

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	EMERGENCY ORDER
JOHN G. PHILIBERT	}	AND
License No. 17417	}	COMPLAINT AND
Respondent	}	STATEMENT OF CHARGES
	}	AND
	}	NOTICE OF HEARING

NOW on this 2nd day of June 1992, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on July 2, 1990, by reciprocity.

2. Respondent is currently employed as a pharmacist at Scott Drug, 629 Sixth Avenue, DeWitt, Iowa, and at the DeWitt Community Hospital, 1118 11th Street, DeWitt, Iowa.

3. On June 1, 1992, the Board received information which alleges that the Respondent obtained, without authorization, various controlled substances including Morphine, Methylphenidate, Dextroamphetamine, Cocaine, and Tylenol with Codeine No. 3, from the DeWitt Community Hospital Pharmacy in DeWitt, Iowa, and from Scott Drug in DeWitt, Iowa, between March 1, 1992, and June 1, 1992, for his own personal use. It is also alleged that Respondent's unauthorized use of these drugs has impaired his ability to practice pharmacy with reasonable skill and safety.

4. Respondent currently resides at 1433 40th Street in Rock Island, Illinois 61201.

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

6. The information contained in paragraph 3, together with other investigative 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 and thereby have access to controlled substances.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if John G. Philibert 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/Director to issue such order. It is the further order of the Board that during the period of the suspension, Respondent shall not enter any pharmacy prescription area and shall not manage any pharmacy, administer any pharmacy, or engage in any pharmacy-related service.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of John G. Philibert 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/Director 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/director alleges that:

7. Alan M. Shepley, Chairperson; Marian L. Roberts, Vice Chairperson; Donna J. Flower; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

8. Respondent is guilty of violations of 1991 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 allegations in paragraph 3.

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 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;...

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u) by virtue of the allegations in paragraph 3.

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), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:...

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

....

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 8 and 9 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 1991 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), and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(d), 9.1(4)(h), 9.1(4)(m), and 9.1(4)(u).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that John G. Philibert appear before the Iowa Board of Pharmacy Examiners on Tuesday, July 28, 1992, 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 John G. Philibert on July 2, 1990, 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. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his license.

The hearing will be presided over by the Board which will be assisted by an administrative law judge from the Iowa Department of Inspections and Appeals. The office of the Attorney General is responsible for the public interest in these proceedings. Information regarding the hearing may be obtained from Lynette A. F. Donner, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8760). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary/Director

BEFORE THE IOWA BOARD
OF PHARMACY EXAMINERS

IN THE MATTER OF:)	DIA DOCKET NO. 92PHB-5
)	
JOHN G. PHILIBERT)	LICENSE NO. 17417
1433 40th Street)	
Rock Island, Illinois 61201)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

An administrative appeal hearing was held on the above referenced matter on July 28, 1992, at 10:15 a.m. in the conference room of the Iowa Board of Pharmacy Examiners, Executive Hills, Des Moines, Iowa. The following Board members were present throughout the hearing: Marian L. Roberts, Vice-Chairperson; Phyllis A. Miller; Phyllis A. Olson; Ronald B. Reiff; Arlan D. Van Norman; and Donna J. Flower. The respondent did not appear at the hearing nor did the Board receive a request for a continuance of this matter. On June 2, 1992, the respondent signed a "Proof of Receipt" acknowledging notice of the hearing date, time, and location. (Exhibit G)

Present also was Lynette Donner, Assistant Attorney General, who represented the State of Iowa. Also present were members of the Board staff and a certified court reporter. The hearing was held in open session. Jenny J. Flaherty, Administrative Law Judge, presided during the hearing. After hearing the State's testimony, the Board convened in closed session, pursuant to Iowa Code Section 21.5(1)(f), to discuss the decision to be rendered in a contested case. The Administrative Law Judge was directed to prepare this Order.

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on July 2, 1990, by reciprocity.

2. At the time of the State's investigation, the Respondent was employed as a pharmacist at Scott Snyder Drug, 629 Sixth Avenue, DeWitt, Iowa, and at the DeWitt Community Hospital, 1118 11th Street, DeWitt, Iowa.

3. On June 1, 1992, the Board received information which alleged that the Respondent obtained, without authorization, various controlled substances including Morphine, Methylphenidate, Dextroamphetamine, Cocaine, and Tylenol with Codeine No. 3, from the DeWitt Community Hospital Pharmacy in DeWitt, Iowa, and from Scott Snider Drug in DeWitt, Iowa, between March 1, 1992, and June 1, 1992, for his own personal use. It was also alleged that Respondent's unauthorized use of these drugs impairs his ability to practice pharmacy with reasonable skill and safety.

