

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

Re:)	Case No. 2002-6922
Pharmacy Technician Registration of:)	
BRANDY D. KLINE)	STATEMENT OF CHARGES
Registration No. 6922)	
Respondent)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (2001).
3. On November 26, 2001, the Board issued the Respondent, Brandy D. Kline, pharmacy technician registration number 6922 to be registered as a pharmacy technician, subject to the laws of the State of Iowa and the rules of the Board.
4. Registration number 6922 is current and active until February 28, 2003.
5. The Respondent's current address is 1466 Lake Drive, Knoxville, Iowa 50138.
6. Upon information and belief, the Respondent is not currently employed as a pharmacy technician.

COUNT I

The Respondent is charged under Iowa Code §§ 155A.6(7) (2001) and 657 Iowa Administrative Code § 22.18 with violation of the laws of the State of Iowa and the United States relating to controlled substances by possessing controlled substances in violation of Iowa Code §§ 124.401(5), 124.403(c), 124.210 & 155A.23.

COUNT II

The Respondent is charged under Iowa Code § 155A.6(7) (1997) and 657 Iowa Administrative Code §§ 22.18 & 22.21 with unethical conduct or behavior, including but not limited to, falsifying her application for pharmacy technician registration and unlawful use of controlled substances.

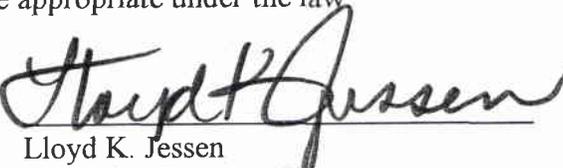
THE CIRCUMSTANCES

1. On December 12, 2001 a Board investigator recognized the Respondent's name on the list of pharmacy technicians during a routine inspection of Vander Linden Pharmacy, the pharmacy where the Respondent was employed as a technician.
2. The investigator recognized the Respondent's name as the name of a nurse that had been accused of misappropriating controlled drugs from a hospital where she had previously worked as a Registered Nurse.
3. Upon further investigation, the investigator learned that the Iowa Board of Nursing filed charges against the Respondent's nursing license on June 6, 2001 and a hearing on the charges was held on December 6, 2001. Copies of the Statement of Charges and the Findings of Fact, Conclusions of Law, Decision and Order in Board of Nursing Case number 01-004 are attached hereto as Exhibits A and B and are incorporated by reference.
4. The evidence presented at the Board of Nursing hearing included evidence regarding the results of testing of two separate urine specimens from the Respondent. Each specimen tested positive for controlled drugs.
5. During the Board of Nursing investigation, the Respondent admitted that she misappropriated Demerol for her own use over a period of time.
6. During the Board of Pharmacy Examiners' investigation, the Respondent acknowledged that she had a problem with Demerol abuse and that she had completed a substance abuse evaluation and received treatment.
7. The Respondent provided a urine specimen for testing to the pharmacy inspector on December 12, 2001. The results of the December 12, 2001 urine screen showed positive for several controlled drugs: Codeine, Morphine, Hydrocodone, Acetaminophen, Butalbital, and Tramadol. The Respondent did not have a valid and current prescription for some of these substances.
8. The results of a December 12, 2001 audit at Vander Linden Pharmacy of the controlled drugs that the Respondent is alleged to have used demonstrated

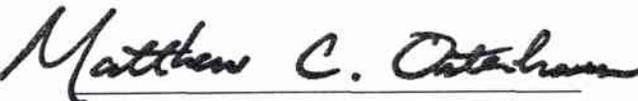
shortages of Morphine, OxyContin, Alprazolam, Xanax, and Hydrocodone.

9. The Respondent made an Application for Pharmacy Technician Registration to the Board of Pharmacy Examiners dated November 20, 2001.
10. The Respondent's Application for Pharmacy Technician Registration indicates that she was hired at Vander Linden Drug Store on November 14, 2001.
11. On the Respondent's Application for Pharmacy Technician Registration she answered "no" to the question, "Do you currently use any drugs, alcohol, or other chemical substances or do you have any physical or mental condition which in any way impairs or limits your ability to perform the duties of a pharmacy technician with reasonable skill and safety?"

