

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of :
GAY LYNN LUCKE : **COMPLAINT**
Lic. No. 16439 : **AND**
Respondent : **STATEMENT OF CHARGES**
:

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on this 28th day of October, 1988, and files this Complaint and Statement of Charges against Gay Lynn Lucke, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa (license number 16439) on May 23, 1984, by reciprocity.

3. Respondent was issued a license to practice pharmacy in Illinois (license number 051-036425) on October 20, 1986, by endorsement.

4. The Board has received investigative reports from Pharmacy Investigator Robert Crawford of the Illinois Department of Professional Regulation in Chicago, Illinois, concerning Respondent. In summary, those investigative reports indicate the following: (a) that Respondent was arrested in Illinois and charged with DUI in July 1987, and that a drug screen performed at the Proctor Community Hospital, 5409 North Knoxville Avenue in Peoria, Illinois, in connection with that arrest, showed that Respondent's urine tested positive on July 17, 1987, for Phentermine, a schedule IV controlled substance; (b) that Respondent was employed as a pharmacist at Super X Drugs located at 8801 North Knoxville Avenue in Peoria, Illinois, from October 26, 1986, to March 27, 1987, and that during this time period a significant shortage of controlled substances occurred, including shortages of Phentermine 37.5 mg., Ionamine 15 and 30 mg., Bontril 105 mg., and Tussionex Suspension; (c) that Respondent was employed as a pharmacist at the Walgreens Pharmacy located at 2004 North Knoxville Avenue in Peoria, Illinois, for approximately two weeks in July 1987, and that during this time period a significant shortage of controlled substances occurred, including shortages of Fastin 30 mg. and Bontril 105 mg.

5. The same investigative reports indicate that the Respondent has admitted to having a history of alcohol abuse and drug dependency.

6. Respondent's license to practice pharmacy in Illinois was suspended indefinitely by the Illinois Department of Professional

Regulation on January 29, 1988, for alcohol abuse and chemical dependency. Respondent failed to report this action to the Iowa Board of Pharmacy Examiners, and this information came to the attention of Board staff in October 1988, at which time the investigative reports referred to in paragraphs 4 and 5 above were obtained.

7. Respondent currently resides at 917 Locust Street, Apartment #105, Des Moines, Iowa 50309.

8. Respondent's license to practice pharmacy in Iowa is current until June 30, 1989.

9. Respondent is guilty of violations of 1987 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 204.308(3), 204.401(1), 204.402(1), and 204.403(1)(c) by virtue of the allegations in paragraphs 4, 5, and 6.

Iowa Code section 155A.12 provides, in part, the following:

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

....

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

....

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

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

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

written or oral prescription of a practitioner.

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

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

Any person who violates this subsection with respect to:...

b. Any...controlled substance classified in schedule...III, is guilty of a class "D" felony.

Iowa Code section 204.402(1) provide, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u) by virtue of the allegations in paragraphs 4, 5, and 6.

657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2)...when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

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

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

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

....

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

....

u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55, and 1987 Iowa Code supplement sections 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 9 and 10 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated 1987 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 204.308(3), 204.401(1), 204.402(1), and 204.403(1)(c), and 657 Iowa Administrative Code sections 9.1(4)(d), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u).

IT IS HEREBY ORDERED that Gay Lynn Lucke appear before the Iowa Board of Pharmacy Examiners on November 28, 1988, at 1:00 p.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Gay Lynn Lucke on May 23, 1984, 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 her own. The failure of Respondent to appear could result in the permanent suspension or revocation of her license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the)	
Complaint and Statement)	
of Charges Against)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
GAY LYNN LUCKE)	
License No. 16439)	
)	DIA NO. 88DPHPB-9
Respondent)	

TO: GAY LYNN LUCKE:

A Complaint and Statement of Charges regarding the Respondent was filed by the Executive Secretary of the Iowa Board of Pharmacy Examiners (hereinafter the Board) on October 28, 1988.

A hearing on the above Complaint and Statement of Charges was held on October 28, 1988 at 1:10 p.m. in the State Board Conference Room, Second Floor, Executive Hill West, 1209 E. Court, Des Moines, Iowa 50319. Present were the members of the Board. Thomas McGrane, Assistant Attorney General, appeared for the State. The Respondent, Gay Lynn Lucke, was present and was represented by attorney Steven L. Addington. Present also were members of the staff of the Board and a court reporter. Amy Christensen Couch, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was closed to the public pursuant to Iowa Code section 258A.6(1) (1987).

