

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	Case No. 2011-160
Pharmacy Technician Registration of	)	
<b>DANA BORMANN</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 17530,	)	
Respondent	)	

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

1. He is the Executive Director of the Iowa Board of Pharmacy (hereinafter, 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 147, 155A and 272C (2011).
3. The Board issued Dana Bormann (hereinafter "Respondent"), pharmacy technician registration number 17530, registering her as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration was last renewed on June 15, 2011.
4. Respondent's registration will next expire/expired on June 30, 2012.
5. At all times material to this Statement of Charges, Respondent was employed as a pharmacy technician at Mercy Family Pharmacy, Dubuque, Iowa.

**A. CHARGES**

**COUNT I – FRAUDULENT APPLICATION**

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011), and 657 Iowa Administrative Code § 36.1(4)(a) with fraud in procuring a technician registration.

**B. CIRCUMSTANCES**

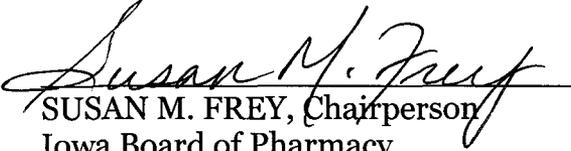
On or about October 28, 2011, an investigation was commenced which revealed the following:

1. At all material times, Respondent was employed as a technician at Mercy Family Pharmacy in Dubuque, Iowa
2. On June 15, 2011, when Respondent applied for a technician registration, she answered "no" to application question #8 which asks: "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 traffic violations with fines under \$100)?"
3. Iowa District Court records establish that Respondent pleaded guilty, on April 15, 2010, to operating a motor vehicle while intoxicated. On December 29, 2009 Respondent pleaded guilty to driving with an open container of alcohol in the vehicle she was driving. A 5<sup>th</sup> degree theft charge (simple misdemeanor) against Respondent was dismissed on September 4, 2007.
4. Respondent acknowledges that she did not reveal her criminal history on her application to register as a technician.

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 Director

On this 27<sup>th</sup> day of June 2012, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

  
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

BEFORE THE IOWA BOARD OF PHARMACY

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IN THE MATTER OF THE  
STATEMENT OF CHARGES AGAINST:

CASE NO. 2011-160  
DIA NO. 12PHB034

DANA BORMANN,  
Registration No. 17530

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER

RESPONDENT

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On June 27, 2012, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges against Dana Bormann (Respondent), alleging that she violated Iowa Code § 155A.6A(5) (2011) and 657 IAC 36.1(4)(a) by committing fraud in procuring a technician registration.

The hearing was held on January 15, 2013 at 3:15 p.m. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Edward McKenna; Dee Ann Wedemeyer Oleson; and LaDonna Gratias. Assistant Attorney General Theresa O'Connell Weeg represented the state. Respondent failed to appear for hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1) (2011) and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. 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 Board Compliance Officer James Wolfe, R.Ph. and State Exhibits 1-12.

FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 17530 to Respondent, which authorizes her to serve as a pharmacy technician, subject to the laws of the state of Iowa and the rules of the Board. Respondent's pharmacy technician registration is current. Respondent was employed as a pharmacy technician or

pharmacy technician trainee at Mercy Family Pharmacy in Dubuque, Iowa at all times relevant to this decision. (State Exhibit 7; James Wolfe testimony)

2. On December 29, 2009, Respondent entered a guilty plea in Dubuque County District Court to driving with an open container of alcohol in her vehicle and was fined. (James Wolfe testimony; State Exhibits 11, 12)

On April 15, 2010, Respondent pled guilty in Dubuque County District Court to Operating a Motor Vehicle While Intoxicated (OWI). Respondent was given a 62 day suspended jail sentence and was placed on probation for a period of two years.

3. On June 15, 2011, Respondent filed an application for registration as a pharmacy technician trainee. Respondent falsely answered "no" to question #8 on the application, which asked:

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?*)

(James Wolfe testimony; State Exhibit 6)

4. In November 2011, the Board opened an investigation after receiving two anonymous complaints against Respondent. Board Compliance Officer James Wolfe interviewed Respondent on November 16, 2011. During this interview, Respondent admitted that she had been convicted of OWI and Open Container but adamantly denied the other allegations made against her in the anonymous complaints. Respondent stated that she "ran through" the application paperwork, did not think things over, and did not "really contemplate" what was "meant by the questions." She further stated that she thought the Open Container ticket was just a simple ticket like speeding. (James Wolfe testimony; State Exhibits 7-10)

5. Respondent was served with the Statement of Charges and Notice of Hearing by restricted certified mail on July 5, 2012. The initial hearing date was continued. On December 8, 2012, Respondent was served with the Corrected Notice of Hearing by restricted certified mail. The Corrected Notice of Hearing scheduled the hearing for January 15, 2013 during the afternoon session beginning at 1:00 p.m. Respondent failed to appear for hearing. (State Exhibits 1-4)

## CONCLUSIONS OF LAW

Iowa Code § 155A.6A(5) (2011) provides, in relevant part, that the board may suspend or revoke or otherwise discipline a registered pharmacy technician for any violation of any rule of the board.

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 Respondent violated Iowa Code section 155A.6A(5)(2011) and 657 IAC 36.1(4)"a" when she provided a false answer to the criminal history question on the registration application. The Respondent answered the question no, when in fact she had two criminal convictions that should have been disclosed on the application. The question on the application is clear, and Respondent's explanation for her failure to disclose these convictions was not convincing. Respondent received a suspended jail sentence for the OWI conviction and was placed on criminal probation for two years. Respondent was still on probation when she completed the application. Respondent could not reasonably believe that an OWI conviction is a "minor traffic violation" that did not have to be reported.

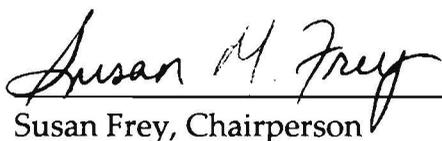
## DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 17530, issued to Dana Bormann, is hereby INDEFINITELY SUSPENDED. Respondent is not required to wait a year before seeking reinstatement. If Respondent seeks reinstatement of her registration, however, the burden will be on her to show that the basis for the

revocation no longer exists and that is in the public interest for her registration to be reinstated. 657 IAC 36.13(4). In order to be reinstated, Respondent will have to document that she has fully complied with any requirements placed on her by the district court in connection with her criminal convictions, including but not limited to payment of fines, completion of a substance abuse evaluation, completion of school for Drinking Drivers, and compliance with any other terms of her criminal probation.

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 30<sup>th</sup> day of January, 2013.



Susan Frey, Chairperson  
Iowa Board of Pharmacy

cc: Theresa O'Connell Weeg, Assistant Attorney General  
Hoover State Office Building (LOCAL)

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).

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.