 12-step style of living.

(Exh. A).

At hearing, Respondent testified that for the last eight years he has worked for a construction company in Wisconsin. He has not been engaged in the practice of pharmacy during that time. Recently he has taken a number of continuing education courses in order to prepare to practice pharmacy again.

In response to questions regarding maintenance of sobriety, Respondent testified that he has not had time in the summers to go to AA or NA meetings because of his work schedule; in the winter, Respondent testified that he was not practicing pharmacy so he did not figure he needed to attend meetings. Respondent stated that his Christian faith helps him to maintain sobriety. Respondent stated if he is allowed to practice pharmacy again, he will attend meetings. Respondent stated that he did a continuing education

course on pharmacists with addiction and learned he has no chance if he does not go to meetings.

While Respondent testified that he fully complied with his federal probation and has now been discharged from probation, he did not provide any documentation to support his testimony.

In response to a question about why, after having indicated he had no intention to practice pharmacy again when he applied for reinstatement in 2011, he subsequently decided to get back into practicing pharmacy, Respondent replied that he wanted to clean up his name and did not want his children and grandchildren to see him never get back into good standing as a pharmacist.

CONCLUSIONS OF LAW

The Board's regulations regarding reinstatement provide, in relevant part:

657-36.13 Reinstatement. Any person whose license to practice pharmacy . . . has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

...

36.13(4) Burden of proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

The Board's rules place a heavy burden on persons seeking reinstatement of a revoked or surrendered license. In this instance, the Board cannot conclude that Respondent has met this burden. Respondent's substance abuse problem led to probation of his license in Iowa, then to voluntary surrender of his license in Minnesota and Iowa following conviction of a federal felony drug charge. Respondent has acknowledged his substance abuse problem and asserts that he has been managing it through his faith. The Board does not have enough information to determine whether Respondent is currently able to safely practice pharmacy. In order to make this determination, the Board typically would look for a current substance abuse evaluation that concludes

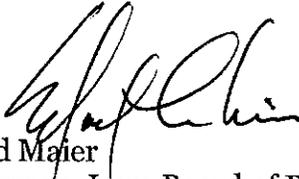
Respondent is competent to practice pharmacy. The last documentary evidence regarding his substance abuse treatment that Respondent provided is from 2006; this information is not sufficient for the Board to conclude that Respondent's license to practice pharmacy should be reinstated.

Respondent has failed to establish by a preponderance of the evidence that the basis for the voluntary surrender of his license no longer exists and that it will be in the public interest for his license to be reinstated.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for reinstatement filed by Respondent Kevin O'Rourke is DENIED.

Dated this 12th day of March, 2014



Edward Maier
Chairperson, Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General
Kevin O'Rourke

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	CASE NO: 2006-104
Pharmacist License of	)	DIA NO: 15PHB021
)	
KEVIN J. O'ROURKE	)	FINDINGS OF FACT,
License No. 15064	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On November 3, 2015, a hearing was held before the Iowa Board of Pharmacy (Board) on the Reinstatement Application filed by Kevin J. O'Rourke (Respondent). The following members of the Board presided at the hearing: James Miller, Chairperson; Edward Maier; Edward McKenna; Sharon Meyer; Jason Hansel; and LaDonna Gratias. Assistant Attorney General Meghan Gavin represented the state. Respondent appeared and was self-represented. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2015), and was recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the written decision for Board approval, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; testimony of Respondent; State Exhibits 1-9 (See Exhibit Index for description) and Respondent Exhibits A-F.

FINDINGS OF FACT

1. On July 1, 1977, the Board issued Respondent license number 15064 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board.

On October 25, 1990, the Board issued Findings of Fact, Conclusions of Law, Decision and Order that placed Respondent's license on probation for three (3) years, subject to terms and conditions. This discipline was based on findings that Respondent diverted Schedule II controlled substances from the pharmacy where he worked and illegally used the controlled substances while working as a pharmacist. Respondent was

required to abstain from the use of controlled substances unless properly prescribed, to continue under psychiatric care and to continue to obtain counseling, to attend aftercare support groups, and to have random urine screenings. (State Exhibits 1, 2, 6)

2. On March 13, 2007, the Board filed a second Statement of Charges asserting that Respondent had violated Minnesota law while practicing in that state as a pharmacist, was professionally incompetent, and was unable to practice pharmacy with reasonable skill and safety due to chemical abuse. The Statement of Charges alleged that Respondent opened capsules of Adderall (a controlled substance) and removed the active ingredient prior to dispensing the capsules to patients. Respondent had surrendered his Minnesota license on August 11, 2006. On June 5, 2007, the Iowa Board accepted Respondent's voluntary surrender of his Iowa license. The Order Accepting Surrender of Pharmacist License stated that the surrender shall be considered a revoked license with respect to any future request for reinstatement. (State Exhibits 3, 4)

3. On May 3, 2011, Respondent filed his first request to reinstate his Iowa pharmacist license following the voluntary surrender. The Board denied that request following an evidentiary hearing. (State Exhibit 6).

