

BEFORE THE IOWA BOARD OF PHARMACY

Re:)
Pharmacy Technician Registration of)
MEGAN A. NEWELL)
Registration No. 16486,)
Respondent)

Case No. 2012-9

STATEMENT OF CHARGES

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

1. He is the Executive Director of 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 147, 155A and 272C (2011).
3. The Board issued Megan A. Newell (hereinafter, "Respondent") pharmacy technician registration number 16486, registering her as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration was last renewed on June 22, 2011, and will expire on April 30, 2013.
4. At all times material to this Statement of Charges, Respondent was employed as a pharmacy technician at CVS Pharmacy 8633, 2314 Spruce Hills Drive, Bettendorf, Iowa 52272.

A. CHARGES

COUNT I – UNLAWFUL POSSESSION AND DISTRIBUTION OF DRUGS

Respondent is charged pursuant to Iowa Code §§ 124.403, 155A.6A(5) and 155A.21 (2011), and 657 Iowa Administrative Code § 36.1(4)(h), with distribution to herself and possession of prescription drugs – including controlled substances – for other than lawful purposes.

COUNT II – VIOLATING LAWS RELATED TO PHARMACY

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011) and 657 Iowa Administrative Code § 36.1(4)(j) with violating state laws related to the practice of pharmacy; specifically, laws relating to possession and distribution of controlled substances found at Iowa Code §§ 124.403, 155A.21 and 155A.23 (2011).

COUNT III – INABILITY TO PRACTICE DUE TO CHEMICAL ABUSE

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011) and 657 Iowa Administrative Code § 36.1(4)(m) with the inability to practice as a pharmacy technician, with reasonable skill and safety, due to chemical abuse.

COUNT IV – CONVICTION OF FELONY

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011) and 657 Iowa Administrative Code § 36.1(4)(e) with conviction of a felony related to the profession of pharmacy and the activities of a pharmacy technician.

COUNT V – OBTAINING DRUGS BY FRAUD

Respondent is charged pursuant to Iowa Code §§ 155A.6A(5), 155A.23(1)(a)(1), 155A.23(1)(h) and 155A.23(1)(p) (2011), and 657 Iowa Administrative Code § 36.1(4)(i), with making false statements and obtaining prescription medications by fraud and deceit.

B. CIRCUMSTANCES

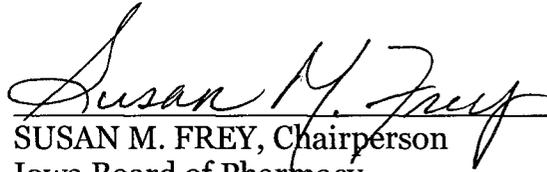
On August 17, 2011 an investigation was commenced which revealed the following:

1. At all material times, Respondent was employed as a pharmacy technician at CVS Pharmacy 8633, 2314 Spruce Hills Drive, Bettendorf, Iowa 52272
2. Respondent admitted to phoning in 21 fraudulent prescriptions for prescription medications. The fraudulent scripts, which identified Respondent as the patient, were called in to two different CVS pharmacies.
3. Respondent obtained hydrocodone and Lorazepam with the false scripts, both of which are controlled substances.
4. On March 2, 2012 Respondent pleaded guilty in Scott County District Court to a felony charge of engaging in prohibited acts with 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 Director

On this ^{27th} day of June 2012, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Theresa Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

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BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2012-9
DIA NO. 12PHB033

MEGAN A. NEWELL
Registration No. 16486

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On June 27, 2012, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges against Megan A. Newell (Respondent), alleging the following violations:

Count I: Unlawful possession and distribution of prescription drugs, including controlled substances, in violation of Iowa Code §§ 124.403, 155A.6A(5), 155A.21 (2011), and 657 IAC 36.1(4)(h).

Count II: Violating state laws related to the practice of pharmacy and distribution of controlled substances, in violation of Iowa Code §§ 124.403, 155A.6A(5), 155A.21, 155A.23(2011), and 657 IAC 36.1(4)(j).

Count III: Inability to practice as a pharmacy technician with reasonable skill and safety by reason of chemical abuse, in violation of Iowa Code § 155A.6A(5)(2011) and 657 IAC 36.1(4)(m).

Count IV: Conviction of a felony related to registration as a pharmacy technician, in violation of Iowa Code §155A.6A(5)(2011) and 657 IAC 36.1(4)(e).

Count V: Making false statements and obtaining prescription medications by fraud and deceit, in violation of Iowa Code section 155A.6A(5), 155A.23(1)(a)(1), 155A.23(1)(h), 155A.23(1)(p)(2011) and 657 IAC 36.1(4)(i).

The hearing was held on November 8, 2012 at 10:00 a.m. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Edward McKenna; James Miller; LaDonna Gratiias; and Margaret Whitworth. Assistant Attorney General Theresa O'Connell Weeg represented the state. Respondent failed to appear for hearing. At the beginning of the hearing, the Board granted the state's

motion to dismiss Count III of the Statement of Charges. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2011) 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 Board Compliance Officer James Wolfe, R.Ph. and State Exhibits 1-8.

FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 16486 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. Respondent's pharmacy technician registration was last renewed on June 22, 2011 and expires on April 30, 2013. (State Exhibits 1, 4)
2. Respondent was employed as a pharmacy technician at CVS Pharmacy 8633 in Bettendorf, Iowa at all times relevant to this decision. Respondent's employment was terminated on or about October 26, 2011 after she admitted that she fraudulently obtained prescription controlled substances for herself at CVS locations in Bettendorf, Iowa and Moline, Illinois. Respondent phoned in prescription orders to these locations posing as an agent for a physician assistant. Respondent admitted to phoning in 21 fraudulent prescriptions that identified herself as the patient. Respondent obtained hydrocodone and Lorazepam, both controlled substances, with these false prescriptions. (Testimony of James Wolfe, R.Ph.; Exhibits 4-7)
3. On March 2, 2012, Respondent pled guilty in Scott County District Court to a felony charge of engaging in prohibited acts with controlled substances, in violation of Iowa Code sections 155A.23(1), 155A.24, 124.401 and 124.208. The guilty plea was based on the same factual allegations as the Statement of Charges. On April 11, 2012, Respondent was granted a deferred judgment and placed on probation for a period of two years. (Testimony of James Wolfe, R.Ph.; Exhibits 7, 8)

4. The Board was unable to personally serve Respondent with the Notice of Hearing and Statement of Charges at her address of record with the Board. Respondent was served with the Statement of Charges and Notice of Hearing by publication, as authorized by 657 IAC 35.5(1)"d." Respondent failed to appear for hearing. (Exhibit 3)

CONCLUSIONS OF LAW

Relevant Statutes and Rules

Iowa Code §155A.6A(5)(2011) 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, ... relating to prescription drugs, controlled substances, or nonprescription drugs, or 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(2011) 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 §155A.23(2011) is entitled "Prohibited Acts" and states that a person shall not perform or cause the performance of or aid or abet any of the following acts:

a. Obtaining or attempting to obtain a prescription drug or device or procuring or attempting to procure the administration of a prescription drug or device by:

(1) engaging in fraud, deceit, misrepresentation, or subterfuge.

...

h. Receiving any drug or device that is ...obtained by fraud or deceit.

...

p. Engaging in misrepresentation or fraud in the distribution of a drug or device.

Iowa Code §124.403(1)(c) provides, in relevant part, 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.

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:

...

e. Conviction of a felony related to the profession or occupation of the licensee or registrant, or conviction of a felony that would affect the licensee's or registrant's 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.

...

h. Distribution of drugs for other than lawful purposes...

i. Willful or repeated violations of the provision 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...intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy...

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, including admissions made by Respondent, established that Respondent unlawfully possessed and distributed prescription drugs (i.e., the controlled substances hydrocodone, Lorazepam), in violation of Iowa Code §§124.403, 155A.6A(5), and 155A.21(2011) and 657 IAC 36.1(4)(h). Respondent obtained these controlled substances by misrepresentation, fraud, and subterfuge when she called in prescriptions for herself to two CVS pharmacies and falsely claimed to be the agent of a physician assistant.

Count II

The preponderance of the evidence established that Respondent violated state laws related to the possession and distribution of controlled substances, in violation of Iowa Code §§124.403, 155A.6A(5), 155A.21, 155A.23 (2011), and 657 IAC 36.1(4) (j).

Respondent obtained and distributed controlled substances by misrepresentation, fraud, and subterfuge.

Count IV

The preponderance of the evidence established that Respondent pled guilty to a felony related to the activities of a pharmacy technician on April 11, 2012, in violation of Iowa Code §§ 155A.6A(5)(2011) and 657 IAC 36.1(4)(e).

Count V

The preponderance of the evidence established that Respondent made false statements and obtained prescription drugs by fraud and deceit, in violation of Iowa Code §§155A.6A(5), 155A.23(1)(a)(1), (h), and (p) (2011), and 657 IAC 36.1(4) (i).

Sanction

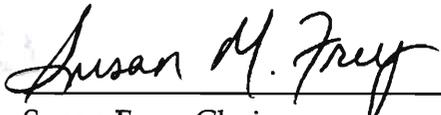
Respondent engaged in a pattern of willful and repeated violations of Board statutes and rules related to prescription drugs and controlled substances. The nature of these violations justifies revocation of Respondent's registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 16486, issued to Megan A. Newell, is hereby REVOKED. If Respondent seeks reinstatement of her registration, 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 registration 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 6th day of Dec , 2012.

A handwritten signature in cursive script, reading "Susan M. Frey". The signature is written in black ink and is positioned above a horizontal line.

Susan Frey, Chairperson
Iowa Board of Pharmacy

cc: Theresa O'Connell Weeg, 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.