

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

Re:	)	Case No. 2004-38
Pharmacy Technician Registration of:)	
SPENCER BROTHERSEN,	)	STATEMENT OF CHARGES
Registration No. 7550,)	
Respondent.)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners (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 (2003).
3. The Board issued Respondent Spencer Brothersen pharmacy technician registration number 7050, registering him as a pharmacy technician, subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration was renewed August 1, 2002.
4. Respondent's technician registration expired April 30, 2004. The renewal application was timely received in the Board office on April 22, 2004, but has not been processed pending resolution of an investigation and the stated charges.
5. Respondent's current address is 2827 Farnam Street, Davenport, IA 52803.
6. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at Omnicare of the Quad Cities, 2660 E. 53rd Street, Suite 1, Davenport, IA 52807.

A. CHARGE

COUNT I – VIOLATION OF CONTROLLED SUBSTANCES LAW

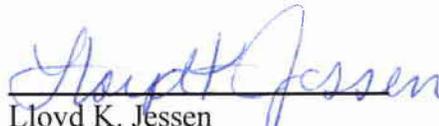
Respondent is charged pursuant to Iowa Code § 155A.6(7) (2003), and 657 Iowa Administrative Code § 36.1(4)(j), with violations of the laws of Iowa relating to controlled substances and non-prescription drugs, which also relate to the practice of pharmacy.

B. FACTUAL CIRCUMSTANCES

On or about April 22, 2004 Respondent reported on his application to renew his pharmacy technician registration that he had been charged with a misdemeanor. An investigation was commenced which revealed the following:

1. Respondent indicated in his application to renew his pharmacy technician registration that he had pleaded "no contest to the charges of [possession] of drug paraphernalia, and criminal mischief."
2. A review of Iowa court records indicate that Respondent has been adjudicated guilty of the simple misdemeanor of public intoxication on May 28, 2003, adjudicated guilty of the simple misdemeanor of possession of possession of drug paraphernalia on May 28, 2003, adjudicated guilty of the serious misdemeanor of criminal mischief (4th degree) on May 28, 2003.
3. Respondent was also adjudicated guilty of speeding on May 9, 2003 and adjudicated guilty of being a minor in possession of alcohol on December 12, 2003.

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 7 day of October 2004, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Michael J. Seifert, 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

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FEB 15 2005

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

IOWA PHARMACY EXAMINERS

Re:	)	Case No. 2004-38
Pharmacy Technician Registration of)	
SPENCER BROTHERSEN	)	STIPULATION
Registration No. 7550	)	AND
Respondent	)	CONSENT ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2003), the Iowa Board of Pharmacy Examiners (hereinafter, "board") and Spencer Brothersen

(hereinafter, "Respondent"), enter into this Stipulation and Consent Order settling a pending contested case. The pending contested case is a licensee disciplinary proceeding before the Iowa Board of Pharmacy Examiners based on allegations specified in a Statement of Charges filed October 7, 2004. The Board and Respondent, who hereby agree that the contested case shall be resolved without proceeding to hearing, stipulate to the following:

1. Respondent was issued Iowa pharmacy technician registration number 7550 in 2002, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. Respondent's registration expired April 30, 2004. Respondent's renewal application was timely received in the Board office on April 22, 2004, but was not renewed pending resolution of an investigation and the stated charges.
3. Respondent is not currently working as a technician and is providing janitorial services at Omnicare of the Quad Cities, Enlow Drugs, Inc.
4. A Statement of Charges was filed against Respondent on October 7, 2004.
5. The Board has jurisdiction over Respondent and the subject matter herein.

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SB

6. Respondent does not contest the allegations set forth in the Statement of Charges and acknowledges that the allegations constitute grounds for the suspension of his pharmacy technician registration in Iowa and for the additional discipline as described herein.

7. Upon the date of the Board's approval of this Stipulation and Consent Order, Respondent's registration shall be placed on probation for a period of five (5) years, under the following terms and conditions:

~~a. Respondent shall not consume alcohol.~~ SB

b. Respondent shall not possess or use any controlled substance or prescription drug, in any form, unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider.

c. Upon demand by an agent of the Board, Respondent shall provide witnessed blood or urine specimens, with costs relating to analysis to be paid for by Respondent. The specimens shall be used for alcohol and drug screening and to verify Respondent's compliance with this Stipulation and Consent Order and with any therapy ordered by Respondent's physician and/or counselor.

d. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Stipulation and Consent Order. The reports shall be filed not later than March 5, June 5, September 5 and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's place of employment, current home

address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

e. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

f. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

g. Respondent shall inform the Board in writing within ten (10) days of any change of home address, place of employment, home telephone number or work telephone number.

h. Respondent may participate in the Iowa Pharmacy Recovery Network (IPRN) program under the direct support of an IPRN advocate.

