

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2012-122
Uncertified Pharmacy Technician)	
Registration of)	STATEMENT OF CHARGES
THOMAS W. BENOIT,)	& NOTICE OF HEARING
License No. 1415,)	
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) on April 23, 2013, and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3) (2013). Respondent was issued uncertified pharmacy technician registration number 1415. Respondent's unregistered pharmacy technician registration is active and will expire on December 31, 2013.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on June 25, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the morning hearing session, beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8th Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Theresa O'Connell Weeg
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Weeg may also be reached by phone at (515)281-5328 or by e-mail at Theresa.Weeg@iowa.gov.

Communications. You may contact the Board office (515)281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. However, you may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Theresa O'Connell Weeg at (515)281-5328 or at Theresa.Weeg@iowa.gov.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2011).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148C, and 272C (2011) and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

C. CHARGES

COUNT I

INABILITY TO PRACTICE WITH REASONABLE SKILL AND SAFETY

Respondent is charged under Iowa Code Sections 147.55(9) (2013) and 657 Iowa Administrative Code 36.1(4)(m) with inability to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

D. FACTUAL CIRCUMSTANCES

1. Respondent is an uncertified pharmacy technician in the State of Iowa. His registration is currently active and will expire on December 31, 2013.
2. At all times material to this Statement of Charges, Respondent was employed as an uncertified pharmacy technician at Hammer Pharmacy in Des Moines, IA.

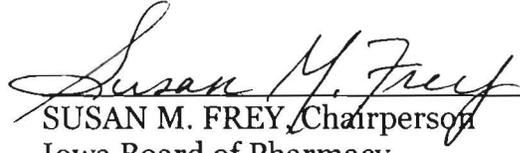
3. The Board has information that Respondent is suffering from an impairment due to substance abuse.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Theresa Weeg.

F. PROBABLE CAUSE FINDING

On this 23rd day of April, 2013, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.


SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Theresa Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

- | | |
|--|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input checked="" type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number 9171999991703106849992 | <input type="checkbox"/> other _____ |
- on the 25th day of April, 2013.

I declare that the statements above are true to the best of my information, knowledge and belief.


Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No: 2012-122
Uncertified Pharmacy Technician)	DIA No: 13PHB036
Registration of:)	
)	
Thomas W. Benoit,)	
License No. 1415,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	and ORDER

This matter concerns a statement of charges filed against respondent Thomas Benoit on April 23, 2013. Respondent is an uncertified pharmacy technician.¹ He was charged with inability to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

The case heard at the Board's headquarters on June 25, 2013. The following board members were present for the hearing: Susan Frey, LaDonna Gratias, Edward Maier, Edward McKenna, James Miller, Sharon Meyer, and Judith Trumpy. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the board. Meghan Gavin, an assistant attorney general, represented the public interest. Respondent did not appear.

THE RECORD

The State's exhibits 1-8 were admitted. The State called Jennifer Tiffany as a witness.

FINDINGS OF FACT

On June 25, 2012, the Board received a complaint from a customer of Hammer Pharmacy in Des Moines that a male pharmacist was frequently observed sleeping at the pharmacy counter, stumbling around the pharmacy, and falling asleep in his car after the pharmacy closed. The complainant reported that the pharmacist had bloodshot eyes and was not able to carry on a conversation. The complainant stated that she goes to the pharmacy every afternoon and has seen this activity on a daily basis. (Exhibits 4-6).

¹ All incoming pharmacy technicians are required to be certified, as provided in Iowa Code section 155A.6A(2) and (3). Respondent is not certified, but met a grandfather exception because he was registered prior to January 1, 2010.

The Board assigned the case to Jennifer Tiffany to conduct an investigation. Ms. Tiffany talked to Pam Key, who is the pharmacist in charge at Hammer. Ms. Key stated that the only male pharmacist is part-time and only works every other Saturday. The only other male that worked at Hammer at the time was respondent Tom Benoit, who was a pharmacy technician. After further discussion, Ms. Tiffany and Ms. Key agreed that respondent was the subject of the complaint. (Tiffany testimony; exhibit 4).

Ms. Key reported that respondent was entering an inpatient treatment program at Powell Chemical Dependency Center at Lutheran Hospital that very day. Mr. Benoit suffered severe back pain from a workplace accident 16 years prior. His physician was increasing medication to try to control the pain. Ms. Key and the other pharmacist noticed that respondent started to appear impaired, confused, and tired. There were occasions which they called one of his children to pick him up from work out of fear he could not make it home. (Exhibit 6; Tiffany testimony).

Ms. Tiffany followed up with Ms. Key on August 9, 2012, and again on August 21, 2012. Respondent was not admitted to Powell, and later found an inpatient detox program in Bayard. He entered the Bayard program on August 24, 2012, and was there for seven weeks. He was successfully discharged on October 5, 2012. Ms. Key told Ms. Tiffany that respondent had other employment and she did not expect him to return to work at Hammer. (Exhibits 6, 8; Tiffany testimony).