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 24 day of Jan., 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2002-6922
Pharmacy Technician Registration of:)	DIA NO: 02PHB004
BRANDY D. KLINE)	FINDINGS OF FACT,
Registration No. 6922)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

TO: BRANDY D. KLINE

On January 24, 2002, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Brandy D. Kline (Respondent), a registered pharmacy technician. The Statement of Charges alleged two counts:

COUNT I: The Respondent is charged under Iowa Code section 155A.6(7)(2001) and 657 IAC 22.18 with violation of the laws of the state of Iowa and the United States relating to controlled substances by possessing controlled substances in violation of Iowa Code sections 124.401(5), 124.403(c), 124.210, and 155A.23.

COUNT II: The Respondent is charged under Iowa Code section 155A.6(7)(2001) and 657 IAC 22.18 & 22.21 with unethical conduct or behavior, including but not limited to, falsifying her application for pharmacy technician registration and unlawful use of controlled substances.

A Notice of Hearing was issued on August 21, 2002 and was served on the Respondent by certified mail, return receipt requested. The hearing on the Statement of Charges was held on December 4, 2002 at 3:10 p.m., in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Paul Abramowitz; Michael J. Seifert; Lemman Olson; Vernon Benjamin; and G. Kay Bolton. The Respondent did not appear, nor was she represented by counsel. The state was represented by Shauna Russell Shields, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001).

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 witness; and the following exhibits:

State Exhibit A: Statement of Charges, filed 1/24/02
State Exhibit B: Certified Mail Receipt
State Exhibit C: Statement of Charges filed by Board of Nursing, 6/6/01
State Exhibit D: Findings of Fact, Conclusions of Law, Decision and Order filed by Board of Nursing on 1/16/02
State Exhibit E: Application for Pharmacy Technician Registration, 11/20/01
State Exhibit F: Investigative Report (including attached exhibits) by Dennis Dobesh, 1/09/02
State Exhibit G: Investigative Report (including attached exhibits) by Jackie Devine, 1/14/02

FINDINGS OF FACT

1. The Respondent started working as a pharmacy technician for Vander Linden Pharmacy in Pella, Iowa on November 14, 2001. On November 20, 2001, the Respondent filed an Application For Pharmacy Technician Registration with the Board. She responded "no" to question 8 on the application: "Do you currently use any drugs, alcohol, or other chemical substances or do you have any physical or mental condition which in any way impairs or limits your ability to perform the duties of a pharmacy technician with reasonable skill and safety?"

On November 26, 2001, the Board issued the Respondent pharmacy technician registration number 6922, subject to the laws of the state of Iowa and the rules of the Board. Registration number 6922 is current and active until February 28, 2003. (Testimony of Dennis Dobesh; State Exhibits A, E)

2. On December 12, 2001, during a routine inspection of Vander Linden Pharmacy, the Board's investigator recognized the Respondent's name as the name of a nurse who had been accused of misappropriating controlled drugs from a hospital by the Board of Nursing. Upon further investigation, the investigator learned charges had been filed, and a hearing had been held on December 6, 2001. The Respondent did not attend the hearing. (Testimony of Dennis Dobesh; State Exhibits F, C)

3. The Executive Director of the Board asked the investigator to perform a full audit at the Vander Linden Pharmacy of the types of controlled drugs that the Respondent had been accused of misappropriating at the hospital. He also asked the investigator to obtain a urine sample from the Respondent for testing. Initially, the Respondent declined to cooperate but eventually admitted that she had a problem with Demerol abuse, had completed a substance abuse evaluation, and had received treatment.

The urine sample obtained from the Respondent on December 12, 2001 tested positive for Codeine, Morphine, Hydrocodone, Acetaminophen, Butalbital, and Tramadol and suspicious of nicotine and benzodiazepenes. (Testimony of Dennis Dobesh; State Exhibits F, G)

4. On December 18, 2001, two Board investigators conducted an audit at Vander Linden pharmacy and obtained pharmacy profiles for the Respondent. The results of the audit were that there were shortages at the Vander Linden Pharmacy of the type of controlled drugs used by the Respondent, including Morphine, Oxycontin, Alprazolam, Xanax, and Hydrocodone.