4. Respondent currently resides at 1433 40th Street in Rock Island, Illinois 61201.

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

6. On June 1, 1992, a Board investigator, with police assistance, interviewed the Respondent; the Respondent had in his possession a quantity of Morphine (10 mg. tablets) and one syringe; the Respondent conceded that he does have a drug problem. (Exhibit A)

7. The Respondent admitted to the Board's investigator that his drug problem began approximately two years ago with the use of Tylenol with Codeine 3 for headaches; he then started using various hydrocodones to control the headaches; he stated he had taken large amounts of Vicodin, Ritalin (Methylphenidate) and some Morphines from the Reliable Drug #5225 in Illinois. (Exhibit A)

8. The Respondent began employment at Scott Snyder Drug on about March 1, 1992; he stated he did not use any controlled substances for about two weeks and then began taking Morphines by dissolving the tablets and injecting them interdermally, removing the injectable outdated Morphine and replacing the contents with water; he stated that the Morphine made him sleepy so he would take Methylphenidate or Dexedrine to keep him awake. (Exhibit A)

9. The Respondent admitted to the Board's investigator that he was responsible for the taking and personal usage of the following hospital and pharmacy controlled substances found by inventories to be missing:

DeWitt Community Hospital

Phenobarbital	30 tablets
Cocaine powder	8.5 gm.
MC Contin	109 tablets

Scott Snyder Drug

Dexedrine	35 tablets
Dexedrine Span	90 Span
Morphine IM	25 ml.
Morphine HT (10 mg.)	180 tablets
Ritalin (5 mg.)	194 tablets
Ritalin (10 mg.)	102 tablets
Ritalin SR	16 tablets
MS Contin	19 tablets
Codeine	39 tablets

(Exhibits C-1 and D)

10. The Respondent explained to the Board's investigator that he had acquired the MS Contin 30 mg. from Scott Snyder Drug by

shorting the count for a patient at Wheatland Nursing Home. (Exhibit B)

11. On June 1, 1992, the Respondent provided a urine sample which was screened for drugs by Iowa Methodist Medical Center on June 5, 1992; the sample contained Ephedrine/Pseudoephedrine, Morphine and Codeine. (Exhibit E)

12. On June 2, 1992, the Respondent advised the Board's investigator that he was going to enter a drug treatment program at the Pencrest Facility, Rockford, Illinois, on June 4, 1992; admission has not been verified. (Exhibit B)

CONCLUSIONS OF LAW

The Iowa Board of Pharmacy Examiners is regulated under the general professional licensing provisions of Iowa Code Chapter 147 and 258A and the specific provisions of Chapter 155A and 204. The Board has adopted rules under Iowa Code Chapter 17A which are set forth at 657 Iowa Administrative Code (IAC).

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 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; . . .

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), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses: . . .

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

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

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.

On June 1, 1992, the Board's investigator received information that the Respondent obtained, without medical authorization, various controlled substances including Morphine, Methylphenidate, Dextroamphetamine, Cocaine and Tylenol with Codeine No. 3 from the DeWitt Community Hospital Pharmacy and Scott Snyder Drug both located in DeWitt, Iowa for the period March 1 through June 1, 1992 for his own personal use. An investigation was conducted with police assistance.

During the course of the investigation the Respondent, an employee of the hospital and pharmacy, admitted that he was responsible for the taking and personal usage of controlled substances, as set forth in finding #9, in order to feed his drug problem. The Respondent's drug problem began approximately two years ago in Illinois and has become progressively worse. A urine sample was provided which confirmed that various controlled substances were used by the Respondent.

The Board concludes that, according to the Respondent's admissions of guilt, he poses a threat to not only himself but to others. He admitted to obtaining 30 mg. of MS Contin by shorting the medication count for a patient in a nursing facility. It can be readily ascertained from this admission that the Respondent's unauthorized use of controlled substances has impaired his ability to practice pharmacy with skill and safety. This position can be further strengthened by the Respondent's admission of removing outdated injectable Morphine and replacing the contents with water.

Based upon the findings as set forth in this decision, the Iowa Board of Pharmacy Examiners finds that the Respondent has violated 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 Iowa Administrative Code Sections 9.1(4)"c", 9.1(4)"d", 9.1(4)"h", 9.1(4)"m", and 9.1(4)"u".

