

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

Re:)	Case No. 2004-82
Pharmacist License of)	
MELVIN L. GALBRAITH,)	STATEMENT OF CHARGES
License No. 12650,)	
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 (2005).
3. On January 17, 1961, the Board issued Respondent, Melvin L. Galbraith, by examination, a license to engage in the practice of pharmacy as evidenced by license number 12650, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2005.
5. Respondent's address, as provided to the Board, is 12962 West Montana Avenue, Lakewood, Colorado, 80228. However, Respondent has corresponded with the Board using the following address: 909 Sunshine Run, Arnolds Park, Iowa 51331.
6. Respondent's employment information has not been provided to the Board.

A. CHARGES

COUNT I – FALSE REPORT TO THE BOARD

Respondent is charged under Iowa Code §§ 155A.12(1) and 155A.23(2) (2005) with making a false report to the Board; specifically, tendering to the board false information regarding discipline in another state (Colorado) at the time of seeking license renewal in Iowa.

COUNT II- FAILURE TO NOTIFY THE BOARD OF DISCIPLINE

Respondent is charged under Iowa Code §§ 155A.12(1) (2005) and 657 IAC § 36.1(4)(k) with failing to notify the Board a disciplinary sanction in another state (Colorado) within 30 days of the final decision.

B. CIRCUMSTANCES

On or about October 22, 2004, an investigation was commenced which revealed the following:

1. On February 28, 2001 Respondent entered into a "Stipulation and Final Agency Order" with the Colorado State Board of Pharmacy. The stipulation, which resulted in probation of Respondent's pharmacy license, resulted from Respondent's repeated filling of fraudulent prescription orders for controlled substances.
2. As a part of the February 28, 2001 stipulation, Respondent agreed to make quarterly status reports to the Colorado State Board of Pharmacy, and to take and pass both the jurisprudence and current practice exams during the first six months of his probation.
3. On October 1, 2002, Respondent stipulated that he failed to comply with the terms of his probationary agreement and surrendered his license to practice pharmacy in Colorado.
4. A final Colorado agency order accepting surrender of Respondent's license was signed and effective October 15, 2002.
5. Respondent did not notify the Board of his discipline by Colorado.
6. On February 4, 2004, Respondent filed a pharmacist license renewal form with this Board in which Respondent checked "no" to the following question: "Have you been convicted of a drug-related offense or had your license suspended, revoked, or disciplined since initial licensure in this or another state?"

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.


LEOYD K. JESSEN
Executive Secretary/Director

On this 15 day of February 2005, 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

Gailbraith-SOC.doc

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2004-82
Pharmacist License of:)	DIA NO: 05PHB004
MELVIN L GALBRAITH)	
License No. 12650)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

TO: MELVIN L. GALBRAITH

On February 15, 2005, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Melvin L. Galbraith (Respondent), a licensed pharmacist. The Statement of Charges alleged two counts:

COUNT I: False Report to the Board, in violation of Iowa Code section 155A.12(1) and 155A.23(2) (2003).

COUNT II: Failure to Notify the Board of Discipline, in violation of Iowa Code section 155A.12(1) (2003) and 657 IAC 36.1(4)k.

A Notice of Hearing was issued on February 21, 2005, and the hearing on the Statement of Charges was held on April 19, 2005, at 10:00 a.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Michael J. Seifert, Chairperson; Paul Abramowitz; Katherine A. Linder; Lemman Olson; Vernon Benjamin; and Barbara Ellen O'Roake. The Respondent appeared personally. Scott Galenbeck, Assistant Attorney General, represented the state. The hearing was tape-recorded. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) (2003).

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

THE RECORD

The record includes the Statement of Charges; Notice of Hearing; the testimony of the witnesses; and Exhibits A-D.

