

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2008-29
Pharmacy Technician Registration of:)	
SARAH MELHADO-BERGESON,)	STATEMENT OF CHARGES
Registration No. 13683,)	
Respondent.)	

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

1. He is the Executive Director for the Iowa Board of Pharmacy 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 (2007).
3. The Board issued Sarah Melhado-Bergeson (hereinafter, "Respondent") a pharmacy technician registration number 13683, 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 is current and active through February 28, 2009.
4. Respondent's address of record is 907 40th Place, Des Moines, IA 50312.
5. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at Walgreens Pharmacy, 3140 Southeast 14th Street, Des Moines, IA 50320.

A. CHARGES

COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

Respondent is charged pursuant to Iowa Code §§ 155A.6(7) and 155A.21 (2007), and 657 Iowa Administrative Code § 36.1(4)(h) with unlawful possession, distribution and use of prescription drugs.

COUNT II – VIOLATING LAWS RELATED TO PHARMACY

Respondent is charged pursuant to Iowa Code §§ 124.403, 155A.6(7) and 155A.21 (2007), and 657 Iowa Administrative Code § 36.1(4)(i), with violating state laws related to the distribution of prescription medications, including controlled substances, and the practice of pharmacy.

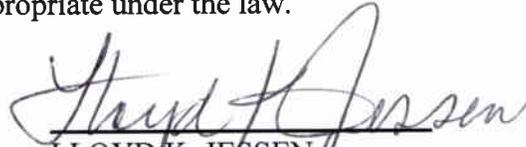
COUNT III – UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCES

Respondent is charged pursuant to Iowa Code §§ 155A.6(7) and 124.403 (2007), and 657 Iowa Administrative Code § 36.1(4)(j) with unlawful possession and use of controlled substances.

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 Director

On this 7th day of October 2008, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.


LEMAN OLSON, Chairperson
Iowa Board of Pharmacy
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 IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2008-29
DIA NO. 08PHB034

SARAH MELHADO-BERGESON
Registration No. 13683

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

TO: Sarah Melhado-Bergeson

On October 7, 2008, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Sarah Melhado-Bergeson (Respondent), alleging the following violations:

Count I: Unlawful possession, distribution and use of prescription drugs, in violation of Iowa Code §§ 155A.6(7), 155A.21 (2007), and 657 IAC 36.1(4)(h);

Count II: Violations of the state laws relating to the distribution of prescription drugs, including controlled substances, in violation of Iowa Code §§124.403, 155A.6(7), and 155A.21(2007)and 657 IAC 36.1(4)(i).

Count III: Unlawful possession and use of controlled substances, in violation of Iowa Code §§ 155A.6(7), 124.403 (2007), and 657 IAC 36.1(4)(j).

The hearing was held on April 29, 2009 at 10:30 a.m. The following members of the Board presided at the hearing: Leman Olson, Chairperson; Susan Frey; Vern Benjamin; DeeAnn Wedemeyer Oleson; Edward L. Maier; and Ann Diehl. Respondent failed to 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.

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

State Exhibit 1:	Statement of Charges, 10/7/08
State Exhibit 2:	Notice of Hearing, 12/34/08
State Exhibit 3:	Affidavit of Publication
State Exhibit 4:	Investigative Report, 6/18/08

FINDINGS OF FACT

1. The Board issued pharmacy technician registration number 13683 to Respondent Sarah Melhado-Bergeson, 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 expired on February 28, 2009. At all times relevant to the Statement of Charges, Respondent was employed as a pharmacy technician at Walgreens Pharmacy, 3140 Southeast 14th Street in Des Moines, Iowa. (State Exhibits 1, 4).
2. During the time of Respondent's employment, Walgreens received numerous complaints from customers that their controlled prescription drugs were being short-counted. The missing drugs included morphine sulfate, oxycodone, oxycontin, and fentanyl, which are all Schedule II controlled substances. Walgreens instigated an internal investigation, which included double counting and double checking all controlled substance prescriptions as well as camera surveillance. The camera surveillance showed Respondent removing prescription bottles from the "Will Call" window area, removing medications from the bottles, and then resealing the bottles and returning them to the "Will Call" area. The pharmacist-in-charge reported his findings to the Board and to the police. (State Exhibit 4; Testimony of Roger Zobel)
3. As the pharmacy's investigation was coming to a close, Respondent suddenly left the state and went to Texas, reportedly due to a death in her family. The police investigated Respondent's role in the missing drugs but decided not to prosecute. Respondent denied stealing the drugs from the pharmacy, but she never returned to work and was discharged from her employment. (Testimony of Roger Zobel; State Exhibit 4-D)
4. The Board's investigator had one telephone conversation with Respondent. Respondent felt that the Board should have closed its investigation after the police decided not to prosecute her. The Board's investigator explained that the Board retained jurisdiction to discipline her registration. Respondent did not return any further telephone messages left by the Board's investigator. (Testimony of Roger Zobel; State Exhibit 4-D)

