

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	Case No. 2009-43
Pharmacy Technician Registration of:	)	
<b>AMY FARRELL,</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 15120,	)	
Respondent.	)	

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

1. He is the Executive Director for the Iowa Board of Pharmacy 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. The Board issued Amy Farrell (hereinafter, "Respondent") a pharmacy technician registration number 15120, authorizing her to serve as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration is current and active until March 31, 2010.
4. Respondent's address of record is 710 Gholson, Knoxville, Iowa 50138.
5. At all times material to this statement of charges, Respondent was a student in the Indian Hills Community College Pharmacy Technician program, serving as an unpaid pharmacy technician at the Medicap Pharmacy, 901 W. Pleasant Street, Knoxville, Iowa.

**A. CHARGES**

COUNT I – FRAUD IN OBTAINING A REGISTRATION

Respondent is charged pursuant to Iowa Code §§ 155A.6A(5) and 155A.23(2) and (12) (2009), and 657 Iowa Administrative Code § 36.1(4)(a) with fraud in obtaining a technician registration.

**B. FACTUAL CIRCUMSTANCES**

An investigation commenced on or about May 6, 2009, revealed the following:

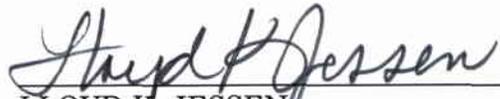
1. Respondent was a student in the Indian Hills Community College Pharmacy Technician program, serving as an unpaid pharmacy technician at the Medicap Pharmacy, 901 W. Pleasant Street, Knoxville, Iowa.
2. A pharmacist at the Medicap reviewed Respondent's on-line court records and

became concerned that her criminal history made her unsuitable to work in the pharmacy.

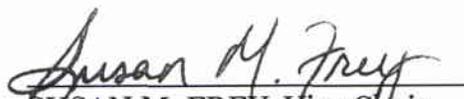
3. Notification to the Board resulted in a review of Respondent's December 24, 2008 application for pharmacy technician registration. On the application, Respondent offered her sworn statement that she had never been charged, convicted, found guilty of, or entered a plea of guilty or no contest to a felony or misdemeanor crime (question number 8).
4. Contrary to her sworn statement, Respondent's criminal history includes a lengthy list of charges and convictions from 1998 to 2005, including the following:

9-05	charged/convicted	driving while license denied (simple misdemeanor)
12-03	charged/convicted	trespass (simple misdemeanor)
1-01	charged/convicted	operating vehicle while license suspended (simple misdemeanor)
9-00	charged/convicted	trespass (simple misdemeanor)
4-00	charged/convicted	operating vehicle with expired license (simple misdemeanor)
10-99	charged/convicted	theft 5 <sup>th</sup> degree (simple misdemeanor)
9-98	charged/convicted	intoxication (simple misdemeanor)
10-98	charged/convicted	possession of alcohol (simple misdemeanor)
11-98	charged/dismissed	possession of controlled substance (serious misdemeanor)
11-98	charged/convicted	possession of alcohol (simple misdemeanor)

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

  
LLOYD K. JESSEN  
Executive Director

On this 17 day of August 2009, 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, Vice Chair  
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**

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BEFORE THE IOWA BOARD OF PHARMACY

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Re: Technician Registration of	)	Case No: 2009-43
	)	DIA No: 09PHB029
<b>AMY FARRELL</b>	)	
Registration No. 15120	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>and ORDER</b>

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This matter concerns a statement of charges filed against respondent Amy Farrell on August 16, 2009. Respondent is a registered pharmacy technician. She was charged with fraud in obtaining a technician registration. More specifically, the statement of charges alleged she failed to report criminal charges and convictions on her registration application.

The case was set for hearing before the Iowa Board of Pharmacy (the Board) on September 23, 2009. The following Board members were present for the hearing: Margaret Whitworth, Mark Anliker, Vernon Benjamin, Susan Frey, Ann Diehl, and Ed Maier. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board. Scott Galenbeck, an assistant attorney general, represented the public interest. Respondent represented herself.

**THE RECORD**

The State's exhibits 1-4 were admitted. Debbie Jorgenson testified on the State's behalf. Respondent testified on her own behalf.

**FINDINGS OF FACT**

Respondent worked as a pharmacy technician at Medicap Pharmacy in Knoxville through a practicum program with Indian Hills Community College. On December 23, 2008, she filed an application for pharmacy technician registration with the Board. The application asked the following question: "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*)?" (emphasis in text). Respondent checked the "no" box. The Board issued a registration based on the information provided. (Exhibit 1).