ORDER

It is the ORDER of the Iowa Board of Pharmacy Examiners that the Respondent's license number 17417, be SUSPENDED INDEFINITELY immediately upon the signing of this Order. To request reinstatement of his license, the Respondent must appear before the Board in person, submitting medical documentation of professional assistance received through a treatment center, at which time the Board will determine the appropriateness of probation and after care requirements. The Respondent is precluded from requesting reinstatement and appearing before the Board until October 1992.

In accordance with the provisions of Iowa Code Section 17A.16 (1991) a party may file an application for rehearing within twenty (20) days after the issuance of this decision. In accordance with Iowa Code Section 17A.19(3) (1991) a petition for judicial review must be filed within thirty (30) days after the application has

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been denied or deemed denied. If a party does not file an application for rehearing the petition for judicial review must be filed within thirty (30) days after the issuance of this decision. If an application for rehearing is granted, the petition for judicial review must be filed within thirty (30) days after the issuance of the agency's final decision on rehearing.

Dated this 4 day of August, 1992.



Marian L. Roberts
Vice-Chairperson
Iowa Board of Pharmacy Examiners

MLR/jmm

cc: John G. Philibert (CERTIFIED MAIL)
1433 40th Street
Rock Island, IL 61201

Lynette Donner
Assistant Attorney General
State of Iowa
Hoover State Office Building
Des Moines, IA 50317

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

Re: Pharmacist License of	}	
JOHN G. PHILIBERT	}	REINSTATEMENT
License No. 17417	}	ORDER
Respondent	}	

COMES NOW, Phyllis A. Olson, Vice Chairperson of the Iowa Board of Pharmacy Examiners, on the 20th day of July, 1994, and declares that:

1. On June 2, 1992, the Iowa Board of Pharmacy Examiners issued an Emergency Order and Complaint and Statement of Charges and Notice of Hearing to Respondent.

2. On July 28, 1992, the Board held an administrative hearing on the matter. The Respondent did not appear. On August 4, 1992, the Iowa Board of Pharmacy Examiners issued a Decision and Order which placed Respondent's Iowa pharmacist license on indefinite suspension.

3. On July 20, 1994, the Respondent appeared before the Board at an informal reinstatement conference. At the conclusion of the conference, the Board agreed to reinstate Respondent's Iowa pharmacist license.

WHEREFORE, it is hereby ordered that pharmacist license number 17417 issued to John G. Philibert on July 2, 1990, is now reinstated subject to the following terms and conditions:

(1) Pharmacist license number 17417 shall be restored to current, active status upon receipt from Respondent of a completed application for renewal of that license, proof of completion of at least 3.0 Continuing

Pharmacy Education Units (CEU) (30 contact hours obtained since July 1, 1990), and payment of a \$100 renewal fee.

(2) Respondent shall be placed on probation for five years, with two years stayed, beginning on the date of restoration of his license. During the three-year probationary period, Respondent shall comply with the following conditions:

(a) At the Board's discretion, Respondent shall submit to random body fluid testing with test results to be submitted to the Board office. Testing shall be done at Respondent's expense as directed by the Board and/or by Respondent's provider of aftercare.

(b) Respondent shall not be an owner of a pharmacy nor serve as the pharmacist in charge, manager, or assistant manager of a pharmacy.

(c) Respondent shall submit written reports quarterly to the Board which provide proof of continued participation in an aftercare program and/or Alcoholics Anonymous / Narcotics Anonymous.

(d) Respondent shall notify all present and prospective Iowa pharmacy employers of the Reinstatement Order in this case, and the terms, conditions, and restrictions imposed on Respondent by said Reinstatement Order. Within 15 days of Respondent undertaking new employment in an Iowa-licensed pharmacy, Respondent shall cause each pharmacy employer to report to the Board in writing acknowledging that the pharmacy employer has read and understands the Reinstatement Order in this case.

(e) Respondent shall report his place of employment and home address to the Board in writing quarterly.

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

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

(h) Respondent shall not supervise any registered pharmacist-intern nor perform any of the duties of a preceptor.

(i) Respondent shall not use any controlled substance or prescription drug in any form unless prescribed for him by a licensed, treating physician. The Respondent shall inform any treating physician of the terms of this Reinstatement Order prior to accepting any controlled substance.

(3) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation. If a petition to revoke probation is filed against 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.

(4) Upon successful completion of probation, Respondent's certificates will be fully restored.

IOWA BOARD OF PHARMACY EXAMINERS



Phyllis A. Olson
Vice Chairperson