

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

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Re:	)	Case No. 2002-77
Pharmacist License of	)	
<b>JANET L. ROTE-McEVOY</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 17170	)	
Respondent	)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (2001).
3. On February 24, 1989, the Board issued Respondent, Janet L. Rote-McEvoy, after examination, a license to engage in the practice of pharmacy as evidenced by license number 17170, subject to the laws of the State of Iowa and the rules of the Board.
4. License number 17170 is current and active until June 30, 2004.
5. Respondent's current address is 317 59<sup>th</sup> Street, West Des Moines, Iowa 50266.
6. Respondent was employed as a pharmacist at Apria Healthcare, 11224 Aurora Avenue, Des Moines, Iowa 50322 during all times relevant to this statement of charges.

COUNT I

The Respondent is charged with unlawful possession of prescription drugs in violation of Iowa Code § 155A.21 (2003) and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(j).

COUNT II

The 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) (2003) and 657 Iowa Administrative Code §§ 36.1(4)(d), 36.1(4)(j) and 36.1(4)(m).

### COUNT III

The Respondent is charged with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy and engaging in unethical conduct and practices harmful and detrimental to the public in violation of Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(c), including tampering with and adulteration of drugs in violation of Iowa Code §§ 126.3 and 126.9 (2003).

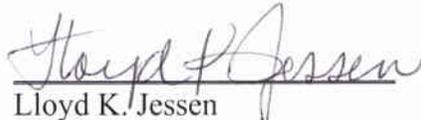
### COUNT IV

The Respondent is charged under Iowa Code §§ 147.55(4), 155A.12 (2003), and 657 Iowa Administrative Code § 36.1(4), with a lack of professional competency, including addiction to the use of drugs.

### THE CIRCUMSTANCES

1. On or about September 10, 2002, the Board received information that Respondent might have been diverting controlled substances from pharmacy stock to her own use.
2. Respondent admits diverting morphine and Dilaudid IV from pharmacy stock to her own use.
3. Respondent further admitted tampering with products; specifically, replacing the diverted drugs contained in morphine and Dilaudid vials with water, then placing the altered products back in pharmacy stock.
4. Respondent also admits smoking marijuana intermittently from the time she was in high school.

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 21st day of February 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Katherine A. Linder, 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 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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RE:	)	CASE NO. 2002-77
Pharmacist License of:	)	DIA NO: 03PHB005
JANET L. ROTE-McEVOY	)	FINDINGS OF FACT,
License No. 17170	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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TO: JANET L. ROTE-McEVOY

On February 19, 2003, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Janet L. Rote-McEvoy (Respondent), a licensed pharmacist. The Statement of Charges alleged four counts:

COUNT I: Unlawful possession of prescription drugs, in violation of Iowa Code section 155A.21 (2003) and 657 Iowa Administrative Code 36.1(4)"h" and "j".

COUNT II: Inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse in violation of Iowa Code section 155A.12(1) (2003) and 657 Iowa Administrative Code 36.1(4)"d", "j", and "m".

COUNT III: Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy and engaging in unethical conduct and practices harmful and detrimental to the public in violation of Iowa Code section 155A.12(1) (2003) and 657 Iowa Administrative Code 36.1(4)"c", including tampering with and adulteration of drugs in violation of Iowa Code sections 126.3 and 126.9 (2003).

COUNT IV: A lack of professional competency, including the addiction to the use of drugs, in violation of Iowa Code sections 147.55(4), 155A.12 (2003) and 657 Iowa Administrative Code 36.1(4).

A Notice of Hearing was issued on February 25, 2003. The hearing was scheduled for April 23, 2003, but was continued and was rescheduled for June 25, 2003. The hearing was continued again.

The hearing on the Statement of Charges was held on December 3, 2003, at 3:00 p.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present in person: Paul Abramowitz; Leman E. Olson; and G. Kay Bolton. Katherine A. Linder, Board Chairperson, participated by telephone. The Respondent appeared, and was represented by her counsel, Rush Nigut. The state was represented by Scott Galenbeck, Assistant Attorney General. The hearing was recorded by a certified court reporter. William Stansbery, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2003).

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 Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

#### THE RECORD

The record includes the Statement of Charges; the Notice of Hearing; the testimony of the Respondent; State's Exhibits A through C; and Respondent's Exhibits 1 and 2.

