

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

Re:) Case No. 2002-94
Pharmacy Technician Registration of:)
Yulanda Avant) **STATEMENT OF CHARGES**
Registration No. 7257)
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 (2001).
3. On April 4, 2002, the Board issued Respondent, Yulanda Avant, pharmacy technician registration number 7257 to be registered as a pharmacy technician, subject to the laws of the State of Iowa and the rules of the Board.
4. Registration number 7257 is current and active.
5. Respondent's current address is 12235 27th Street, Fort Dodge, Iowa 50501.
6. Respondent has been employed as such during all times relevant to this statement of charges by Wal-Mart Pharmacy #10-0886, 3036 First Avenue South, Fort Dodge, Iowa 50501.

COUNT I

The Respondent is charged under Iowa Code §§ 147.55 & 272C.3 (2003), and 657 Iowa Administrative Code § 36.1(4)(a) with fraud in procuring a pharmacy technician registration.

THE CIRCUMSTANCES

1. At the time Respondent applied to the Board for registration as a pharmacy technician, she indicated in her application that she had not been charged, convicted, found guilty of, or entered a plea of guilty or no contest to a felony or misdemeanor crime.
2. Respondent has an extensive record of felony and misdemeanor criminal charges,

convictions, guilty pleas and jail sentences covering the past ten years.

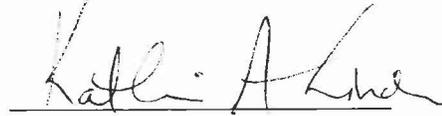
3. Respondent has been charged and convicted of, among other things, possession of marijuana and disorderly conduct.

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 19th day of February, 2003, 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

RE:)	CASE NO. 2002-94
Pharmacy Technician Registration of:)	DIA NO: 03PHB016
Yulanda Avant)	FINDINGS OF FACT,
Registration No. 7257)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

TO: Yolanda Avant

On February 19, 2003, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Yolanda Avant (Respondent), a registered pharmacy technician. The Statement of Charges alleged that the Respondent violated Iowa Code sections 147.55, 272C.3(2003) and 657 IAC 36.1(4)"a" by committing fraud in procuring a pharmacy technician registration.

A Notice of Hearing was issued on February 25, 2003 and was served on the Respondent by certified mail, return receipt requested. The hearing on the Statement of Charges was held on June 25, 2003 at 10:05 p.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Paul Abramowitz; Michael J. Seifert; Lemman Olson; Vernon Benjamin; G. Kay Bolton; and Barbara Ellen O'Roake. The Respondent did not appear, nor was she represented by counsel. The state was represented by Scott Galenbeck, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open 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; Notice of Hearing; the testimony of the witnesses; and State Exhibits 1-4.

FINDINGS OF FACT

1. On March 15, 2002, the Respondent was hired as a pharmacy technician by the Wal-Mart Store at 301 S. 29th St. in Fort Dodge, Iowa. On March 27, 2002, the Respondent filed an Application For Pharmacy Technician Registration with the Board. She responded "no" to question 9 on the application: "Have you ever been charged, convicted, found guilty of, or entered a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$100)?" The Respondent signed her name following the statement "I certify to the Iowa Board of Pharmacy Examiners that the information I have provided on this registration application is true and correct." (Testimony of Denny Dobesh; State Exhibit 3)

2. On April 4, 2002, the Board issued the Respondent pharmacy technician registration number 7257, subject to the laws of the state of Iowa and the rules of the Board. Registration number 7257 is current and active. (Testimony of Dennis Dobesh; State Exhibits 1, 4)

3. After the Respondent had been employed by Wal-Mart for four to six months, she was arrested at the store after pharmacy hours. After further investigation, Wal-Mart placed the Respondent on leave of absence pending investigation. Wal-Mart notified the Board that the Respondent may have fraudulently obtained her pharmacy registration. Board Investigator Denny Dobesh was assigned to investigation. (Testimony of Denny Dobesh; State Exhibit 4)

4. On January 20, 2003, Investigator Dobesh obtained a copy of the Respondent's criminal history record at the Fort Dodge Police Department. The Respondent's criminal record includes an extensive history of felony and misdemeanor criminal charges, convictions, guilty pleas, and jail sentences over the past ten years. The convictions include false report to law enforcement, assault, violation of no contact order, contempt of court, driving without a license, possession of marijuana, refusing to assist a police officer, driving under suspension, assault without intent to do injury, disorderly conduct, and failure to appear. (Testimony of Denny Dobesh; State Exhibit 4)

5. The Respondent was served with the Notice of Hearing and Statement of Charges by certified mail, return receipt requested on March 26, 2003. She personally signed the return receipt card. (Testimony of Debbie Jorgenson; State Exhibit 2)

CONCLUSIONS OF LAW

I. Failure to Appear

657 IAC 35.5(1)"b" provides that the notice of hearing may be executed by certified mail, return receipt requested. 657 IAC 36.5(5) provides that the notice shall be delivered at least 30 days before the time set for the hearing.

The notice of hearing was delivered to the Respondent by certified mail, return receipt requested on March 26, 2003. (State Exhibit 2) The Respondent personally signed the return receipt card. She was properly served with the notice of hearing but failed to appear.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 657 IAC 35.21 (1). When the Respondent failed to appear, the Board was authorized to proceed with the hearing.

II. The Violation

Iowa Code section 147.55(2001) authorizes the Board to discipline a person licensed to practice a profession if the person commits fraud in procuring the license.

Iowa Code section 272C.3(2001) authorizes licensing boards to initiate and prosecute disciplinary proceedings and impose licensee discipline, including revocation of the license.

657 IAC 36.1(4)(a) provides, in relevant part:

36.1(4) Grounds for discipline. The board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth... in making

application for a registration to practice as a...pharmacy technician. It includes false representations of material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application,...in making application for a license or registration in this state.

The preponderance of the evidence established that the Respondent has violated Iowa Code section 147.55(1)(2001) and 657 IAC 36.1(4)"a" by her false answer to the question concerning criminal history on the application for registration as a pharmacy technician. The Respondent answered the question no, when in fact she has a long list of arrests and convictions and has had several jail sentences. The Respondent was certainly aware of her criminal history, which included jail sentences and fines, and knew that she was providing a false answer on her application for registration. Criminal history information is material to the Board's decision whether to issue a pharmacy technician registration.

III. Sanction

The Respondent obtained her registration through deception and false representation. This violation destroys any trust or confidence that the Board might have in the Respondent as a registered pharmacy technician. The protection of the public requires revocation of her registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration no. 7257, issued to Yulanda Avant, shall be REVOKED, effective immediately upon service of this order.

IT IS FURTHER ORDERED, that the Respondent shall immediately return her pharmacy technician registration to the Iowa Board of Pharmacy Examiners, 400 SW 8th St., Suite E, Des Moines, Iowa 50309-4688.

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 may 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 29th day of July, 2003.

Kay Bolton, for
Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated within the time frame provided by rule 657-35.26... A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 657 IAC 35.21. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 657 IAC 35.21(4).