4. On September 12, 2013, Respondent filed his second request to reinstate his Iowa pharmacist license. Once again, the Board denied Respondent's reinstatement request following an evidentiary hearing. The Board concluded that Respondent had not presented sufficient evidence to establish that he was currently able to practice pharmacy safely. Respondent had not submitted a current substance abuse evaluation and the most recent documentary evidence concerning Respondent's substance abuse was from his treatment program in 2006. (State Exhibit 7)

5. On September 10, 2015, Respondent filed his third reinstatement request. (Notice of Hearing). At hearing, Respondent submitted the following documentation:

a) A written report from a substance abuse evaluation that was completed on August 7, 2015. The evaluation report concluded that Respondent does not currently meet the criteria for a substance abuse disorder. The evaluator did not recommend any treatment for Respondent. (State Exhibit 8)

b) A letter from Respondent's family physician for the past five years. The letter was dated October 13, 2015 and states that Respondent has not shown any narcotic seeking behavior and has not had any further instances of substance abuse, to the best of his physician's knowledge. Respondent's physician asked the Board to consider allowing Respondent to return to the practice of pharmacy. (Respondent Exhibit B)

c) Verification of Respondent's attendance at Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings during the past four months. (Respondent Exhibits C-F)

6. Respondent has been employed in construction since 2006. The work is seasonal, and Respondent is currently laid off. If Respondent is allowed to return to the practice of pharmacy, he hopes to eventually gain employment as a relief pharmacist in the Iowa City area. In preparation for returning to the profession, Respondent has completed approximately 120 hours of continuing education in the last eighteen months. Respondent has been attending AA and NA and has been working through the 12 steps. Respondent testified that he last used controlled substances, not properly prescribed, in June 2006. Respondent further testified that he has had an occasional beer since that time but that he stopped drinking alcohol on June 27, 2015. Respondent reports that he receives support for maintaining his sobriety from his church, his family, and his fellow members of AA. (Respondent testimony)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if the license...was voluntarily surrendered, an initial application for

reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

36.13(2) Pharmacist license revoked or surrendered-examinations required. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board...

36.13(4) Burden of Proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) Order. An order for reinstatement shall be based upon a decision that incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

The Board's rules establish a heavy burden on a person seeking reinstatement of a revoked or surrendered license. The applicant for reinstatement must present persuasive evidence that the issues leading to the loss of the license have been fully resolved and that it is in the public interest for the license to be reinstated. Upon reviewing the record, the Board was persuaded that Respondent has resolved the issues that led to the surrender of his license and is now ready to begin the process to return to the practice pharmacy. Due to the length of time (over 9 years) that Respondent has been away from pharmacy practice, the Board has determined that Respondent will be required to complete a 500 hour internship, under supervision, prior to being allowed to sit for the NAPLEX and MPJE examinations. During this time, Respondent will be monitored by the Board. Upon successful completion of the supervised internship and

successful completion of the NAPLEX and MPJE examinations, Respondent's license will be reinstated on probation, subject to terms and conditions.

DECISION AND ORDER

IT IS THEREFORE ORDERED that prior to reinstatement of his license, Respondent Kevin J. O'Rourke must first comply with the following requirements:

A. Respondent must register as an intern, pay any applicable fee, and successfully complete a 500 hour internship at an Iowa site(s) approved by the Board. The 500 hour internship must be completed within one (1) year of the issuance of this Decision and Order. During the internship, Respondent shall be required to:

- Notify all prospective preceptor(s) and any pharmacist-in-charge of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of starting a new internship, Respondent shall cause his preceptor(s) and the pharmacist-in-charge to report to the Board in writing, acknowledging that the preceptor and pharmacist-in-charge have read this Decision and Order of the Board and understand it.
- Ensure that his preceptor(s) file a quarterly written report with the Board concerning Respondent's performance and progress as a pharmacist-intern. The first report shall be due three (3) months after Respondent begins the internship;
- Abstain from the use of alcohol and from the use of controlled substances not properly prescribed by a licensed treating health provider;
- Attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) on a weekly basis and obtain written verification of attendance;
- Participate in the Board's Impaired Pharmacy Professional Recovery Program (IPRN);
- File written, sworn quarterly reports with the Board no later than March 5, June 5, September 5, and December 5 of each year of Respondent's internship. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work

telephone number, written verification of his weekly attendance at AA or NA, and a list of Respondent's current prescriptions;

- Provide witnessed blood, hair or urine specimens on demand by the Board or its agents. Respondent shall participate in the Board's approved alcohol and drug screening program (NTS) and will be responsible for any costs of compliance with that program. All costs related to participation in the NTS program and all costs relating to the collection and analysis of such specimens shall be paid by Respondent.

Upon completion of the 500 hour internship, Respondent may apply to take the licensing examinations (NAPLEX and MPJE).

B. Respondent must take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, as required by Iowa Code section 657 IAC 36.13(2). Respondent must successfully complete the examinations within one (1) year of completing his internship.

Upon timely completion of the required examinations, Respondent's pharmacist license no. 15064 will be REINSTATED and shall immediately be placed on PROBATION for a term of five (5) years. IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

A. Respondent shall notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause his pharmacy employer and any pharmacist-in-charge to report to the Board in writing, acknowledging that the pharmacy employer and pharmacist-in-charge have read this document and understand it.

B. Respondent shall not consume alcohol and shall not use any controlled substances or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for him by a licensed, treating physician or other qualified health care provider. Respondent shall

inform any treating physician or other treating health care provider of his medical and substance abuse history, including his history of drug diversion.

C. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. Respondent shall participate in the Board's approved alcohol and drug screening program (NTS) and will be responsible for any costs of compliance with that program. All costs related to participation in the NTS program and all costs relating to the collection and analysis of such specimens shall be paid by Respondent.

D. Respondent shall continue regular weekly attendance at Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) and shall provide documentation of attendance in his quarterly reports to the Board.

E. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The reports shall be filed no later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, written verification of attendance at weekly AA/NA meetings, and a current list of all of Respondent's prescribed medications.

F. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.

G. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.

H. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.

I. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

J. Respondent shall appear informally before the Board or a Board committee upon request for the purpose of reviewing his performance as a pharmacist during the probationary period. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

K. Should Respondent violate or fail to comply with any of the terms or conditions of probation, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

Dated this 12th day of January, 2016.



James Miller, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.