

**BEFORE THE IOWA BOARD OF PHARMACY**

Re: ) Case No. 2009-128  
Pharmacy Technician Registration of: )  
**DENISE L. MURPHY,** ) **STATEMENT OF CHARGES**  
Registration No. 6865, )  
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 (2009).
3. The Board issued Denise L. Murphy (hereinafter, "Respondent") a pharmacy technician registration number 6865, 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 until June 30, 2010.
4. Respondent's address of record is 2811 SW Miller, Des Moines, Iowa 50321.
5. At all times material to this statement of charges, Respondent was employed as a pharmacy technician by Medicap Pharmacy, 3825 SW 9<sup>th</sup> Street, Des Moines, Iowa 50315.

**A. CHARGES**

**COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS**

Respondent is charged pursuant to Iowa Code §§ 155A.6A(5) and 155A.21 (2009), and 657 Iowa Administrative Code § 36.1(4)(j) with unlawful possession of prescription drugs, including controlled substances.

**COUNT II – DISTRIBUTION OF DRUGS FOR UNLAWFUL PURPOSES**

Respondent is charged pursuant to Iowa Code §§ 155A.6A(5) and 124.401, and 657 Iowa Administrative Code § 36.1(4)(h) with distribution of drugs for unlawful purposes.

**COUNT III – VIOLATING LAWS RELATED TO PHARMACY**

Respondent is charged pursuant to Iowa Code §§ 155A.6A(5), 155A.21, 155A.23(11) and 124.401 (2009), and 657 Iowa Administrative Code § 36.1(4)(i) and (j), with violating state laws related to the practice of pharmacy and distribution of prescription medications, including laws related to controlled substances.

COUNT IV – OBTAINING A PHARMACY TECHNICIAN REGISTRATION BY FRAUD

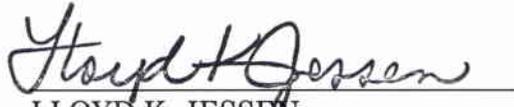
Respondent is charged pursuant to Iowa Code § 155A.6A(5) and 657 Iowa Administrative Code § 36.1(4)(a) with obtaining a pharmacy technician registration by fraud.

**B. FACTUAL CIRCUMSTANCES**

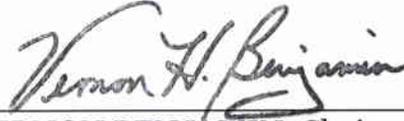
An investigation commenced on or about January 6, 2010, revealed the following:

1. Respondent was employed as a technician by Medicap Pharmacy, 3825 SW 9<sup>th</sup> Street, Des Moines, Iowa 50315.
2. Respondent submitted a renewal application for her Iowa pharmacy technician registration on March 23, 2009, and did not reveal that she had been charged criminally with possession of a controlled substance in October 2004; nor did Respondent reveal that she had pled guilty to possession of drug paraphernalia in December 2004.
3. In October 2009, Respondent was charged criminally with the possession of a controlled substance, possession of a prescription drug, possession of drug paraphernalia, and operating a motor vehicle while intoxicated.
4. Respondent is alleged to have diverted a Schedule III controlled substance, hydrocodone, and two Schedule IV controlled substances, zolpidem and diazepam, from her employer, Medicap Pharmacy, since beginning employment there in June 2009.
5. Respondent is also alleged to have tampered with and adulterated prescription drugs, including Schedule II controlled substances, at her place of employment, Medicap Pharmacy.
6. Respondent's urine has tested positive for marijuana, amphetamines, and opiate metabolites.
7. Respondent's employment at Medicap Pharmacy has been terminated.

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 2<sup>nd</sup> day of February 2010, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



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VERNON BENJAMIN, 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**

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**BEFORE THE IOWA BOARD OF PHARMACY**

Re: ) Case No. 2009-128  
Pharmacy technician Registration of )  
 ) **EMERGENCY ORDER**  
**DENISE L. MURPHY** )  
Registration No. 6865, )  
Respondent. )

**I. JURISDICTION**

The Iowa Board of Pharmacy (hereinafter, "Board") has jurisdiction over pharmacy technician registrations pursuant to Iowa Code Chapters 155A and 272C (2009). Denise L. Murphy (hereinafter, "Respondent") possesses pharmacy technician registration number 6865 issued by the Board. A Statement of Charges was filed against Respondent on February 2, 2010. After receipt and review of the Statement of Charges, and careful review of evidence relating to the Statement of Charges, the Board has adopted the following Findings of Fact, Conclusions of Law and Emergency Order.