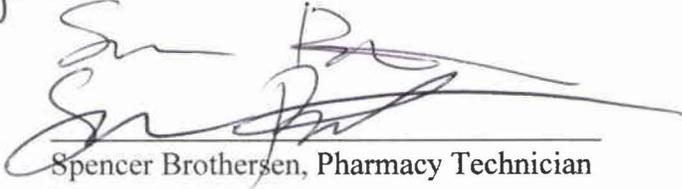
8. Respondent shall notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this Stipulation and Consent Order. The notification requirement contained in this paragraph shall only apply where Respondent's pharmacy technician registration is or will be utilized in the course of his employment. Within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his employer to report to the Board in writing, acknowledging that the employer has read this Stipulation and Consent Order and understands it.

9. Respondent acknowledges as follows: (1) Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order,

the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license, or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2003), and 657 IAC 36, (2) the charges resolved by this Stipulation and Consent Order arose at a time when Respondent was on probation pursuant to an earlier Stipulation and Consent Order and (3) if Respondent again violates probationary terms, continuation of his technician registration is unlikely.

10. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, the Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.
11. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.
12. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER of the Board in a disciplinary action.

This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 14 day of February, 2005.


Spencer Brothersen, Pharmacy Technician
Respondent

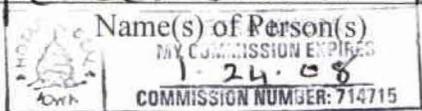
State of Iowa

County of Johnson

Signed and sworn (or affirmed) before me

on 2-14-05
Date

by Spencer David Brothersen



Notary Public

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 15 day of February, 2005.


Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN REGISTRATION

I, Spencer D. Brothersen, a resident of 1015 Oakcrest Street F-1, Iowa City, IA 52246, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat on the part of anyone, do hereby voluntarily surrender my pharmacy technician registration in the State of Iowa, number 7550, to the Iowa Board of Pharmacy Examiners, for an indefinite period of time. This surrender of registration shall become effective upon the notarized signature of the registrant, Spencer D. Brothersen, being affixed to this voluntary surrender document.

I, Spencer D. Brothersen, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat given or made by any representative, officer, or employee of the Iowa Board of Pharmacy Examiners, or of any other state official, do hereby further acknowledge that by voluntarily signing this surrender statement that I am knowingly and willingly giving up the exercise of the following legal rights:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy Examiners on the matter of my continued registration as a pharmacy technician pursuant to Chapter 155A, Code of Iowa (1999).
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) My right to submit evidence and to have witnesses called on my own behalf at such formal hearing.
- (4) My right to be represented by an attorney in this matter at this time.

I, Spencer D. Brothersen, do hereby acknowledge that pursuant to 657 Iowa Administrative Code section 36.25, a pharmacy technician registration which has been voluntarily surrendered shall be considered a revocation of license with respect to a request for reinstatement, which will be handled under the terms established by 657 Iowa Administrative Code section 36.23, which provides as follows:

Any person ... whose pharmacy technician registration ... has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

....

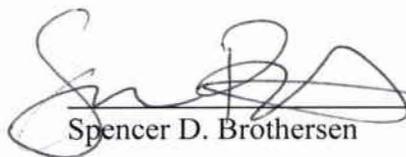
3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license, registration, or permit. Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657—9.24 (17A,124B,147,155A,272C).

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657 Chapter 14.

I, Spencer D. Brothersen, hereby further acknowledge that I shall not engage in any of the practices or aspects thereof of a pharmacy technician in the State of Iowa for which a registration is required.

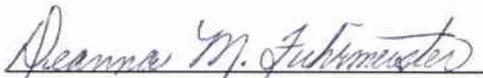
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Date of signature

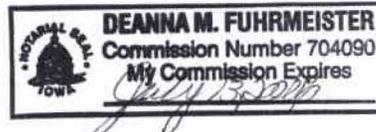

Spencer D. Brothersen

State of Iowa
County: of Johnson

Signed and sworn to (or affirmed) before me on October 25, 05
Date

By Spencer D. Brothersen.


