

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

Re:)	Case No. 2005-18632
Pharmacist License of)	
SEAN T. HIGGINS,)	STATEMENT OF CHARGES
License No. 18632,)	
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 May 13, 1996, the Board issued Respondent, Sean T. Higgins, by license transfer, a license to engage in the practice of pharmacy in Iowa, as evidenced by license number 18632, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license expired on June 30, 2005 and his application for renewal is pending.
5. Respondent's current address is 908 17th Street SW, Willmar, Minnesota 56201.

A. CHARGES

COUNT I – CONVICTION OF A FELONY

Respondent is charged under Iowa Code § 155A.12(1) (2005) and 657 Iowa Administrative Code § 36.1(4)(e) with conviction of a felony related to the profession of pharmacy.

COUNT II – INABILITY TO PRACTICE PHARMACY DUE TO CHEMICAL ABUSE

The Respondent is charged addiction to the use of drugs and with an inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse in violation of Iowa Code § 155A.12(1) (2005) and 657 Iowa Administrative Code §§ 36.1(4)(d) and 36.1(4)(m).

B. CIRCUMSTANCES

On or about July 5, 2005, Respondent self-reported the following:

1. Respondent was employed as a pharmacist by The Medicine Shoppe in Willmar, Minnesota, beginning in October of 2002.
2. On December 15, 2004, Respondent admitted an addiction to prescription pain medication and entered treatment at the Willmar Regional Treatment Center.
3. Respondent confessed to his employer that he had been diverting hydrocodone on a daily basis.
4. An inventory at The Medicine Shoppe revealed a shortage of over 27,582 tablets of hydrocodone, with a wholesale value of \$3,674.
5. Respondent pleaded guilty to felony theft in Kandiyohi County District Court, Minnesota, in connection with the diversion of controlled substances.


LLOYD K. JESSEN
Executive Secretary/Director

On this 13 day of Sept. 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

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BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2005-18632
Pharmacist License of)	DIA NO: 05PHB024
SEAN T. HIGGINS)	
License No. 18632)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

TO: Sean T. Higgins

On September 13, 2005, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Sean T. Higgins (Respondent), alleging the following violations:

Count I: Conviction of a felony related to the profession of pharmacy, in violation of Iowa Code § 155A.12(1)(2005) and 657 IAC 36.1(4)(e); and

Count II: Inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse, in violation of Iowa Code § 155A.12(1)(2005) and 657 IAC 36.1(4)(d) and (m).

The hearing was held on November 15, 2006 at 10:50 a.m. The following members of the Board presided at the hearing: Michael J. Seifert, Chairperson; Susan Frey; Paul Abramowitz; Leman Olson; Vernon Benjamin; and Kathleen Halloran. Respondent did not appear for the hearing. 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, which was open to the public, pursuant to Iowa Code section 272C.6(1)(2005).

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 the witness, and the following exhibits:

- Exhibit A: Statement of Charges, 9/13/05
- Exhibit B: Notice of Hearing, 9/15/05
- Exhibit C: Return Receipt
- Exhibit D: Revised Notice of Hearing
- Exhibit E: Return Receipt
- Exhibit F: Pharmacist License Renewal Application (rec'd 7/5/05)
- Exhibit G: Documents from Kandiyohi District Court, State of Minnesota

- Exhibit 1: Respondent letter, 11/13/06

FINDINGS OF FACT

1. On May 13, 1996, the Board issued Respondent license number 18632, by license transfer, to engage in the practice of pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. Respondent's license expired on June 30, 2005, and his renewal application is pending. (State Exhibit A, F)

2. On July 5, 2005, Respondent filed an Iowa Pharmacist License Renewal Application disclosing that on March 1, 2005, he was convicted of felony theft in the state of Minnesota. The conviction was based on Respondent's theft of controlled substances from the pharmacy where he was employed as a pharmacist. The pharmacy's inventory check revealed a shortage of 27,582 tablets of hydrocodone, which had a wholesale value of \$3,674.00 and a retail value of \$30,691.14. Respondent admitted that he had been stealing the hydrocodone from the pharmacy for approximately two years and had been using the drug on a daily basis. Respondent pled guilty to felony theft, was granted a Stay of Adjudication of Sentence, and was placed on probation for a period of five years, subject to terms and conditions. Respondent's criminal probation expires on March 31, 2010. (Exhibits F, G)