**II. FINDINGS OF FACT**

1. On March 26, 2009, the Board renewed Respondent's pharmacy technician registration as evidenced by registration number 6865, subject to the laws of the State of Iowa and the rules of the Board.
2. Respondent was employed as a pharmacy technician at Medicap Pharmacy, 3825 SW 9<sup>th</sup> Street, Des Moines, Iowa 50315, during all times relevant to this Emergency Order.
3. On or about January 6, 2010, an investigation was commenced which revealed the following:
  - a) Respondent submitted a renewal application for her Iowa pharmacy technician registration on March 23, 2009, and did not reveal that she had been charged criminally with possession of a controlled substance in October 2004; nor did Respondent reveal that she had pled guilty to possession of drug paraphernalia in December 2004.
  - b) In October 2009, Respondent was charged criminally with the possession of a controlled substance, possession of a prescription drug, possession of drug paraphernalia, and operating a motor vehicle while intoxicated.
  - c) Respondent is alleged to have diverted a Schedule III controlled substance, hydrocodone, and two Schedule IV controlled substances, zolpidem and diazepam, from her employer, Medicap Pharmacy, since beginning employment there in June 2009.
  - d) Respondent is also alleged to have tampered with and adulterated prescription drugs, including Schedule II controlled substances, at her place of employment, Medicap Pharmacy.

- e) Respondent's urine has tested positive for marijuana, amphetamines, and opiate metabolites.
  - f) Respondent's employment at Medicap Pharmacy has been terminated.
4. The Board finds that the evidence assembled during the investigation of Respondent supports the February 2, 2010, Statement of Charges against Respondent. The Board also finds that Respondent has diverted controlled substances to her own use in the manner alleged in the Statement of Charges, both in violation of the provisions of Iowa Code Chapter 155A (2009) and the provisions of the Iowa Administrative Code.
  5. The Board finds that Respondent is an immediate danger to the public health, safety and welfare due to her diversion and tampering of controlled substances.
  6. The Board finds that immediate, emergency action must be taken for the reason that if Respondent is allowed to continue to work as a pharmacy technician, the public health, safety and welfare will be threatened by her diversion and tampering of controlled substances. Given this fact, the Board must act in the interest of the public to suspend Respondent's pharmacy technician registration.
  7. The Board finds that the minimum emergency action needed to protect the public health, safety and welfare is as follows:
    - a) Immediate suspension of Respondent's pharmacy technician registration.
    - b) Issuance of an Order directing that Respondent's registration shall remain suspended until an administrative hearing is held.

### **III. CONCLUSIONS OF LAW**

1. Respondent's diversion and tampering of controlled substances and other violations of Iowa Code chapter 155A (2009) and the Iowa Administrative Code establish that Respondent is not working legally or safely as a pharmacy technician.
2. The provisions of Iowa Code § 17A.18A (2007) permit the Iowa Board of Pharmacy to take emergency action to protect the health, safety and welfare of the public. A basis for emergency action against Respondent, pursuant to the provisions of the Iowa Code and the Iowa Administrative Code, has been established by the findings of fact adopted above.

### **IV. EMERGENCY ORDER**

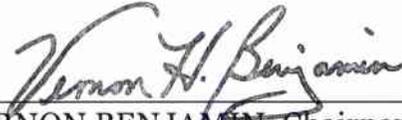
The Board ORDERS as follows:

1. Pursuant to Iowa Code § 17A.18A, chapter 155A (2009) and 657 Iowa Administrative Code §§ 36.1(4)(a), (b), (c), (d), (h), (m), and (u), the pharmacy technician registration of Denise L.

Murphy is hereby suspended indefinitely. This suspension is effective immediately upon issuance of this Order.

2. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).
3. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on March 10, 2010. The hearing will commence at 9:00 A.M. and be held at the office of the Iowa Board of Pharmacy, 400 SW 8<sup>th</sup> Street, Suite E, Des Moines, Iowa 50309.