#### FINDINGS OF FACT

1. On February 24, 1989, the Board issued the Respondent license number 17170 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. The license is current and active until June 30, 2004. (State's Exhibit A)
2. The Respondent has not practiced as a pharmacist since September 2002. (State's Exhibit B)
3. From May to September 2002, the Respondent was employed as a pharmacist at Apria Healthcare in Urbandale, Iowa. (State's Exhibit A; State's Exhibit B, attached Exhibits 3 and 5; State's Exhibit C)

4. While employed as a pharmacist at Apria Healthcare, the Respondent diverted morphine and Dilaudid IV from pharmacy stock to her own use. (State's Exhibit B; State's Exhibit C)

5. While employed at Apria Healthcare, the Respondent removed drugs containing morphine and Dilaudid IV from vials, put water into the vials to replace the drugs that had been removed, and returned the vials to pharmacy stock. (State's Exhibit B, pages 3 and 4, and attached Exhibit 6; State's Exhibit C)

6. The Respondent has smoked marijuana intermittently since she was in high school. (State's B, attached Exhibit 5; State's Exhibit C)

7. The Respondent began receiving treatment for drug dependency in September 2002. She is currently under the care of a physician for her drug dependence. She is receiving additional counseling for her drug dependence and depression. (State's Exhibit B, attached Exhibit 5; Respondent's Exhibit 1; Respondent's Exhibit 2; Respondent's testimony)

#### CONCLUSIONS OF LAW

##### Board's statutory authority

Iowa Code section 147.2 requires a license to practice any of several professions, including pharmacy. Iowa Code section 147.12 directs the governor to appoint a board of examiners for each of several professions. Iowa Code section 147.13(13) provides that the Board of Pharmacy Examiners is the examining board for the practice of pharmacy.

Iowa Code chapter 155A is the Iowa Pharmacy Practice Act. Iowa Code section 155A.8 sets out requirements for a pharmacist license, including passing an examination prescribed by the Board. Iowa Code section 155A.12 provides that the Board "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 . . . licensee has done any of the following: . . ." The section then sets out several grounds for imposing a disciplinary sanction.

The Board has administrative rules on disciplinary sanctions at 657 Iowa Administrative Code chapter 36.

Count I

In Count I, the Respondent is charged with unlawful possession of prescription drugs, in violation of Iowa Code section 155A.21 (2003) and 657 Iowa Administrative Code 36.1(4)"h" and "j."

Iowa Code section 155A.21 prohibits a person from possessing a drug that is limited to dispensation by prescription, unless the drug is lawfully dispensed. The Respondent possessed drugs that were not lawfully dispensed to her. The possession of the drugs was not related to the Respondent's performance of her duties as a pharmacist. The possession violated Iowa Code section 155A.21.

657 Iowa Administrative Code 36.1(4)"h" allows the Board to impose a disciplinary sanction if the licensee distributes drugs for other than a lawful purpose. The Respondent distributed drugs for other than a lawful purpose, in violation of 657 Iowa Administrative Code 36.1(4)"h".

657 Iowa Administrative Code 36.1(4)"j" allows the Board to impose a disciplinary sanction if the licensee violates a law which "relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs." The Respondent violated laws related to the practice of pharmacy, in violation of 657 Iowa Administrative Code 36.1(4)"j".

The Respondent has committed the violations alleged in Count I.

Count II

In Count II, the Respondent is charged with inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse in violation of Iowa Code section 155A.12(1) (2003) and 657 Iowa Administrative Code 36.1(4)"d", "j", and "m".

Iowa Code section 155A.12(1) allows the Board to impose a sanction if the licensee has violated any provision of Iowa Code chapter 155A or any rule adopted by the Board.

657 Iowa Administrative Code 36.1(4)"d" allows the Board to impose a disciplinary sanction because of habitual intoxication or addiction to the use of drugs. The Respondent's diversion of morphine and Dilaudid IV from pharmacy stock to her own use shows that she was addicted to the use of drugs, in violation of 657 Iowa Administrative Code 36.1(4)"d".

657 Iowa Administrative Code 36.1(4)"j" allows the Board to impose a disciplinary sanction if the licensee violates a law which "relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs." The Respondent's diversion of morphine and Dilaudid IV from pharmacy stock to her own use, and the Respondent's adulteration of drugs, was a violation of laws related to the practice of pharmacy and the distribution of controlled substances, in violation of 657 Iowa Administrative Code 36.1(4)"j".