On April 22, 2009, the Board received a complaint that respondent was not truthful on her application to the Board. The complainant reported that respondent might have been charged or convicted of crimes that were not reported. The Board staff reviewed Iowa

Courts Online to determine the accuracy of the complaint. The website revealed the following criminal actions against respondent:

9.6.98 – Consumption of alcohol/intoxication – no reported conviction

10.24.98 – Possession of alcohol – fine

11.1.98 – Possession of alcohol – fine

11.23.98 – Intoxication – dismissed

11.28.98 – Possession of alcohol – fine

11.28.98 – Possession of controlled substance – dismissed

10.9.98 – Fifth degree theft – fine

9.23.00 – Trespass – fine

12.4.03 – Trespass – fine

Respondent was also convicted twice of driving while license suspended, with the latter conviction occurring on September 16, 2005. (Exhibit 4).

Respondent testified that she had gone through three background investigations while in college without anyone questioning her background.<sup>1</sup> She testified that she felt she had a clean background because simple misdemeanors were reportable. She offered no rational basis for this belief. (Respondent testimony; exhibit 1).

Respondent testified that she has turned her life around since the majority of her convictions in 1998 through 2000. She admitted to having a bad childhood in which she rebelled. She is now the single mother of two children and is trying to improve her life through education. Respondent stated at hearing that she now “wants to climb the ladder rather than push it down.” (Respondent testimony).

Respondent had a strong desire to work as a pharmacy technician, with the possibility of seeking out a pharmacy degree in the future. Indian Hills dismissed her from the pharmacy technician program after learning about her false application, so she adjusted her plans to work in the pharmacy profession. Rather than wait for the outcome of the Board’s decision, respondent enrolled in college for a psychology degree to continue her education. She works for Veteran’s Affairs, and is now considering using her psychology degree to seek higher job positions there. She remains interested in pharmacy, and considered herself “at the mercy of the Board” to have a chance to get back into the pharmacy field. (Respondent testimony).

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<sup>1</sup> The school backgrounds were limited – they only checked the sex offender and child abuse registries, and did not review criminal history.

## 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.<sup>2</sup> 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 defined as a person registered by the board who is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical functions of the practice.<sup>3</sup> 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.<sup>4</sup>

**Fraudulent application:** The legislature has prohibited any person from willfully making a false statement in any prescription, report, or record required by the statute governing the pharmacy profession.<sup>5</sup> A prospective pharmacy technician must file an application on a form prescribed by the board.<sup>6</sup> Additionally, the Board has adopted administrative rules specifically prohibiting the use of fraud in obtaining a technician registration.<sup>7</sup> "Fraud" is defined in the rules as an "intentional perversion of the truth," false misrepresentations, or the concealment of material facts that should have been disclosed.

Respondent committed a violation of the statute and the rule. The question on the application is abundantly clear, asking the applicant to report any charges or convictions of felonies or misdemeanors. The only listed exception is for minor traffic violations with fines under \$100. Respondent was convicted of a number of non-traffic violations. She has no reasonable basis for belief to think that she was not required to list her charges and convictions. Even if she passed other background investigations without reporting her charges and convictions, she still has the responsibility to answer each question honestly.

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<sup>2</sup> Iowa Code section 155A.2.

<sup>3</sup> Iowa Code section 155A.3(29).

<sup>4</sup> Iowa Code section 155A.6(7).

<sup>5</sup> Iowa Code section 155A.23(2).

<sup>6</sup> Iowa Code section 155A.7A(2).

<sup>7</sup> 657 IAC 36.1(4)(a).

### SANCTION

The Board carefully considered the facts and circumstances as a whole. The Board must impose a penalty to enforce the requirement that applicants are honest with the Board when they file their application. Respondent's application not only impacts her personal integrity, it impacts the integrity of the profession as a whole. The Board would not be doing its job if it let this violation go without any penalty.

On the other hand, with regard to respondent's underlying criminal history, she has demonstrated a change in the way she has conducted herself. Much of her criminal history is concentrated during a period that she was rebelling. She has since decided to change her life and focus on family, education, and work. Several years have passed since her last non-traffic offense. She was sincere and penitent during the hearing before the Board. The Board finds she is not a great risk to reoffend in an area relating to the practice of pharmacy. If she had simply been honest in reporting her offenses, no Board action may have been necessary.

### DECISION AND ORDER

The Iowa Board of Pharmacy hereby places on **probation** the pharmacy technician registration held by Amy Farrell, registration no. 15120, effective immediately. The registration shall be on probation for **six months from the date of this order**. During the period of probation, respondent shall file a written report to the Board if she becomes certified as a pharmacy technician, or becomes employed (either with pay or as a practicum) as a pharmacy technician. Any report shall be due within 15 days from the date of certification or employment. Respondent shall report to any prospective employer that she is on probation with the Board.

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. Payment shall be made to the Board's office at 400 SW 8<sup>th</sup> St., Suite E, Des Moines, Iowa 50309-4688.

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Dated this *18* day of *November*, 2009.

A handwritten signature in blue ink that reads "Vernon Benjamin, Chairperson". The signature is written in a cursive style.

Vernon Benjamin, Chairperson  
Iowa Board of Pharmacy

cc: Scott Galenbeck, 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.