**DATED** this 2<sup>nd</sup> day of February 2010.



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VERNON BENJAMIN, Chairperson  
Iowa Board of Pharmacy  
RiverPoint Business Park  
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 IOWA BOARD OF PHARMACY

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IN THE MATTER OF THE  
STATEMENT OF CHARGES AGAINST:

CASE NO. 2009-128  
DIA NO. 10PHB002

DENISE L. MURPHY  
Registration No. 6865

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER

RESPONDENT

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On February 2, 2010, the Iowa Board of Pharmacy (Board) found probable cause to file an Emergency Order and Statement of Charges against Denise L. Murphy (Respondent), alleging the following violations:

Count I: Unlawful possession of prescription drugs, including controlled substances, in violation of Iowa Code §§ 155A.6A(5), 155A.21 (2009), and 657 IAC 36.1(4)(j).

Count II: Distribution of drugs for unlawful purposes, in violation of Iowa Code §§ 124.401, 155A.6A(5), and 657 IAC 36.1(4)(h).

Count III: Violating state laws related to the practice of pharmacy and distribution of prescription medications, in violation of Iowa Code §§ 155A.6A(5), 155A.21, 155A.23(11) and 124.401 (2009), and 657 IAC 36.1(4)(h).

Count IV: Obtaining a pharmacy technician registration by fraud, in violation of § 155A.6A(5) and 657 IAC 36.1(4)(a).

The hearing was held on June 2, 2010 at 10:30 a.m. The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Edward L. Maier; Mark Anliker; DeeAnn Wedemeyer Oleson; Margaret Whitworth; and Annabelle Diehl. Assistant Attorney General Scott Galenbeck represented the state. Respondent failed to appear for hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009) and 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

The record includes the testimony of the witnesses and State Exhibits 1-4.

## FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 6865 to Respondent, which authorizes her to serve as a pharmacy technician subject to the laws of the state of Iowa and the rules of the Board. The Board indefinitely suspended Respondent's registration on February 2, 2010. (State Exhibits 2, 3)

2. Respondent was employed as a pharmacy technician at a Medicap Pharmacy in Des Moines, Iowa at all times relevant to this decision. On March 23, 2009, Respondent submitted a renewal application for her Iowa pharmacy technician registration. Respondent failed to disclose that she had been criminally charged with possession of a controlled substance in October 2004. Respondent also failed to disclose that she pled guilty to possession of drug paraphernalia in December 2004. (Testimony of Jennifer O'Toole; State Exhibit 1)

3. The pharmacist-in-charge/owner of the Medicap Pharmacy conducted an investigation after one employee discovered an adulterated bottle of Adderall XR 20 mg in the pharmacy and another employee found a tablet of hydrocodone/APAP on the floor in an area where the drug was not stored or used. Covert cameras were placed in the area where the hydrocodone was stored. On December 17, 2009, the camera's tape showed Respondent moving a hydrocodone bottle in a suspicious manner.

On December 21, 2009, the pharmacy instituted a perpetual inventory of its hydrocodone/APAP products. On December 22, 2009, twenty-two tablets of hydrocodone were missing. On December 29, 2009, fifty-five tablets of hydrocodone were missing. The camera's tape showed Respondent removing the hydrocodone bottle from the shelf. The bottle later reappeared in an area of the pharmacy where it did not belong. (Testimony of Jennifer O'Toole; State Exhibit 1)

4. The pharmacist-in-charge checked Iowa Courts On-Line for Respondent's criminal history. He discovered that Respondent had been charged with possession of a

controlled substance, unlawful possession of a prescription drug, and possession of drug paraphernalia in October 2009.

The Board has obtained a copy of the police report for Respondent's arrest. The police report reveals that a trooper stopped Respondent's car and found her in possession of three plastic baggies containing 13 grams of marijuana, 2 marijuana pipes, 60 tablets of hydrocodone/acetaminophen (Schedule III), 36 tablets of cyclobenzaprine (a muscle relaxant), and two tablets of zolpidem (sedative-Schedule IV). Respondent admitted all of the items were hers and stated that she bought the hydrocodone off the street. She also stated that she was unemployed, although she had been employed full-time at the Medicap Pharmacy since June 2009. Respondent submitted to a urine test which tested positive for marijuana, amphetamines, and opiate metabolites. Respondent was charged with Operating While Intoxicated. (Testimony of Jennifer O'Toole; State Exhibit 1)