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

THE RECORD

The evidentiary record in this case includes the Complaint and Statement of Charges, the recorded testimony of the witnesses, and the following exhibits:

- State's Exhibit 1 - certified copy of the Illinois Consent Order, transcript of Restoration proceeding, letter dated 5-13-88 (Zook to Coughlin), letter dated 3-30-88 (Lauer to Coughlin), letter dated 4-25-88 (Lucke to Coughlin)
- State's Exhibit 2 - investigative report no. 14 dated 10-13-87 (part struck and not considered by the Board)

Respondent's Exhibit A - letter dated 11-21-88 (Lauer to Addington)

Respondent's Exhibit B - Respondent's list of job applications

Respondent's Exhibit C - Respondent's list of AA meetings dated November 1988

FINDINGS OF FACT

1. The Respondent, Gay Lynn Lucke, is a pharmacist licensed in Iowa and was issued license number 16439 which is current until June 30, 1989.

(testimony of Ms. Lucke; official file)

2. The Respondent was issued a license to practice pharmacy in Illinois on October 20, 1986, by endorsement. The Respondent was originally licensed to practice pharmacy in Nebraska.

(testimony of Ms. Lucke; official file)

3. The Respondent entered into a Consent Order with the Illinois Department of Registration and Education in which her Illinois pharmacy license was indefinitely suspended for practicing pharmacy while suffering from alcohol and drug dependency. The effective date of this Consent Order was January 29, 1988. The Respondent did not report this disciplinary action by the Illinois Board to the Iowa Board.

(testimony of Ms. Lucke; State's Exhibit 1)

4. The Respondent has been habitually intoxicated and alcohol dependent. The Respondent realizes that she is an alcoholic and cannot drink at all. She testified she has not taken a drink since January 1988. On February 16, 1988 the Respondent began an intensive outpatient treatment program for chemical dependency (alcoholism) at the Human Services Center in Peoria, Illinois. While in Phase I of the program she left an abusive relationship which her counselor stated "had been a deterrent to her recovery." She successfully completed Phase I of the program. She completed Phase II of the program on June 23, 1988. She attended AA meetings as a part of her treatment program.

She was last seen by her individual therapist on June 20, 1988. She did not keep an appointment on June 27, 1988. As of June 20, the Respondent's therapist felt her prognosis was guarded, and her sobriety was being threatened. During Phase II of the program, the Respondent was beaten up by the same man she had left in March, and was depressed. As of June 1988, her therapist reported that Ms. Lucke was under stress and her relationship issue had not been resolved.

(testimony of Ms. Lucke; State's Exhibits 1, 2; Respondent's Exhibit A)

5. While in Illinois, the Respondent was taking phenobarbital, which was prescribed for her. Phenobarbital is a potent depressant. Also while in Illinois, the Respondent had a drug screen which tested positive for phentermine. She explained this by testifying that she had leftover Fastin from a six-year-old prescription, and that she had taken Fastin to "bring herself down" when she was keyed up from being raped. Fastin (a brand name of phentermine) is a potent stimulant. Self-medication by taking this Fastin shows very poor decision making by the Respondent. As a pharmacist, the Respondent should have known that Fastin was a stimulant and should not have been taken "to bring herself down." The Board is also concerned about the Respondent self-medicating with drugs from a six-year-old prescription, and taking a potent stimulant at the same time she was taking a potent depressant. This adversely reflects on the Respondent's professional judgment. The Board is not entirely convinced that the Respondent's explanation of the positive phentermine screen is the whole truth. At the restoration hearing in Illinois on June 3, 1988 the Respondent testified that her chemical dependency consisted of mainly alcohol abuse and occasional use of amphetamines. (tr. p. 6). An audit of the Super-X pharmacy in Peoria where the Respondent worked showed shortages of phentermine and Ionamin. Although the Respondent denied any knowledge of such shortages, the Board is not entirely convinced of Respondent's credibility on this point given the positive phentermine screen.

(testimony of Ms. Lucke; State's Exhibits 1, 2)

6. The Respondent moved to Iowa in mid-August 1988. She has continued to attend AA meetings in Iowa and has a sponsor. She has not obtained counseling since living in Iowa. The last information the Board has is from June 1988 when her prognosis was guarded. The Board does not have any current evaluation by a psychologist regarding the Respondent's condition and prognosis.

(testimony of Ms. Lucke; Mr. Brafford)

7. As of the date of the hearing, the Respondent was again living with the same boyfriend with whom she had had the abusive relationship in Illinois. The Respondent testified she had "kicked him out" for eight weeks while in Illinois, and then they had moved back together in August 1988. She also testified she was again forcing him to move out as of December 1, 1988. The Board is very concerned that the Respondent is again living with this man who had abused her and is continuing to expose herself to an abusive situation. The Respondent's counselor stated that as of June 1988, her prognosis was guarded because of the stress she was experiencing, partly due to this unresolved relationship issue.

