

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

Re:)	Case No. 2006-82
Pharmacy Technician Registration of)	
COURTNEY GRUB,)	STATEMENT OF CHARGES
Registration No. 7169,)	
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. The Board issued Respondent Courtney Grub a pharmacy technician registration number 7169, 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 renewed November 30, 2005.
4. Respondent's technician registration is current and active until October 31, 2007
5. Respondent's address is 1025 Third Street, West Unit, Marion, IA 52302.
6. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at ValuScript Pharmacy in Coralville, Iowa.

A. CHARGES

COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 155A.6(7) (2005), 155A.21 (2005) and 657 Iowa Administrative Code § 36.1(4)(j).

COUNT II – ILLEGAL DISTRIBUTION OF DRUGS

Respondent is charged with distribution of drugs for other than lawful purposes in violation of Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(h).

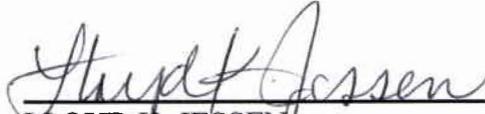
COUNT III – VIOLATION OF CONTROLLED SUBSTANCES LAW

Respondent is charged with violations of the laws of Iowa relating to controlled substances and prescription drugs in violation of Iowa Code § 155A.6(7) (2005), and 657 Iowa Administrative Code § 36.1(4)(j).

B. FACTUAL CIRCUMSTANCES

The circumstances supporting the charges are set forth on Attachment A.

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 16th day of January 2007, 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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BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Technician Registration of)	CASE NO. 2006-82
)	DIA NO: 07PHB004
COURTNEY GRUB,)	FINDINGS OF FACT,
Registration No. 7169)	CONCLUSIONS OF LAW,
)	and ORDER
Respondent)	

This matter concerns a statement of charges filed against respondent Courtney Grub on January 16, 2007. Respondent is a registered pharmacy technician. She was charged with three counts: 1) unlawful possession of prescription drugs, 2) illegal distribution of drugs, and 3) violation of state laws relating to controlled substances.

The case was set for hearing before the Board of Pharmacy Examiners (the Board) on March 13, 2007. The following Board members were present for the hearing: Susan Frey, Vernon Benjamin, Michael Seifert, Leman Olson, Paul Abramowitz, and Kathleen Halloran. 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 did not appear.

THE RECORD

The state's exhibits 1-5 were admitted. Debbie Jorgenson and Bernard Berntsen testified on the State's behalf. Respondent did not appear.

FINDINGS OF FACT

Facts relating to statement of charges: Respondent was employed as a pharmacy technician at ValuScript Pharmacy in Coralville from 2003 until July of 2006. One of respondent's job responsibilities were to place drug orders for the pharmacy. (Exhibit 5).

In July of 2006, an employee approached Kevin Christians, owner and pharmacist-in-charge, to ask if there had been any ordering problems with the drug provider. The staff member pointed out that three bottles of Hydrocodone had been ordered, but that she did not recall dispensing that drug recently. (Exhibits 5A, 5C).

Mr. Christians started investigating the matter further. He discovered that the pharmacy had ordered 11 bottles of Hydrocodone in July, even though the pharmacy had not dispensed any since June 5, 2006. He then ran reports showing ordering and dispensing from November of 2004 until July of 2006. He discovered the pharmacy had ordered approximately 9,500 doses of Hydrocodone that it had not dispensed. He could not account for the missing units. (Exhibit 5A).

Mr. Christians contacted the Coralville Police Department to report the thefts. Mr. Christians told law enforcement that he suspected respondent of committing the thefts. Respondent was the only employee who had been employed throughout the period of the thefts. She was responsible for most of the drug orders for the pharmacy, so she had the opportunity to order unneeded units. Respondent also had the opportunity to take the drugs. She was normally the last person to leave the pharmacy at the end of the day, along with one of the pharmacists. Mr. Christians reported that respondent had a routine that she always followed at the end of the day: she filled up her water bottle, which was located by the Hydrocodone pills, and then went into the bathroom with her purse. Mr. Christians thought the water routine unusual because respondent lived close to the pharmacy, but he had not suspected anything prior to learning about the drug diversion. (Exhibits 5A, 5B).

Mr. Christians also reported two other pieces of evidence supporting his suspicion. Respondent had turned in her resignation on July 14, 2006, with a last day of employment of July 28. She stated that she was taking a pharmacy assistant job in her home state of New Jersey. During the week she resigned, respondent went to a local clinic complaining of back pain. One employee found that strange, because she had never complained of back pain before. Respondent asked that employee (who had a prescription for Hydrocodone) for the name of her doctor, even though respondent already had a doctor.¹ Respondent obtained a prescription for Hydrocodone. Mr. Christians stated that the pharmacy had not filled a prescription for Hydrocodone for respondent during the three years she had been employed. Additionally, respondent asked a fellow employee how long Hydrocodone stayed in a person's system, because she would be required to take a drug test before becoming registered as a pharmacy technician in New Jersey. (Exhibits 5A, 5B, 5D, 5E).