5. On October 14, 2008, the Board sent the Statement of Charges and original Notice of Hearing (for a November 20, 2008 hearing) by certified mail, return receipt requested and by first-class mail to Respondent's address of record. Although the Board received a signed return receipt card, Respondent later called Board staff and claimed that she did not receive the documents. She asked for them to be resent to a new address in Waukee, Iowa. The Board rescheduled the hearing for April 29, 2009.

On December 24, 2008, the Board sent the Statement of Charges and second Notice of Hearing by certified mail and by first-class mail to Respondent at the Waukee address that she provided. However, these documents were returned to the Board marked "return to sender, unable to deliver, unable to forward." The Board's investigator made an unsuccessful attempt to personally serve the Notice of Hearing on Respondent at the Waukee address. The Board subsequently published notice in the Des Moines Register on February 28, March 7, and March 14, 2009. Respondent did not appear for hearing. (State Exhibit 3; Testimony of Debbie Jorgenson; Roger Zobel)

CONCLUSIONS OF LAW

Iowa Code §155A.6(7)(2007) 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, ...relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

Iowa Code §155A.21(2007) provides, in relevant part:

155A.21. Unlawful possession of prescription drug-penalty.

1. A person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.

...

Iowa Code chapter 124 is the Controlled Substances Act. Iowa Code §124.403(1)(c)(2007) provides that it is unlawful for any person knowingly or

intentionally to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

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:

...

h. Distribution of drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a ...pharmacy technician's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board...

j. Violating a statute or law of this state,...without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

...

Count I

The preponderance of the evidence established that Respondent unlawfully possessed and distributed prescription drugs, which she obtained without prescriber authorization by stealing them from the pharmacy where she was employed, in violation of Iowa Code §§155A.6(7), 155A.21(2007) and 657 IAC 36.1(4)"h."

Count II

The preponderance of the evidence established that Respondent violated laws relating to controlled substances and prescription drugs, in violation of Iowa Code §§155A.6(7),155A.21, 124.403(1)(c)(2007) and 657 IAC 36.1(4)"i," when she stole controlled drugs from customer prescription bottles at her employing pharmacy.

Count III

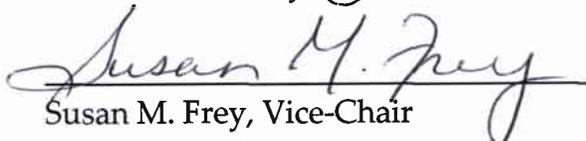
The preponderance of the evidence established that Respondent unlawfully possessed controlled substances, in violation of Iowa Code §§155A.6(7), 124.403(1)(c) and 657 IAC 36.1(4)"j," when she stole them from the pharmacy where she was employed.

DECISION AND ORDER

The serious nature of the violations and Respondent's failure to respond to the Statement of Charges or appear for the hearing more than justify revocation of her pharmacy technician registration. IT IS THEREFORE ORDERED that pharmacy technician registration number 13683, issued to Sarah Melhado-Bergeson, is hereby REVOKED.

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 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 (30) days of receipt of the bill.

Dated this ^{2nd} day of *June*, 2009.


Susan M. Frey, Vice-Chair
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General

A default decision or decision rendered on the merits after a party has failed to appear or participate in a contested case hearing shall become final board action unless within 15 days after the date of notification or mailing of the decision a motion to vacate is filed and served on all parties or unless an appeal of a decision is timely initiated within the time provided by rule 35.26. A motion to vacate must state all facts relied upon by the moving party which establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated shall be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) shall be 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).