The investigation raised obvious concerns about respondent's ability to practice. Ms. Tiffany contacted respondent to discuss a voluntary resolution of these concerns. On December 11, 2012, respondent left a voice mail message with Ms. Tiffany. He stated that he had no desire or intent to return to work at Hammer. On December 17, 2012, respondent and Ms. Tiffany met to discuss a possible resolution. Ms. Tiffany provided a proposed combined order that addressed the Board's concerns. Respondent took the document for consideration, but the matter was not informally resolved. (Tiffany testimony).

CONCLUSIONS OF LAW

Regulatory framework: The board was created for the express purpose to promote, preserve and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy.² The board regulates the area, in part, through the licensing of pharmacies, pharmacists, and others engaged in the sale, deliver, or distribution of prescription drugs and devices.

A pharmacy technician is a person registered by the board and is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical

² Iowa Code section 155A.2.

functions of the practice.³ The board may deny, suspend, or revoke a pharmacy technician registration for any violation of the laws of a state or the federal government relating to prescription drugs, or any violation of several listed statutes or the board's regulations.⁴

Statement of charges: The board may impose discipline if a registrant is unable to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.⁵ The undisputed evidence shows a violation of the regulation. A customer witnessed respondent on multiple occasions with blood-shot eyes, stumbling in the pharmacy, and incapable of carrying on a conversation. She saw him sleeping at the pharmacy counter, and also fall asleep in his car immediately after work. She had the impression that he was either drunk or stoned. The customer's statement is corroborated by the statements from the pharmacist in charge, who confirmed that respondent was impaired by taking increasing doses of pain medication, and displayed confusion, distraction, and sleepiness. The pharmacy sometimes had to call for rides to make sure respondent could safely travel home. Respondent clearly recognized a problem and sought placement in a treatment center. Under these facts, there is no question that he was not able to practice with reasonable skill and safety by reason of a mental or physical impairment, or due to the medications he was taking to combat his physical problems.

Sanction: The Board has the authority to impose disciplinary sanctions including revocation, suspension, or nonrenewal of a license, placing a license on probation, requiring additional training or examination, imposing a civil penalty, and any other action that is appropriate and allowed by law.⁶

The Board's primary concern is that respondent placed the public health, safety, and welfare at risk by working in the pharmacy while impaired. The pharmacists at Hammer recognized that respondent was impaired and checked his work more closely, but his condition still created a greater likelihood of an error that may have jeopardized the safety of the public. Additionally, respondent's condition was readily noticed by at least one customer, who filed a complaint with the Board about a "pharmacist" who appeared to be drunk or stoned while working at the pharmacy. This jeopardizes the integrity of the profession as a whole, in that a member of the public reasonably believes that a pharmacist was working with controlled substances while under the influence or otherwise impaired.

This is not so much a case to remedy wrong-doing, but rather, a case to protect the public safety. There is no evidence or allegation that respondent was diverting controlled

³ Iowa Code section 155A.3(33).

⁴ Iowa Code section 155A.6A(5).

⁵ 657 IAC 36.1(2).

⁶ Iowa Code section 155A.6(7).

substances or taking more pain medication than prescribed. Rather, his medical condition and/or his use of prescription medications create serious concerns that he could again work with controlled substances. Respondent attended a treatment program, but he did not provide to the Board information regarding his medical and/or mental health diagnoses, his treatment plan, compliance with any recommended after-care, and current medications. The information about the treatment program itself was limited. Respondent may have been able to answer some of these questions if he had appeared for the hearing, but he did not do so. He told Ms. Tiffany he does not intend to work in a pharmacy again, which may explain his nonappearance. However, the Board must presume he may again seek out employment in a pharmacy, and enter the appropriate sanction to protect the public welfare.

For these reasons, the Board revokes the pharmacy technician registration held by respondent. In the event respondent would like to work as a pharmacy technician, he may seek reinstatement. At that time, he would need to appear before the Board and affirmatively provide supporting information to prove that he can practice safely and in accord with the public welfare. He would also need to comply with the certification requirements that are now in place for incoming pharmacy technicians. In the event he met his burden of proof and showed compliance with all governing standards, the Board would consider reinstating his registration with terms and conditions that would be set at that time.

DECISION AND ORDER

The Iowa Board of Pharmacy revokes the pharmacy technician registration held by Thomas Benoit. Respondent shall immediately return his pharmacy technician registration to the Iowa Board of Pharmacy Examiners, 400 SW 8th St., Suite E, Des Moines, Iowa 50309-4688.

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 days of receipt of the bill.

Dated this 10th day of October, 2013.



Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Notice

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.