The Respondent had prescriptions for Hydrocodone c ApAp 7mg/500mg, that was last filled on May 13, 2001 and Alprazolam 1 mg (#100), that was last filled on March 30, 2001. At Vander Linden Pharmacy, the Respondent only had a prescription for Compazine and her son had a prescription for H-C Tussive Syrup. The Respondent told the Board's investigator that she took her last two Lortab at bedtime on December 10, 2001. (Testimony of Dennis Dobesh; State Exhibits F, G)

5. On January 16, 2002, the Iowa Board of Nursing issued its Findings of Fact, Conclusions of Law, Decision and Order revoking the Respondent's nursing license. The Board found, in part, that the Respondent had repeatedly misappropriated Demerol from her place of employment. The Board also found that the

Respondent's employment as a nurse had been terminated after she appeared impaired at work on March 27, 2001 and provided a urine specimen that was positive for Demerol. (Testimony of Dennis Dobesh; State Exhibit D)

CONCLUSIONS OF LAW

I. Failure to Appear

657 IAC 35.5(1)"b" provides that the notice of hearing may be executed by certified mail, return receipt requested. 657 IAC 36.5(3) provides that the notice shall be delivered at least 30 days before the time set for the hearing.

The notice of hearing was delivered the Respondent by certified mail, return receipt requested on September 19, 2002. (State Exhibit B) She was properly served with the notice of hearing 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 the Respondent failed to appear, the Board was authorized to proceed with the hearing.

II. The Violations

COUNT I

Iowa Code section 155A.6(7)(2001) provides, in relevant part:

155A.6 Pharmacist internship program and pharmacy technician registration.

...
7. The board may deny, suspend, or revoke a pharmacy technician registration for any violation of the laws of this state, another state, or the United States relating to prescription drugs, or for any violation of this chapter or chapter 124, 124A, 126, 147, or 205, or any rule of the board.

657 IAC 22.18 provides that the Board may impose discipline on pharmacy technicians for violations of any state or federal laws relating to prescription drugs, controlled substances, or nonprescription drugs. Possible sanctions include revocation, suspension, or nonrenewal of a pharmacy technician registration,

prohibitions of specific acts, probation, civil penalties, and citations and warnings.

Iowa Code section 124.403(1)(c) provides that it is unlawful for any person to knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Iowa Code section 155A.23 also prohibits a person from obtaining or attempting to obtain a prescription drug by fraud, deceit, misrepresentation, or subterfuge.

Iowa Code section 124.401(5) provides that it is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of practitioner while acting in the course of the practitioner's professional practice.

The preponderance of the evidence established the Respondent has violated Iowa Code section 155A.6(7) and 657 IAC 22.18 by her violations of state and federal laws relating to controlled substances, including possession of controlled substances in violation of Iowa Code sections 124.401(5), 124.403(1)(c), 124.210, and 155A.23. The urine sample provided by the Respondent on December 12, 2001 was positive for several controlled substances for which the Respondent did not have a current and valid prescription.

COUNT II

657 IAC 22.21(1) provides that a pharmacy technician shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy. Violation of this rule by a pharmacy technician shall constitute unethical conduct or practice and may be grounds for discipline as provided in 657 IAC 22.18.

The preponderance of the evidence established that the Respondent violated Iowa Code section 155A.6(7)(2001) and 657 IAC sections 22.18 and 22.21 when she falsely answered no to question number 8 on the Application for Pharmacy Technician Registration, which she filed with the Board. The preponderance of the evidence established that the Respondent does use drugs or other chemical substances, contrary to her answer on the

application. The Respondent's false answer on her application was deceptive and misleading and constituted unethical conduct.

IV. Sanction

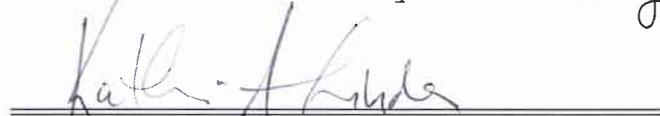
The Respondent has committed very serious violations of the laws pertaining to controlled substances in the state of Iowa. She has demonstrated a pattern of deceptive conduct and abuse of controlled substances. The violations adversely affect the public trust and confidence in the Respondent as a registered pharmacy technician. The protection of the public requires revocation of her registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration no. 6922, issued to Brandy D. Kline, shall be REVOKED, effective immediately upon service of this order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, 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 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 *19th* day of *February*, 2003.



Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields, 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 or an appeal of the decision on the merits is timely initiated within the time frame provided by rule 657-35.26... 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 or 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).