Signature of Notary Public



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

Re:)	
Pharmacy Technician Registration of	)	REINSTATEMENT
SPENCER BROTHERSEN	)	ORDER
Registration No. 7550)	
Respondent)	

COMES NOW, Leman Olson, Chairperson of the Iowa Board of Pharmacy, on the 4th day of June, 2008, and declares that:

1. On October 25, 2005, Respondent voluntarily surrendered his pharmacy technician registration.
2. Respondent acknowledged that a pharmacy technician registration which has been voluntarily surrendered shall be considered a revocation of registration with respect to a request for reinstatement.
3. On April 29, 2008, Respondent appeared before the Board at an Informal Reinstatement Conference pursuant to 657 I.A.C. 36.14.
4. Based on the testimony presented at the Informal Reinstatement Conference, the Board concludes that the basis for the revocation of Respondent's pharmacy technician registration no longer exists and that it is in the public interest to allow his registration to be reinstated.

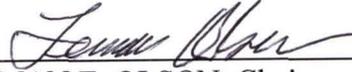
WHEREFORE, following deliberation by the Board, it is hereby ordered that Respondent's pharmacy technician registration number 7550 shall be reinstated, subject to the following terms and conditions:

1. Respondent's renewal registration, which has already been submitted, will be processed and placed on probation for a term of three (3) years. The Respondent's probation is subject to the following terms and conditions:
 - a. Respondent's period of probation shall begin on the date of this Order and continue for three years.
 - b. Respondent shall not possess or use any controlled substance or prescription drug, in any form, unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider.
 - c. Upon demand by an agent of the Board, Respondent shall provide witnessed blood or urine specimens, with costs relating to analysis to

be paid for by Respondent. The specimens shall be used for alcohol and drug screening and to verify Respondent's compliance with this Reinstatement Order.

- d. For the purpose of facilitating paragraph (c), above, Respondent shall work with FirstLabs or another Board-approved testing service to provide random specimens for laboratory testing as directed by the Board.
 - e. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The reports shall be filed not later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's place of employment, current home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.
 - f. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearance.
 - g. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.
 - h. Respondent shall inform the Board in writing within ten (10) days of any change of home address, place of employment, home telephone number or work telephone number.
 - i. Respondent may participate in the Iowa Pharmacy Recovery Network (IPRN) program under the direct support of an IPRN advocate.
 - j. Respondent shall notify all present and prospective employers of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this Stipulation and Consent Order. The notification requirement contained in this paragraph shall only apply where Respondent's pharmacy technician registration is or will be utilized in the course of his employment. Within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his employer to report to the Board in writing, acknowledging that the employer has read this Stipulation and Consent Order and understands it.
2. Should Respondent violate or fail to comply with any of the terms, conditions, or restrictions of probation, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacy technician registration, or to impose other

licensee discipline as authorized by Iowa Code chapters 272C and 155A (2007), and 657 IAC 36.



LEMAN E. OLSON, Chairperson
Iowa Board of Pharmacy
RiverPoint Business Park
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck,
Attorney General

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2009-117
Pharmacy Technician Registration of:)	
SPENCER BROTHERSEN,	)	STATEMENT OF CHARGES
Registration No. 7550,)	
Respondent.)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners (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 (2009).
3. On June 4, 2008, the Board reinstated the pharmacy technician registration of Spencer Brothersen (hereinafter, Respondent), registering him as a pharmacy technician number 7550, subject to the laws of the State of Iowa, the rules of the Board and the terms of the Reinstatement Order.
4. Respondent's technician registration is current and active until June 30, 2010
5. Respondent's current address is 2827 Farnam Street, Davenport, IA 52803.

A. CHARGE

COUNT I – FAILURE TO COMPLY WITH BOARD ORDER

The Respondent is charged under Iowa Code § 272C.3(2)(a) (2009) with a failure to comply with the terms of a Reinstatement Order adopted by the Iowa Board of Pharmacy Examiners on June 4, 2008, which terms required Respondent to, among other things, to file written, sworn quarterly reports with the Board and participate in a random drug screening program.

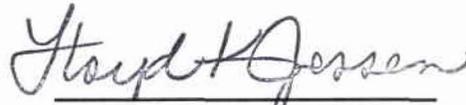
B. FACTUAL CIRCUMSTANCES

A review of Respondent's compliance with the Reinstatement Order revealed the following:

1. A Statement of Charges was filed against Respondent on October 7, 2004. Respondent surrendered his pharmacy technician registration on October 25, 2005.