657 Iowa Administrative Code 36.1(4)"m" allows the Board to impose a disciplinary sanction if the licensee is unable "to practice with reasonable skill and safety by reason of physical or mental impairment or chemical abuse." The Respondent's diversion of morphine and Dilaudid IV from pharmacy stock to her own use, and the Respondent's adulteration of drugs, was a failure to practice with reasonable skill and safety, in violation of 657 Iowa Administrative Code 36.1(4)"m".

The Respondent has committed the violations alleged in Count II.

Count III

In Count III, the Respondent is charged with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy and engaging in unethical conduct and practices harmful and detrimental to the public in violation of Iowa Code section 155A.12(1) (2003) and 657 Iowa Administrative Code 36.1(4)"c", including tampering with and adulteration of drugs in violation of Iowa Code sections 126.3 and 126.9 (2003).

Iowa Code section 155A.12(1) allows the Board to impose a sanction if the licensee has violated any provision of Iowa Code chapter 155A or any rule adopted by the Board. 657 Iowa Administrative Code 36.1(4)"c" allows the Board to impose a sanction against the licensee for "[k]nowingly making

misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful or detrimental to the public." Iowa Code section 126.3(2) prohibits the adulteration of any drug. Iowa Code section 126.9 defines adulteration of a drug.

The Respondent's adulteration of drugs resulted in misleading, deceptive, untrue, and fraudulent representations in the practice of pharmacy. The Respondent's diversion of drugs to her own use and the Respondent's adulteration of drugs was unethical conduct and was harmful and detrimental to the public. The Respondent's actions violated 657 Iowa Administrative Code 36.1(4) "c".

The Respondent has committed the violations alleged in Count III.

#### Count IV

In Count IV, the Respondent is charged with a lack of professional competency, including the addiction to the use of drugs, in violation of Iowa Code sections 147.55(4) and 155A.12 (2003) and 657 Iowa Administrative Code 36.1(4).

Iowa Code section 147.55(4) allows a professional license to be revoked or suspended if the licensee is habitually addicted to the use of drugs. Iowa Code section 155A.12 allows the Board to impose a disciplinary sanction. 657 Iowa Administrative Code 36.1(4) also allows the Board to impose a disciplinary sanction. Subparagraph "b" of the rule addresses professional incompetency. Incompetency includes "[a] failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances." Incompetency also includes "[a] willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa."

By diverting drugs to her own use and adulterating drugs, the Respondent failed to exercise the degree of care that is ordinarily exercised by the average pharmacist. The Respondent's actions were a willful departure from, and a failure to conform to, the minimal standard for the practice of

pharmacy. The Respondent's actions violated the rule on professional incompetency at 657 Iowa Administrative Code 36.1(4) "b".

The Respondent has committed the violations alleged in Count IV.

Sanction

In determining an appropriate sanction, the Board has considered the factors outlined in 657 Iowa Administrative Code 36.1(3). The Board has taken into account the relative seriousness of the violations as they relate to assuring the citizens of this state a high standard of professional care. The Board has taken into account the steps taken by the Respondent toward dealing with her addiction.

DECISION AND ORDER

**IT IS THEREFORE ORDERED** that pharmacy license no. 17170, issued to Janet L. Rote-McEvoy, shall be placed on **PROBATION** for a period of five (5) years, subject to the following conditions:

- 1) The Respondent shall not consume alcohol.
- 2) The Respondent shall not use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for the Respondent by a licensed, treating physician or other qualified treating health care provider. The Respondent shall fully inform any treating physician or other treating health care provider of her medical history, including her history of chemical dependency.
- 3) The Respondent shall not possess any controlled substance except medication prescribed in accordance with the preceding paragraph. The Respondent's handling of a controlled substance as part of her employment as a pharmacist as authorized by this order shall not be considered possession of a controlled substance.
- 4) Upon demand by an agent of the Board, the Respondent shall provide witnessed blood or urine specimens, with costs relating to analysis to be paid for by the Respondent. The specimens shall be used for alcohol and

drug screening and to verify the Respondent's compliance with this order and with any therapy ordered by the Respondent's physician.