FINDINGS OF FACT

1. On January 17, 1961, the Board issued the Respondent license number 12650 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. The Respondent's license is current and active until June 20, 2005. (Ex. A and Records of the Board).
2. The Respondent entered into a "Stipulation and Final Agency Order" on February 29, 2001, with the Colorado State Board of Pharmacy. The stipulation resulted from the Respondent's repeated filling of fraudulent prescription orders for controlled substances. The Respondent stipulated to his pharmacy license being placed on probation. (Ex. A, D).
3. The stipulated terms the Respondent's probation included that the Respondent not serve as a preceptor; during the first six months of probation he was to take and pass the jurisprudence examination and a Board-approved current practice competency examination; and the Respondent was to be monitored by a Board-approved practice monitor who will provide reports to the Board. (Ex. D).
4. On October 1, 2002, the Respondent stipulated that he failed to comply with the terms of his probationary agreement and surrendered his license to practice pharmacy in Colorado. (Ex. A, D).
5. A final Colorado agency order accepting surrender of Respondent's license was signed and effective October 15, 2002. (Ex. A, D).
6. The Respondent did not notify the State of Iowa Board of Pharmacy Examiners of this discipline by the state of Colorado.
7. On February 4, 2004, the Respondent filed a pharmacist license renewal form with the Board in which the Respondent checked "no" to the following answer: "Have you been convicted of a drug-related offense or had your license suspended, revoked, or disciplined since initial licensure in this or another state?" (Ex. A, D).

8. The Respondent admitted that he failed to notify the Board of the discipline in the state of Colorado. He stated that he was unaware of the requirement to notify Iowa when he was not actively practicing in Iowa. The Respondent also acknowledged that he answered the renewal form incorrectly, but he believed that since he voluntarily surrendered his license in Colorado that was not considered discipline. (Testimony of Respondent).

CONCLUSIONS OF LAW

Count I

Iowa Code section 155A.12(1) (2003) provides, in relevant part:

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

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

This code chapter also provides that a licensed pharmacist shall not "willfully make a false statement in any prescription, report or record required by this chapter." Iowa Code § 155A.23(2) (2003).

The Respondent admitted that he failed to report the state of Colorado's discipline on his license renewal. This constitutes a false statement on a record of the board. The preponderance of the evidence establishes that the Respondent violated Iowa Code section 155A.12(1) and 155A.23(2).

Count II

Iowa Code section 155A.12 provides, in relevant part:

155A.12 Pharmacist license-grounds for discipline.

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

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

The Board of Pharmacy has promulgated administrative rules that provide that the Board may impose disciplinary sanctions against a licensee when a licensee fails "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 sanction." 657 IAC 36.1(4)k.

The Respondent admitted that he failed to inform the Board of the discipline of his Colorado license. The preponderance of the evidence established that the Respondent failed to notify the Board of discipline in another state in violation of Iowa Code section 155A.12(1) and 657 IAC 36.1(4)k.

Sanction

In determining an appropriate sanction, the Board considered the factors outlined in 657 IAC 36.1(3). The Respondent's violations are serious in that he failed to notify Iowa of the loss of his Colorado pharmacy license. The Appellant failed to follow the conditions of probation that he agreed to. He then agreed to surrender his license. When he filled out the renewal form in Iowa he was required to divulge this information.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy license no. 12650 issued to Melvin L. Galbraith, shall be **SUSPENDED**, effective immediately upon service of this order. **IT IS FURTHER ORDERED** that the Respondent shall have one year to comply with the outlined conditions of this decision or the indefinite suspension shall become a **REVOCATION**. Before the Respondent can apply for reinstatement he must complete the following conditions:

- 1) The Respondent shall take and pass the Multi-State Pharmacy Jurisprudence Exam-Iowa Edition.
- 2) The Respondent shall take and pass the North American Pharmacist Licensure Exam.

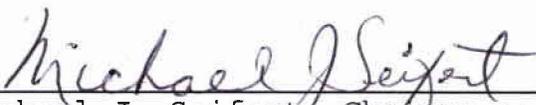
IT IS FURTHER ORDERED that once the Respondent successfully completes these exams he shall be placed on probation for three years. Specific conditions of probation shall be:

- 1) The Respondent shall submit quarterly reports to the Board.

- 2) The Respondent shall not act as a Pharmacist in Charge.
- 3) The Respondent shall not employ nor supervise interns.
- 4) The Respondent shall not act as a preceptor.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 7th day of June 2005.



Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

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.