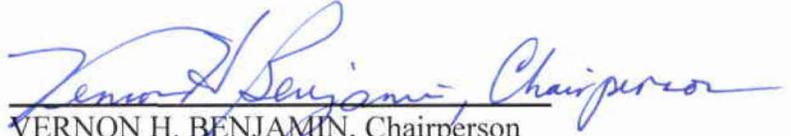
2. Subsequently, Respondent sought and was granted reinstatement. The Reinstatement Order, dated June 4, 2008, contained probationary provisions requiring Respondent to:
 - a. not possess unauthorized controlled substances
 - b. provide blood or urine samples upon demand
 - c. participate in a program of random urine specimen testing
 - d. file written, sworn quarterly statements with the Board
3. Additionally, Respondent was encouraged to participate in the Iowa Pharmacy Recovery Network (IPRN).
4. Respondent has failed to make a daily call FirstLab to receive instructions on providing a urine specimen. He last called FirstLab on October 29, 2008.
5. Respondent failed to file quarterly reports in December 2008, March 2009, June, 2009 and September 2009.
6. Respondent has not participated in IPRN.

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 18th day of November 2009, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



VERNON H. BENJAMIN, 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 50319

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2009-117
DIA NO. 09PHB038

SPENCER BROTHERSEN
Registration No. 7550

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On November 18, 2009, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Spencer Brothersen (Respondent), alleging that he failed to comply with the terms of a reinstatement order, in violation of Iowa Code section 272C.3(2)(a)(2009). The hearing was held on March 9, 2010 at 1:10 p.m. The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Mark Anliker, and Margaret Whitworth. Respondent was properly served with notice of hearing but failed to appear. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1). 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 and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the testimony of the witnesses and State Exhibits 1-8 (See Exhibit List for description).

FINDINGS OF FACT

1. The Board issued Respondent Spencer Brothersen pharmacy technician registration 7550 in 2002. On April 22, 2004, Respondent filed an application to renew his pharmacy technician registration and disclosed that he had pleaded no contest to charges of possession of drug paraphernalia and criminal mischief. On October 7, 2004, the Board filed a Statement of Charges against Respondent, charging him with violations of law relating to controlled substances and non-prescription drugs. On February 15, 2005, Respondent entered into a Stipulation and Consent Order with the Board that placed his registration on probation for a period of five years, subject to

conditions. Respondent voluntarily surrendered his pharmacy technician registration to the Board on October 25, 2005. (Exhibits 1-3)

2. On June 4, 2008, the Board reinstated Respondent's pharmacy technician registration, subject to a three year probation. The probationary terms included requirements that Respondent must:

- Work with FirstLabs or another Board-approved testing service to provide random specimens for laboratory testing;
- File written, sworn quarterly reports with the Board asserting to his compliance with all terms and conditions of probation. The reports were required to be filed no later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation.

(Debbie Jorgenson testimony; Exhibit 4)

3. Respondent failed to call in to FirstLabs eleven times in the period from June 25, 2008 to August 18, 2008. Board investigator Bernard Bernsten visited Respondent in September 2008 to remind him of his probationary obligations. Respondent indicated that he would comply in the future. Respondent filed his quarterly report six days late on September 11, 2008 but failed to file any quarterly reports after that. Respondent's last call in to FirstLabs was on October 29, 2008. Respondent has reported that he is no longer employed as a pharmacy technician and does not intend to return to work as a pharmacy technician in the future. (Jorgenson testimony; Bernard Bernsten testimony; Exhibit 5)

4. On November 28, 2009 Respondent received the Statement of Charges and Notice of Hearing by restricted certified mail. (State Exhibits 6-8; Jorgenson testimony)

CONCLUSIONS OF LAW

657 IAC 35.5(1) authorizes the Board to deliver a notice of hearing by certified mail return receipt requested. Respondent was properly served with the Statement of Charges and Notice of Hearing by restricted certified mail. 657 IAC 35.21 authorizes the Board to proceed with the hearing in the party's absence if the party fails to appear after proper service of notice.

Iowa Code §272C.3(2)(a)(2009) authorizes the Board to discipline a license or registration for failure to comply with a Board decision imposing license discipline. The

preponderance of the evidence established that Respondent repeatedly violated the probationary terms established in the June 4, 2008 Reinstatement Order. Respondent has failed to file his quarterly written reports and failed to call in the FirstLabs, in violation of Iowa Code §272C.3(2)(a)(2009).

DECISION AND ORDER

The repeated nature of the violations and Respondent's failure to appear for the hearing more than justifies the revocation of his pharmacy technician registration. IT IS THEREFORE ORDERED that pharmacy technician registration number 7550, issued to Spencer Brothersen, is hereby REVOKED.

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 24th day of March, 2010.



Vernon Benjamin, 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).