5) The Respondent shall comply with all treatment recommendations of her treatment program and her physician and/or counselor. The treatment program or physician/counselor shall submit quarterly reports to the Board documenting the Respondent's compliance with the treatment program.

6) The Respondent shall file written, sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of the order. The reports shall be filed not later than March 5, June 5, September 5, and December 5 of each year of the Respondent's probation. The quarterly reports shall include the Respondent's place of employment, current home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

7) The Respondent shall attend appropriate aftercare support group meetings or Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings as recommended by the Respondent's physician or treatment provider. The Respondent shall append to each quarterly report, referred to in paragraph (6) above, statements signed or initialed by another person in attendance at the support group meetings or AA meetings and NA meetings, attesting to the Respondent's attendance and continuing participation. The statement shall include the time, date, and location of the meetings attended.

8) The Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give the Respondent reasonable notice of the date, time, and location for such appearances.

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

10) The Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing education (CE) as directed by the Board.

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

12) The Respondent shall not serve as a pharmacist in charge of a pharmacy.

13) The Respondent shall not work as a staff pharmacist in any home infusion pharmacy. The Respondent shall not work alone, without supervision, in any other setting where any injectable controlled substance is stocked in the pharmacy. The Respondent may petition the Board for lifting of this restriction after she has successfully completed three years of probation and after she has had three years of sufficient employment as a pharmacist.

14) The Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate.

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

16) During probation, the Respondent shall permit the release of all her medical records to the Board, including all medical records pertaining to treatment for mental conditions and for alcohol and substance abuse. The Respondent shall allow the free flow of information between the Board and the Respondent's physician(s) and treatment provider(s). The Respondent shall ensure that the Board receives all necessary information if further evaluation or treatment of the Respondent is requested or required.

17) The Respondent shall notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on the Respondent by this document. Within fifteen (15) days of undertaking new employment as a pharmacist, the Respondent

shall cause her pharmacy employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

18) If the Respondent leaves Iowa to reside or practice outside this state, the 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.

19) 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.

20) Pursuant to Iowa Code section 272C.6(6) and 657 Iowa Administrative Code 36.18(2), the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

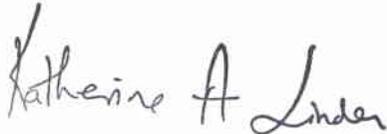
21) The Respondent shall pay a civil penalty of \$10,000 within sixty (60) days from the date of this order. The civil penalty shall be made payable to the Treasurer of Iowa and shall be mailed or delivered to the executive secretary/director of the Board. The civil penalty shall be deposited in the State of Iowa general fund. The civil penalty is being imposed because of the Respondent's disregard for the health and safety of patients.

22) If the Respondent violates or fails to comply with any of the terms or conditions of this order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 Iowa Administrative Code chapter 36.

23) Upon successful completion of probation, the Respondent's certificate shall be fully restored.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 17th day of February, 2004.

A handwritten signature in cursive script that reads "Katherine A. Linder". The signature is written in dark ink and is positioned above a horizontal line.

Katherine A. Linder, Chairperson  
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General  
Rush Nigut, Attorney for Respondent

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 BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

Re:	)	Case No. 2004-90
Pharmacist License of	)	
JANET L. ROTE-McEVOY	)	STATEMENT OF CHARGES
License No. 17170,	)	
Respondent.	)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 February 24, 1989, the Board issued Respondent, after examination, a license to engage in the practice of pharmacy as evidenced by license number 17170, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2006.
5. Respondent's current address is 317 59<sup>th</sup> Street, West Des Moines, Iowa 50266.
6. Respondent is not currently employed as a pharmacist.

A. CHARGES

COUNT I – FAILURE TO COMPLY WITH BOARD ORDER

Respondent is charged with a failure to comply with the terms of an Order issued by the Iowa Board of Pharmacy Examiners on February 17, 2004, in violation of Iowa Code § 272C.3(2)(a) (2005). The Board's order, among other things, prohibited Respondent from consuming alcohol, and utilizing controlled substances or other prescription medications, except as prescribed for her, and further required Respondent to attend Alcoholics Anonymous or Narcotics Anonymous meetings – and file with the Board quarterly reports regarding her attendance -- during a five year probationary period beginning on the date of the order.