5. The pharmacist-in-charge planned to have a surprise meeting between himself, Respondent, and a Board compliance officer on January 5, 2010. However, police were called to the Medicap Pharmacy on January 4, 2010 after forty-two tablets of hydrocodone were found missing while Respondent was working. Respondent denied taking the hydrocodone but consented to a search. One tablet of hydrocodone and one tablet of diazepam (Schedule IV) were found on her person, and she was arrested for possession of a controlled substance. The next day pharmacy staff found Respondent's glove in a trash can in the back room. Forty-two tablets of hydrocodone were inside the glove. There was also a generic bottle of Ambien with twenty-nine tablets in the trash. The bottled contained a label from the Medicap Pharmacy with Respondent's name on it. The prescription number on the label matched Respondent's prescription for oral contraceptives, which was the only legitimate prescription that she had on file at the Medicap Pharmacy. The label was actually two labels cut in half and pieced together to make it appear that the Ambien prescription belonged to Respondent. (Testimony of Jennifer O'Toole; State Exhibit 1)

6. In all, the pharmacy's inventory records revealed that over 3500 tablets of hydrocodone/APAP were missing between the annual inventory taken on April 27, 2009 and December 31, 2009. (Testimony of Jennifer O'Toole; State Exhibit 1)

7. Respondent was terminated from her employment at the Medicap Pharmacy. Respondent did not respond to inquiries from the Board. The Board issued the Emergency Order suspending Respondent's registration. Respondent's continued practice as a pharmacist technician presented an immediate danger to the public health,

safety and welfare due to her diversion of controlled substances to her own use and her tampering with controlled substances. (Testimony of Jennifer O'Toole; State Exhibits 1-3).

9. The Board initially attempted to serve Respondent with the Emergency Order and Statement of Charges by certified mail, return receipt requested at the address she has provided to the Board. When the certified mail was returned to the Board as undeliverable, Respondent was served with the Emergency Order, Statement of Charges, and Notice of Hearing by publication, as authorized by 657 IAC 35.5(1)"d." (Testimony of Debbie Jorgenson; State Exhibit 4)

### CONCLUSIONS OF LAW

Iowa Code § 155A.6A(5)(2009) provides, in relevant part, that the board may suspend or revoke the registration of a registered pharmacy technician for any violation of the laws of this state, . . . for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, 205, or 272C or any rule of the board.

Iowa Code § 155A.21(2009) provides, in relevant part, that any 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 § 124.401 provides, in relevant part, that it is unlawful for any person to possess a controlled substance with intent to deliver.

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:

*a.* Fraud in procuring a license. Fraud includes but is not limited to an intentional perversion of the truth in making an application...to practice as a . . . pharmacy technician.

.....

*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.

The preponderance of the evidence established that Respondent unlawfully possessed prescription drugs, including controlled substances, in violation of Iowa Code §§ 155A.6A(5), 155A.21(2009) and 657 IAC 36.1(4)(j), as alleged in Count I of the Statement of Charges.

The preponderance of the evidence established that Respondent distributed drugs for unlawful purposes, in violation of Iowa Code §§ 155A.6A(5), 124.401(2009) and 657 IAC 36.1(4)(h), as alleged in Count II of the Statement of Charges.

The preponderance of the evidence established that Respondent violated state laws related to the possession and distribution of controlled substances, in violation of 155A.6A(5), 155A.21, 155A.23(11), and 124.401(2009), and 657 IAC 36.1(4)(i) and (j), as alleged in Count III of the Statement of Charges.

The preponderance of the evidence established that Respondent obtained the renewal of her pharmacy technician registration by fraud, in violation of Iowa Code § 155A.6A(5) and 657 IAC 36.1(4)(a), as alleged in Count IV of the Statement of Charges.

In light of these violations, Respondent's continued practice as a registered pharmacy technician presents a serious danger to the public health, safety, and welfare. Both the violations and Respondent's failure to respond to the Board more than justify revocation of her registration.

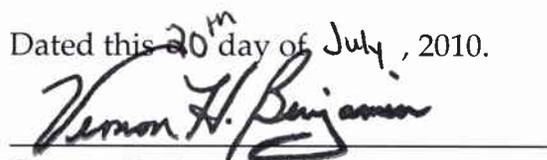
#### DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 6865, issued to Denise L. Murphy, is hereby REVOKED. If Respondent seeks reinstatement of her license the burden will be placed on her to show that the basis for the revocation

no longer exists and that is in the public interest for her license to be reinstated. 657 IAC 36.13(4).

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 20<sup>th</sup> day of July, 2010.



Vernon Benjamin, Chairperson  
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General  
Hoover State Office Building (LOCAL)

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).

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.