The investigating police officer, Bill Clarahan, decided to interview respondent immediately after talking to Mr. Christians, due to her forthcoming move to New Jersey. Respondent denied stealing Hydrocodone. Detective Clarahan asked her if she had ever been arrested for a crime. She replied that she had only been arrested for underage drinking. Detective Clarahan had run her criminal history, which showed arrests for possession of marijuana and shoplifting. Detective Clarahan asked her again, and she again denied other arrests. Detective Clarahan then confronted respondent with her criminal history. She then acknowledged that she received a deferred judgment on a marijuana charge, and stated that the shoplifting charge involved a three dollar item. (Exhibit 5D).

Detective Clarahan offered to let respondent take a polygraph to help clear herself as a suspect. Respondent agreed to do so. Detective Clarahan asked respondent if she would submit to a consent search of her purse, vehicle, and residence. Respondent denied any

¹ Respondent later told law enforcement that she had hurt her back as a teenager, and it had begun to act up again.

search, stating it would be a violation of her rights. Respondent was defensive when asked whether she had a boyfriend, stating that she would not identify him because it had nothing to do with the investigation. Mr. Christians had previously identified respondent's boyfriend, stating that she lived with him in Tiffin. Respondent could not name any other individual who might have committed the theft. (Exhibits 5B, 5D).

On July 24, 2006, Mr. Christians called respondent into his office after she arrived at work. Respondent stated that she was "shocked" by the allegations. Mr. Christians did not notice any visible signs of shock. Respondent stated that she would not take a polygraph, based on advice from her attorney. Mr. Christians asked why she did not cooperate with police by agreeing to a search and a polygraph. She replied that she distrusted police, based on a prior incident when she lived in New Jersey. Mr. Christians told her that he was suspending her from work without pay pending a conclusion of the investigation. Respondent stated that that was fine, as she "did not want to be here anyway." (Exhibit 5A).

On July 26, 2006, Detective Clarahan left a voice mail on respondent's cell phone asking her to call him to set up the polygraph examination. Respondent's previously unnamed boyfriend returned the call approximately thirty minutes later. The boyfriend accused Detective Clarahan of "violating" and "destroying" respondent's rights. He accused the detective of harassing her. He stated that respondent had been in shock since being interviewed on Friday. The phone was then disconnected. (Exhibit 5D).

Shortly thereafter, respondent called Detective Clarahan. Respondent stated that she would not take a polygraph, that Detective Clarahan was harassing her, and that she would not speak to him again. Respondent indicated that she had an attorney, so Detective Clarahan asked for the name of the attorney so he could contact him or her directly. Respondent refused to identify her attorney. Respondent then stated: "this is bullshit and you'll hear from my attorney with a civil suit." She then hung up. There is no evidence indicating that respondent's attorney contacted Detective Clarahan or filed a civil lawsuit. (Exhibit 5D).

Detective Clarahan searched respondent's trash for evidence relevant to his investigation. He located marijuana seeds, Internet information regarding how to change a person's name in the courts in Pennsylvania, and how to pass a drug test. However, he did not find any mail items or other information that would directly connect the items in the trash to respondent. (Exhibit 5).

Facts relating to service of process: The Board first attempted to serve respondent with the statement of charges via certified mail to respondent's last known address. The post office returned the envelope as not deliverable, unable to forward. The Board then provided notice by publication in the Des Moines Register on February 8, 15, and 22, 2007. (Exhibits 3-4; Jorgenson 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 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.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: All three charges are interconnected and can be discussed together. The Board may impose discipline if a registrant is in unlawful possession of prescription drugs, distributes drugs for unlawful purposes, or violates any law relating to controlled substances.⁵ The State has alleged a violation of each of these grounds in the statement of charges. (Exhibit 1).

There is no question that a large number of Hydrocodone pills were diverted from the pharmacy. The pharmacy began the investigation after an employee noted that additional drugs were ordered even though the pharmacy had not recently dispensed the drug. The pharmacist-in-charge then reviewed company records in detail. He discovered that the pharmacy had purchased approximately 9,500 tablets that were not legally dispensed by the pharmacy. Records support that the diversion occurred on a regular basis between November of 2004 and July of 2006.

The only real question is whether respondent stole the drugs. There is no direct evidence linking her with the thefts. The pharmacy had a surveillance camera in place, but there is no surveillance video in the record showing her taking the drugs. There are no eye witnesses to the thefts. Respondent did not admit taking the thefts, when questioned by her boss and by law enforcement.