## COUNT II – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 124.403(1)(c), 155A.12(1) and 155A.21 (2005) and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(j), specifically, possession of stolen controlled substances and prescription medications.

### B. CIRCUMSTANCES

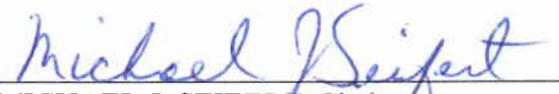
On or about December 8, 2004 an investigation was commenced, revealing the following:

1. As a result of prior charges before the Board, Respondent was placed on probation on February 17, 2004. The order prohibited use of alcohol by Respondent, and further prohibited use or possession of prescription medications and controlled substances unless prescribed for Respondent by a treating physician or other prescriber.
2. The February 17, 2004 order of the Board also required Respondent to attend AA or NA meetings, and provide the Board with quarterly reports regarding her attendance.
3. An acquaintance of Respondent's, Amanda Harris, provided evidence that Respondent had consumed alcohol. Harris also described an incident where Respondent, while visiting Harris in her apartment, had taken Percocet, Valium and Lortabs from Harris' medicine cabinet.
4. Respondent admitted to Harris that she stole a variety of controlled substances from Harris' medicine cabinet.
5. Respondent has not provided the Board with quarterly reports of AA or NA meeting attendance.
6. Respondent failed to appear when a Board investigator requested Respondent to provide a urine sample.

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 15 day of February 2005 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

McEvoy-SOC.doc

Janet L Rote-McEvoy  
317 59<sup>th</sup> Street  
West Des Moines, IA 50266

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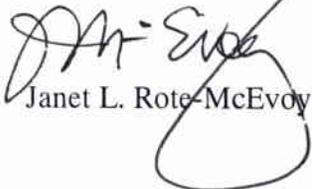
IOWA PHARMACY EXAMINERS

Mr. Lloyd Jessen  
Iowa Board of Pharmacy Examiners  
400 SW Eighth St.  
Suite E  
Des Moines, IA 50309-4688

Mr. Jessen,

I wish to surrender my Iowa Pharmacist License, number 17170. I have enclosed my renewal card and license certificates.

Sincerely,

  
Janet L. Rote-McEvoy

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

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Re:	)	<b>ORDER</b>
Pharmacist License of	)	<b>ACCEPTING</b>
<b>JANET L. ROTE-McEVOY</b>	)	<b>SURRENDER OF</b>
License No. 17170	)	<b>PHARMACIST LICENSE</b>

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**COMES NOW**, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 20<sup>th</sup> day of April, 2005, and declares that:

1. On December 13, 2004, Respondent executed a voluntary surrender of her pharmacist license number 17170.

3. On April 20, 2005, the Board reviewed Respondent's voluntary surrender of her 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 her Iowa pharmacist license number 17170 is hereby accepted.

IOWA BOARD OF PHARMACY EXAMINERS

  
\_\_\_\_\_  
MICHAEL J. SEIFERT, Chairperson

BEFORE THE IOWA BOARD OF PHARMACY

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RE:	)	CASE NO: 2004-90
	)	DIA NO: 13PHB039
Pharmacist License of	)	
JANET L. ROTE-McEVOY	)	FINDINGS OF FACT,
License No. 17170	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On August 27, 2013, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Janet L. Rote-McEvoy (Respondent). The following members of the Board presided at the hearing: Edward Maier, Chairperson; Susan Frey; James Miller; Edward McKenna; Sharon Meyer; and Judith Trumpy. Respondent appeared and was self-represented. Assistant Attorney General Meghan Gavin 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)(2013), 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 Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; the testimony of Respondent and Anthony McEvoy; State Exhibits 1-11 (See Exhibit Index for description) and Respondent Exhibit A.