3. In his renewal application, Respondent reports that he successfully completed treatment at Willmar Regional Treatment Center and is involved in aftercare and chemical dependency support groups. Respondent reported regular attendance at AA and the Minnesota Pharmacist Recovery Network. Respondent was

not practicing pharmacy when he filed his renewal application. (Exhibit F)

4. On September 23, 2005, the Board served Respondent with the Statement of Charges and Notice of Hearing by certified mail, return receipt requested. (Exhibits A-C) On October 4, 2006, the Board served Respondent with the Revised Notice of Hearing by certified mail, return receipt requested. (Testimony of Debbie Jorgenson; Exhibits D, E)

5. On November 13, 2006, Respondent sent the Board a letter asking to withdraw his license renewal application. Respondent reported that he has been clean and sober for two years and has been allowed to return to the practice of pharmacy in Minnesota, subject to monitoring by the Minnesota Health Professions Services Program (HPSP). Respondent has no plans to return to Iowa to practice pharmacy. (Exhibit 1)

CONCLUSIONS OF LAW

I. Failure To Appear

657 IAC 35.5(1)"b" provides that delivery of the notice of hearing may be executed by certified mail, return receipt requested. 657 IAC 36.5(5) provides that the notice shall be delivered at least 30 days before the time set for the hearing. Respondent was properly and timely served with the statement of charges and notices of hearing by certified mail, return receipt requested, but failed to appear.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 657 IAC 35.21(1). When Respondent failed to appear, the Board was authorized to proceed with the hearing.

II. The Violations

Iowa Code section 155A.12(1) (2005) 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.

...

657 IAC 36.1(4) provides, in relevant part:

36.1(4) Grounds for discipline. The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication to the use of drugs includes, but is not limited to:

...

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill and safety.

...

e. Conviction of a felony related to the profession or occupation of the licensee or registrant, or a conviction of a felony that would affect the licensee's or registrants' ability to practice within the licensee's or registrant's profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

...

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

The preponderance of the evidence established that in March 2005, Respondent was convicted of a felony related to the pharmacy profession, in violation of Iowa Code section 155A.12(1)(2005) and 657 IAC 36.1(4)(e). The preponderance of the evidence further established that Respondent is unable to practice pharmacy with reasonable skill and safety by reason of chemical abuse, in violation of Iowa Code section 155A.12(1)(2005) and 657 IAC 36.1(4)(d) and (m).

Respondent has admitted extensive thefts of the controlled drug hydrocodone from his employing pharmacy over a period of two years, which resulted in his felony theft conviction. In addition, Respondent admitted daily personal use of the stolen hydrocodone. Respondent reports that he has now resumed the practice of pharmacy in the state of Minnesota, subject to

monitoring conditions for his chemical dependency. Respondent is not currently interested in returning to the practice of pharmacy in Iowa. However, the Board must take formal disciplinary action against Respondent's Iowa license for his violations in order to protect the safety and welfare of the public in this state and to establish the Board's right to impose probationary conditions on Respondent's license if he is permitted to practice pharmacy in Iowa at some time in the future.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa pharmacist license number 18632, issued to Sean T. Higgins, is hereby INDEFINITELY SUSPENDED. Before Respondent's license can be reinstated, he must personally appear before the Board and establish that the reason for the suspension no longer exists and that it is in the public interest for his Iowa license to be reinstated. The Board will determine appropriate conditions of probation at the time of reinstatement. 657 IAC 36.13.

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 shall 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 16th day of January, 2006.



Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties... A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure

to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact 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).

The Board's final decision can be appealed in accordance with the Iowa administrative procedures Act.