However, there is considerable circumstantial evidence linking respondent with the thefts. First, other than the owner, she was the only person employed throughout the time period of the thefts. Company records show a consistent pattern of drugs being taken throughout the period, thus indicating that the same person or persons made the thefts.

² Iowa Code section 155A.2.

³ Iowa Code section 155A.3(29).

⁴ Iowa Code section 155A.6(7).

⁵ 657 IAC 36.1(4)(h), (j).

Second, respondent was responsible for ordering most of the drugs for the pharmacy, so she had the opportunity to order more drugs than needed for client use. In fact, the records show that the pharmacy continued to order more and more drugs as time went on. In November and December of 2004, the pharmacy ordered 100 units each month. By June and July of 2005, the pharmacy was ordering 700 units each month. By December of 2005, the pharmacy had ordered 1,000 units during month. The ordering dwarfed the dispensing, which was less than 100 units per month on most occasions. This shows how the wrongdoer gained additional confidence as time went by. Respondent had gained the trust of Mr. Christians and was regarded as a good worker until the theft issue arose; in fact, she even babysat his children at times.

Respondent also had the opportunity to remove the drugs from the building. Mr. Christians discussed respondent's habit of putting water in her water bottle at going to the restroom before leaving each night. The water tank was by the Hydrocodone, so respondent could have taken Hydrocodone while getting water, and then hidden the drugs while in the restroom. All employees other than a pharmacist were typically gone by that time. Mr. Christians thought the behavior unusual because respondent did not live far away, so he questioned why she always needed to take home a full bottle of water. While this habit does not directly prove the theft, it is unusual and shows how respondent could have concealed the drugs and got them out of the building.

Respondent's questions about Hydrocodone and complaints of back pain also invite suspicion. Respondent had not complained of back pain during the three years she worked for ValuScript. She had not received a prescription for Hydrocodone while working at ValuScript. She asked a co-worker who had received a valid prescription for Hydrocodone for the name of her doctor, even though respondent already had one. When asked, she claimed that the pain resulted from a teenage injury that had started to act up. However, during the same time, respondent told a pharmacy employee that she was going to have to take a drug test when she started her new job in New Jersey. She asked how long Hydrocodone stays in the body. If respondent had been stealing and using Hydrocodone from ValuScript, she had an interest in obtaining a prescription as cover to explain why the drug showed up on a drug test.

Respondent's interaction with Detective Clarahan is also troubling. She did not disclose her full criminal history, even when asked a second time. She only admitted her criminal background after being directly confronted with it. She refused to disclose the name of her boyfriend, even though they were living together at the time. When Detective Clarahan called respondent to set up the polygraph test she had previously agreed to take, she accused him of harassment, referred to his investigation as "bullshit," and made an unsubstantiated threat to file a civil action against him, before hanging up the phone on him. Respondent was certainly within her rights to refuse a polygraph and consent search, but her untruthfulness and failure to cooperate with the investigation tends to corroborate the other evidence in support of the allegations against her.

Finally, there is no evidence pointing to other suspects. In a sense, respondent is an easy target because she had turned in her resignation and was planning on returning to New Jersey. However, she did not identify any other suspect or provide evidence that would implicate any one else. The only other person who was in a position to take the drugs and worked at the facility during the entire time period was Mr. Christians. Mr. Christians was also the person who reported the theft to the police and fully cooperated in the investigation. There is no evidence connecting him with the diversion.

In consideration of the record as a whole, the Board finds a preponderance of evidence to support the allegations in the statement of charges. The record clearly demonstrates that Hydrocodone was diverted from the pharmacy. There is considerable circumstantial evidence linking respondent with the thefts, and no evidence implicating any other person. In light of the totality of the evidence in the record, the statement of charges is sustained.

SANCTION

The Board is empowered to consider any sanction consistent with the request for relief made in the statement of charges and embraced in its issues.⁶ The statement of charges requested any relief deemed "appropriate under the law." The Board is authorized to revoke the registration of a pharmacy technician for any violation of the laws of the state, the Board's authorizing statute, or the Board's rules.⁷

Revocation is the only appropriate sanction in this case. Respondent was in a position of trust at the pharmacy. She stole approximately 9,500 units of Hydrocodone over a lengthy period of time. She cannot be allowed to work in the pharmacy profession in Iowa.

DECISION AND ORDER

The Iowa Board of Pharmacy Examiners revokes the pharmacy technician registration held by Courtney Grub, registration no. 7169, effective immediately. Respondent shall immediately return her 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 th 24 day of April, 2007.

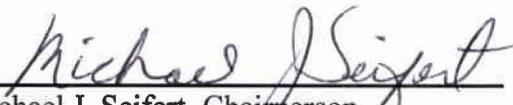
⁶ 657 IAC 35.21(9).

⁷ Iowa Code section 155A.6(7).

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Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners

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.