FINDINGS OF FACT

1. On February 24, 1989, the Board issued Respondent license number 17170 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 3)
2. Respondent has a history of drug addiction and drug diversion, which ultimately led to the Board's acceptance of the voluntary surrender of her pharmacist license on April 20, 2005.

a) On February 21, 2003, the Board issued a Statement of Charges against Respondent alleging four counts: unlawful possession of prescription drugs, inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse, tampering with and adulteration of drugs, and lack of professional competency. (State Exhibit 3) A hearing was held, and the Board issued its Decision and Order on February 17, 2004. Respondent's license was placed on probation for a period of five years, subject to terms and conditions of probation relating to substance abuse. Respondent was also required to pay a \$10,000 civil penalty. (State Exhibits 3-6)

b) On December 3, 2004, the Board received information indicating that Respondent was using controlled substances in violation of the terms of her probation. During the investigation of this complaint, Respondent elected to voluntarily surrender her pharmacist license. On February 15, 2005, the Board charged Respondent with failure to comply with a board order and with unlawful possession of prescription drugs. On April 20, 2005, the Board accepted the voluntary surrender of Respondent's license. (Exhibits 7-10)

3. Respondent reports that she first began diverting drugs as self-medication for severe post-partum depression. Following her first Statement of Charges, Respondent completed inpatient and outpatient treatment at Powell Chemical Dependency Center. After she relapsed and faced additional charges from the Board, Respondent made the decision to surrender her license. At that time, Respondent believed that she would never want to return to pharmacy practice. Respondent has not practiced pharmacy since 2003. (Testimony of Respondent)

4. After surrendering her license, Respondent had a second child, who is now in school full-time. In 2004 while pregnant with her second child, Respondent was diagnosed with bipolar disorder. Respondent has also been diagnosed with fibromyalgia and chronic pain syndrome. She has been prescribed a narcotic patch but has also been given epidurals for breakthrough pain that she experiences from a degenerative disc. Respondent reports that her bipolar disorder and her chronic pain are well controlled by her current medication regimen. Respondent believes she is ready and capable of returning to the practice of pharmacy. (Testimony of Respondent; Anthony Francis McEvoy; Respondent Exhibit A)

5. Respondent is under the medical care of Charles R. Caughlan, M.D. Dr. Caughlan prescribes Respondent's narcotic analgesics, which he describes as a

“stable” dose. Respondent has a pain contract with Dr. Caughlan. Christian Ledet, M.D. treats Respondent’s break through pain from degenerative discs with epidurals. Dr. Ledet is aware of Respondent’s other pain medications and submitted a letter stating that medical studies have failed to demonstrate any loss of psychomotor skills associated with the chronic use of opiates. (Testimony of Respondent; Respondent Exhibit A)

6. Nurse practitioner Grace Hatcher has managed Respondent’s psychiatric medications since September 2006. Ms. Hatcher reports that Respondent has been compliant with her psychiatric medications and has not failed an appointment since September 2006. Respondent has not exhibited a depressive or hypomanic episode in several years. It is Ms. Hatcher’s professional opinion that Respondent could return to the practice of pharmacy given the safeguards routinely employed for pharmacists with substance dependence. Ms. Hatcher believes that Respondent is at low risk (among impaired pharmacists) to abuse narcotic medications, given that she is highly motivated to successfully return to pharmaceutical practice. Respondent has told Ms. Hatcher that she is completely willing to cooperate with all assessment and monitoring recommendations imposed by the Board. (Testimony of Respondent; Respondent Exhibit A)

7. Karla Hansen, MSW, LISW is Respondent’s mental health therapist. Ms. Hansen has been meeting with Respondent since February 4, 2008. She reports that the primary focus of Respondent’s therapy has been to develop and maintain healthy cognitive patterns and behaviors. Ms. Hansen reports that Respondent demonstrates no abnormal cognition or behavior at this time that could be viewed as detrimental to the restoration of her pharmacy license. Ms. Hansen recommended reinstatement of Respondent’s pharmacy license and stated her willingness to assist in Respondent’s monitoring. (Respondent Exhibit A)

#### CONCLUSIONS OF LAW

The voluntary surrender of a license to practice pharmacy shall be considered a revocation, and a request for reinstatement is handled under the terms of 657 IAC 36.13.<sup>1</sup> 657 Iowa Administrative Code 36.13 provides, in relevant part:

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<sup>1</sup> 657 IAC 36.15.