(testimony of Ms. Lucke; State's Exhibit 1; Respondent's Exhibit A)

8. Except for temporary jobs, the Respondent has not practiced as a pharmacist since August 1987.

(testimony of Ms. Lucke)

9. The Respondent appeared to have a poor self-image, and appeared nervous and insecure at the hearing. The Respondent did not appear ready to handle the stress involved in the practice of pharmacy. The Board has concern about her judgment. It would be a disservice to the public and to the Respondent to allow her to practice pharmacy without undergoing further treatment. (testimony of Ms. Lucke; State's Exhibit 1)

CONCLUSIONS OF LAW

1. Iowa Code section 155A.12 provides that the Board may take disciplinary action if it finds that the Respondent has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

. . .

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

. . .

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

. . .

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

The preponderance of the evidence showed that the Respondent violated Iowa Code sections 155A.12(1),(5),(8), and (10). (Findings of fact numbers 3, 4, 5).

2. Iowa Code section 204.308(3) provides that ". . . a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral prescription . . .". The preponderance of the evidence shows that the Respondent violated Iowa Code section 204.308(3). Self-medicating with Fastin left over from a six-year-old prescription violated Iowa Code section 204.308(3). (Finding of fact number 5).

3. Iowa Code section 204.402(1) provides that "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; . . .".

The preponderance of the evidence showed that the Respondent violated Iowa Code section 204.402(1). (Finding of fact number 5).

4. 657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2) . . . when the board determines that the licensee or registrant is guilty of the following acts or offenses: . . .

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

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

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

. . .

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

. . .

u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55, and 1987 Iowa Code supplement sections 155A.12 and 155A.15.

The preponderance of the evidence showed that the Respondent violated 657 Iowa Administrative Code section 9.1(4)(d), (j), (k), and (u). (Findings of fact numbers 3, 4, 5, 6, 7, 8, 9).

ORDER

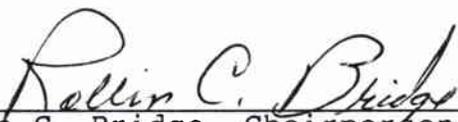
Therefore it is the ORDER of the Iowa Board of Pharmacy Examiners that the license of the Respondent, Gay Lynn Lucke, license number 16439, is hereby suspended for a period of six months beginning on the date of the issuance of this ORDER.

It is the further ORDER of the Board that the Respondent must appear before the Board prior to reinstatement of her license. Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a psychotherapist of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment for substance abuse and physical abuse until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit a six month status report to the Board prior to her reinstatement. The Board may require Respondent to undergo psychiatric evaluations by a Board-approved psychiatrist. The Respondent shall contact the Pharmacists Aiding Pharmacists in Iowa program for assistance in choosing a counselor.

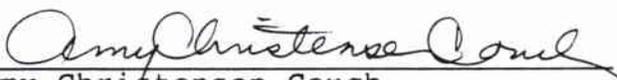
The Respondent will keep a log of AA meetings she attends and submit it to the Board when she reappears before the Board. The Board commends the Respondent for the hard work she has already done on her recovery.

Protection of the public requires that prior to reinstatement, the burden of proof will be on the Respondent to show that the conditions which led to this disciplinary action no longer exist and that she is able to practice pharmacy with reasonable skill and safety. The Respondent will immediately surrender her license to the Board upon receipt of this Order.

Dated this 22ND day of December, 1988.



Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners



Amy Christensen Couch
Administrative Law Judge
Iowa Department of Inspections and Appeals

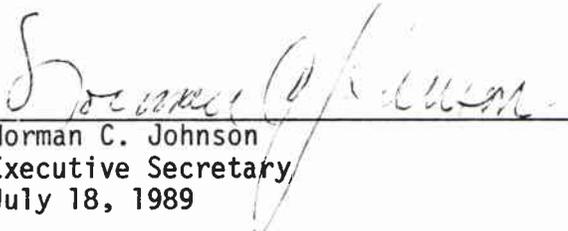
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BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of the	:	
Complaint and Statement	:	
of Charges Against	:	ORDER
GAY LYNNE LUCKE, Respondent	:	
License No. 16439	:	

Gay Lynne Lucke has appeared before the Board asking that the Order of December 22, 1988, be modified to reflect an end to the suspension of her license to practice pharmacy in Iowa.

After hearing testimony and being satisfied that all of the conditions of the December 22, 1988, Order have been satisfied, the Board hereby declares that the license to practice pharmacy issued to Gay Lynne Lucke on May 23, 1984, is restored to a current, active status effective July 12, 1989. Such license is free and clear of all encumbrances.



Norman C. Johnson
Executive Secretary
July 18, 1989