

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2007-130
Pharmacist License of)	
THOMAS W. BADER,)	STATEMENT OF CHARGES
License No. 13473,)	
Respondent.)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy (hereinafter referred to as the "Board") and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2007).
3. On September 5, 1968, the Board issued Respondent, Thomas W. Bader (hereinafter, "Respondent"), by examination, a license to engage in the practice of pharmacy in Iowa, as evidenced by license number 13473, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license is active through June 30, 2009.
5. Respondent's address of record is 2690 Whiterock Lane, Colorado Springs, Colorado 80904.

A. CHARGES

COUNT I – LICENSE DISCIPLINE IN COLORADO

Respondent is charged under Iowa Code §§ 155A.12(1), 155A.12(8) and 155A.12(10) (2007) and 657 Iowa Administrative Code §§ 36.1(4)(j), 36.1(4)(ad) and 36.1(4)(ae), with having had his license to practice pharmacy in Colorado suspended October 19, 2007, after which Respondent voluntarily and permanently relinquished his right to practice pharmacy in the State of Colorado.

COUNT II – FAILURE TO DISCLOSE DISCIPLINE

Respondent is charged under Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(k), with failure to notify the Board within 30 days of discipline in the State of Colorado.

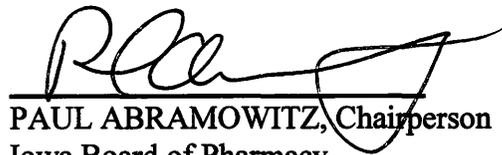
B. CIRCUMSTANCES

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

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such disciplinary action as it may deem to be appropriate under the law.


LLOYD K. JESSEN
Executive Secretary/Director

On this th 4 day of March 2008, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.


PAUL ABRAMOWITZ, Chairperson
Iowa Board of Pharmacy
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

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BEFORE THE IOWA BOARD OF PHARMACY

RE:)	CASE NO. 2007-130
Pharmacist License of)	DIA NO: 08PHB022
THOMAS W. BADER)	
License No. 13473)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

TO: Thomas W. Bader

On March 4, 2008, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Thomas W. Bader (Respondent), alleging the following violations:

Count I: Having license discipline in the state of Colorado, in violation of Iowa Code §§ 155A.12(1), (8), (10)(2007) and 657 IAC 36.1(4)(j), (ad), and (ae);

Count II: Failure to notify the Board within 30 days of discipline in the state of Colorado, in violation of Iowa Code § 155A.12(1)(2007) and 657 IAC 36.1(4)(k).

The hearing was held on June 4, 2008 at 9:25 a.m. The following members of the Board presided at the hearing: Leman Olson, Chairperson; Susan Frey; DeeAnn Wedemeyer Oleson; Edward L. Maier; Margaret Whitworth; and Ann Diehl. Respondent failed to appear for the hearing. Assistant Attorney General Scott Galenbeck represented the state. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2007).

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 their decision. The administrative law judge was instructed to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the testimony of the witness and the following exhibits:

State Exhibit A: Statement of Charges, 3/4/08
State Exhibit B: Notice of Hearing, 3/7/08
State Exhibit C: Certified Mail Return Receipt
State Exhibit D: Request for Publication, 4/28/08
State Exhibit E: Affidavit of Publication
State Exhibit F: Certified Record of Colorado Discipline

FINDINGS OF FACT

1. On September 5, 1968, the Board issued Respondent license number 13473 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. Respondent's Iowa pharmacist license is active through June 30, 2009. (State Exhibit A)
2. Respondent was licensed as a pharmacist in the state of Colorado on June 23, 1969. (State Exhibit F)
3. On January 3, 2008, the Board received a certified copy of the public disciplinary documents concerning Respondent's Colorado pharmacist license.
 - a. On October 19, 2007, the Colorado Board of Pharmacy took emergency action to suspend Respondent's pharmacy license based on a finding that Respondent had deliberately and willfully violated the State Pharmaceuticals and Pharmacists Act, Colorado administrative rules, and the United States Code.
 - b. The charges included allegations that Respondent had imported and dispensed a human growth hormone (somatropin) from China and Chinese suppliers. Somatropin is not an FDA approved drug, and it could not be introduced into interstate commerce in the United States without violating Food and Drug Administration (FDA) regulations.
 - c. Respondent repackaged and distributed somatropin as a "treatment" to prevent aging and as a body-building supplement.
 - d. On December 14, 2007, Respondent resolved the charges against him by stipulating to a permanent relinquishment of his Colorado pharmacist license and by permanently waiving his right to re-apply for licensure.

(Testimony of Debbie Jorgenson; State Exhibit F)

4. Respondent has never notified the Iowa Board that his Colorado pharmacist license had been disciplined. (Testimony of Debbie Jorgenson; State Exhibit F)

5. The Statement of Charges and Notice of Hearing were sent to Respondent at his Colorado address by certified mail, return receipt requested. The post office left two notices but Respondent failed to claim the certified mail. Subsequently, notice was served on Respondent by publication in a newspaper of general circulation. Respondent failed to appear for hearing. (State Exhibits A-D; Testimony of Debbie Jorgenson)

CONCLUSIONS OF LAW

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

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

...

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 the 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 the state.

Iowa Code section 155A.12(1), (8), (10) (2007).

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

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

...

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 or

the distribution of controlled substances, prescription drugs, or nonprescription drugs.

k. Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary action.

...

ad. Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.

ae. Having a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to any of the grounds for disciplinary action in Iowa. A copy of the record from the state taking the disciplinary action shall be conclusive evidence of the action taken by that state.

The Board charged Respondent with having his license to practice pharmacy in Colorado disciplined, in violation of Iowa Code sections 155A.12(1), (8), and (10) (2007) and 657 IAC 36.1(4)(ad) and (ae) [Count I]. The Board further charged Respondent with failure to notify the Iowa Board within 30 days of discipline in the state of Colorado, in violation of Iowa Code section 155A.12(1) and 657 IAC 36.1(4)(k) [Count II]. The preponderance of the evidence supports both counts. After Colorado summarily suspended his license for violating the State Pharmaceutical and Pharmacists Act, Colorado administrative rules, and the United States Code, Respondent voluntarily relinquished his Colorado pharmacist license and permanently waived his right to apply for re-licensure. This constituted license discipline, which Respondent failed to report to the Iowa Board.

License revocation is warranted due to the very serious nature of Respondent's violations in Colorado and Respondent's failure to respond to the Iowa charges or to appear for the hearing.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacist license no. 13473, issued to Thomas W. Bader, shall be REVOKED, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill

Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 29th day of July, 2008.



Leman Olson, Chairperson
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General

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