**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...

**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... 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.

Upon reviewing the entire record, the Board is satisfied that the basis for the voluntary surrender (revocation) no longer exists and that it is in the public interest to reinstate Respondent's license to practice pharmacy, so long as she fully satisfies the

requirements established in this Decision and Order. It has been more than eight years since Respondent surrendered her license to practice pharmacy. Respondent appeared sincerely remorseful and has taken responsibility for the actions that led to the voluntary surrender of her license. Respondent has sought and maintained medical and therapeutic interventions for the mental health and physical conditions that contributed to her violations. Respondent has made significant progress in maintaining her recovery and has established a strong support system. The Board believes that Respondent is now ready to begin the process leading to a probationary license to practice pharmacy.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that to reinstate pharmacist license number 17170, Respondent Janet L. Rote-McEvoy must first comply with the following requirements:

A. Respondent must register as an intern, pay the applicable fee, and successfully complete a 1000 hour internship at an Iowa site pre-approved by the Board. Respondent's registration as a pharmacist-intern will be placed on probation, subject to the following terms and conditions:

1. Respondent shall notify all prospective pharmacy or pharmacy-related employers and/or preceptors, 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 a new position as a pharmacist-intern, Respondent shall cause her preceptor and/or employer to report to the Board in writing, acknowledging that the preceptor and/or employer has read this document and understands it.
2. Respondent's work/intern hours shall be limited to 24 hours a week, with shifts not to exceed 8 hours, during the first six months.
3. Respondent shall file written, sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of this Order. 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/internship(s), home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

4. Respondent must complete and submit the internship booklet, as defined in 657 IAC 4.1.

B. Upon successful completion of the internship hours, Respondent may apply to take the licensing examinations and shall pay all applicable fees. 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). If Respondent fails an examination, she will be required to comply with the same restrictions for timeliness and retaking the examinations that are imposed on new graduates by 657 IAC chapter 2.

C. The internship and the required examinations must be completed within eighteen (18) months of the date of this Decision and Order.

Upon timely completion of the required examinations and payment of all applicable fees, Respondent's pharmacist license no. 17170 shall be REINSTATED and shall immediately be placed on PROBATION for a term of five (5) years. Periods when Respondent is not employed as a pharmacist shall not count toward satisfaction of the five-year probationary period. IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

A. Respondent shall promptly provide copies of or access to all of her medical records upon Board request, or sign all necessary releases for the Board to obtain that information.

B. Respondent shall abstain from alcohol and all other intoxicants.

C. Respondent is prohibited from using any controlled substance in any form unless properly prescribed by a duly licensed treating health care provider. Respondent shall inform any treating physician or other treating health care provider of her medical history, including her history of chemical dependency.

D. Respondent shall continue to receive mental health therapy/counseling, at the frequency recommended by her counselor, until the counselor recommends that Respondent be discharged from counseling. Respondent shall ensure that her counselor notifies the Board in writing if she recommends Respondent's discharge from therapy/counseling.

E. Respondent shall ensure that the Board receives quarterly written reports from the medical providers who prescribe her pain medications or controlled substances. The reports shall include a list of Respondent's current prescriptions for controlled substances and shall state whether Respondent has been compliant with physician orders and any pain contract. The medical provider's quarterly reports shall include copies of any laboratory tests administered to verify Respondent's compliance with her pain contracts. These reports shall be filed no later than March 5, June 5, September 5 and December 5 of each year of Respondent's probation.

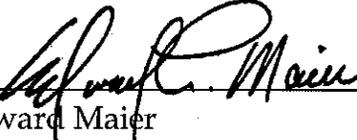
F. Respondent shall provide witnessed blood, hair, or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug screening and to verify Respondent's compliance with this Reinstatement Order of the Board and with any drug therapy ordered by Respondent's physician or treatment provider. All costs related to the analysis of such specimens shall be paid by Respondent.

G. Respondent shall provide a specimen to a healthcare provider specified by the Board within 24 hours after notice from the Board requesting that Respondent provide a specimen. The healthcare provider shall be located in reasonable proximity to Respondent. Respondent shall cooperate with the Board in establishing a specimen testing program through FirstLab. Respondent shall sign all necessary releases to allow FirstLab or any other testing facility disclose her medical information and test results to the Board.

H. Respondent shall attend and participate in Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or a similarly structured support group on a regular weekly basis and shall maintain documentation of her attendance. Respondent shall obtain an AA or NA sponsor and maintain a relationship with the sponsor.

- I. Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate.
- J. Respondent shall file written, sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of her 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, and any further information deemed necessary by the Board from time to time.
- K. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- L. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.
- M. 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 her employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.
- N. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.
- O. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.
- P. 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 10<sup>th</sup> day of October, 2013.



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Edward Maier

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.