

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

Re:)	Case No. 2004-72
Pharmacy Technician Registration of:)	
NICOLE F. LEICK,)	STATEMENT OF CHARGES
Registration No. 7157,)	
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 (2003).
3. The Board issued Respondent Nichole F. Leick a pharmacy technician registration number 7157, 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 was renewed March 22, 2004.
4. Respondent's technician registration is current and active until March 31, 2006.
5. Respondent's address of record is 693 Glen Oak Street, Dubuque, Iowa 52001.
6. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at Union Family Pharmacy, 2541 Central Avenue, Dubuque, Iowa 52001.

A. CHARGES

COUNT I – VIOLATING LAWS RELATED TO PHARMACY

Respondent is charged pursuant to Iowa Code § 155A.6(7) (2003), and 657 Iowa Administrative Code § 36.1(4)(i) with violating state laws related to the distribution of controlled substances and prescription drugs, and to her work as a pharmacy technician.

B. FACTUAL CIRCUMSTANCES

On September 1, 2004 an investigation was commenced which revealed the following:

1. On August 11, 2004, Respondent was charged with two counts of possession of a controlled substance. Each count, if resulting in a conviction, would constitute a serious misdemeanor.
2. On or about September 23, 2004, Respondent was charged with first-degree burglary. If convicted, Respondent would be guilty of a felony.
3. All charges arise from arrests of Respondent in Dubuque, Iowa.
4. An audit of the controlled substances inventory at Union Family Pharmacy, Respondent's former employer, revealed shortages of controlled substances.

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 15th day of December 2004, 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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re:) DIA NO: 05PHB002
) CASE NO: 2004-72
NICOLE F. LEICK)
Registration No. 7157) **DEFAULT ORDER**
)
Respondent.)

This matter concerns a statement of charges filed against Nicole F. Lieck (respondent) on December 15, 2004. Respondent is a registered pharmacy technician. She was charged with violating state criminal laws regarding possession of a controlled substance and burglary. The statement of charges also alleges that an audit of respondent's former employer revealed a shortage of controlled substances.

The case was set for hearing before the board on April 20, 2005. The following board members were present for the hearing: Katherine Linder, Vernon Benjamin, Michael Seifert, Lemar Olson, Paul Abromowitz, and Barbara O'Rourke. 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.

DEFAULT

Mr. Galenbeck moved for a default judgment based on respondent's failure to appear. He introduced exhibits 1-4, and called Bernard Berntsen as a witness. Mr. Berntsen is a compliance officer for the board.

A default may be entered when a party fails to appear or participate in a contested case hearing after receiving proper service or notice.¹ Service may be made by certified mail (return receipt requested) or personally as provided in the Iowa Rules of Civil Procedure.² Personal service may be accomplished by giving the notice to a person who is at least 18 years of age

¹ Iowa Code section 17A.12(3); 657 IAC 35.21.

² Iowa Code section 17A.12(1); 657 IAC 35.5(1).

and is a resident of the party's dwelling house or usual place of abode.³

Mr. Bertsen testified that the board first attempted to serve respondent by registered mail at 693 Glen Oak Street in Dubuque. The notice was returned by the post office with no service noted. Mr. Bertsen obtained an alternative address from the local police department. Mr. Bertsen visited that address; it was the home of respondent's parents. Respondent's mother told Mr. Bertsen that respondent had moved out of her home two weeks earlier. She reported that respondent moved in with her boyfriend, Terry Gansen.

Mr. Berntsen went back to the police department to check on an address for Mr. Gansen. He discovered Mr. Gansen's address was 693 Glen Oak Street, which was the first address attempted by the board. Mr. Bertsen went to 693 Glen Oak Street with the statement of charges and notice of hearing. Mr. Berntsen personally talked to Mr. Gansen, who stated he would be seeing respondent within the next day or so. Mr. Gansen promised to give the paperwork to respondent when he next saw her. Mr. Bertsen served Mr. Gansen with the notice and statement of charges.

Mr. Berntsen made proper personal service on respondent by delivering notice to an adult resident of respondent's dwelling house. Appellant is in default because she did not appear for her contested case hearing.

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.⁴ The statement of charges requests 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.⁵

The charges in this case are extremely serious and closely related to the pharmacy practice. Respondent was criminally charged with two counts of possession of a controlled substance.

³ Iowa R. Civ. P. 1.305(1).

⁴ 657 IAC 35.21(9).

⁵ Iowa Code section 155A.6(7).

These charges are of great concern considering that her position as a pharmacy technician allows her access to controlled substances. Respondent's pharmacy reported a shortage of controlled substances, heightening the concern. Additionally, respondent was criminal charged with burglary, a felony charge. As mentioned above, respondent did not appear to contradict any of these charges. Based on these unrefuted allegations, the board revokes respondent's registration.

DECISION AND ORDER

The Iowa Board of Pharmacy Examiners revokes the pharmacy technician registration held by Nicole F. Leick, registration no. 7157, 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 7th day of June , 2005.



Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

Notice

A default decision becomes final agency action unless respondent files and serves on all parties a motion to vacate within 15 days after the date of notification or mailing of this decision. A motion to vacate shall state all facts which establish good cause for respondent's failure to appear at the

DIA No. 05PHB002
Case No. 2004-72
Page 4

contested case proceeding. Each fact must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact. All affidavits must be attached to the motion.⁶

⁶ 657 IAC 35.21.