

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	
Pharmacist License of	)	Case No. 2009-102
<b>DANIEL B. O'CONNOR</b>	)	
License No. 17524,	)	<b>STATEMENT OF CHARGES</b>
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. On October 26, 1990 the Board issued Daniel B. O'Connor (hereinafter, "Respondent"), after examination, a license to engage in the practice of pharmacy as evidenced by license number 17524, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license expired June 30, 1997.
5. Respondent's address of record is 2301 Bonita Street, Gilbert, AZ 85296.
6. At all times material to this statement of charges, Respondent was employed as the pharmacist at CVS Pharmacy #89 in Scottsdale, Arizona.

**A. CHARGES**

**COUNT I – VIOLATING LAWS OF ANOTHER JURISDICTION**

Respondent is charged under Iowa Code §§ 155A.12(1) and 155A.12(8) (2009), and 657 Iowa Administrative Code § 36.1(4)(ad), with violating the drug laws or rules of Arizona while under Arizona's jurisdiction.

**COUNT II – FAILURE TO TIMELY REPORT DISCIPLINARY ACTION**

Respondent is charged under Iowa Code § 155A.12(1) (2009), and 657 Iowa Administrative Code § 36.1(4)(k), with failing to report to the Board the final decision and disciplinary sanction of a licensing authority in another state within thirty days of that decision.

## B. CIRCUMSTANCES

An investigation commenced on August 25, 2009 which revealed the following:

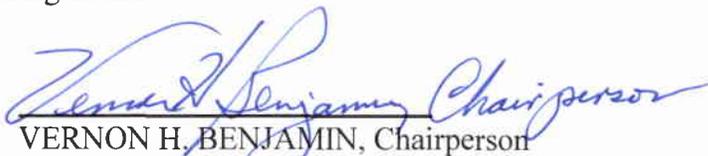
1. At all times material to this statement of charges, Respondent was employed as a pharmacist at the CVS Pharmacy #89 in Scottsdale, Arizona.
2. Respondent filled a prescription for amlodipine/benazepril 5/10 with amlodipine 5mg tablets.
3. On June 23, 2009 Respondent was disciplined by the Arizona State Board of Pharmacy.
4. The June 23, 2009 "Consent Agreement for Civil Penalty" concluded that Respondent had engaged in unprofessional conduct and directed him to pay a \$500 civil penalty.
5. Respondent did not report the June 23, 2009 Arizona discipline to this Board.

**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 18<sup>th</sup> day of November 2009, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



VERNON H. 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

BEFORE THE IOWA BOARD OF PHARMACY

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RE:	)	CASE NO. 2009-102
Pharmacist License of	)	DIA NO: 09PHB039
DANIEL O' CONNOR	)	FINDINGS OF FACT,
License No. 17524	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On November 18, 2009, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Daniel O'Connor (Respondent), alleging the following violations:

Count I: Violating the drug laws or rules of Arizona while under Arizona's jurisdiction, in violation of Iowa Code §§155A.12(1), (8)(2009) and 657 IAC 36.1(4)(ad);

Count II: Failure to notify the Board within 30 days of discipline in the state of Arizona, in violation of Iowa Code §155A.12(1)(2009) and 657 IAC 36.1(4)(k).

The hearing was held on June 2, 2010 at 10:45 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 witness and State Exhibits 1-3.

### FINDINGS OF FACT

1. On October 26, 1990, the Board issued Respondent license number 17524 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. Respondent's Iowa pharmacist license expired on June 30, 1997. (State Exhibit 2)

2. Respondent holds license number 11401 to practice as a pharmacist in the state of Arizona. While working as a pharmacist at a CVS Pharmacy in Scottsdale, Arizona, Respondent filled a prescription for amlodipine/benazepril 5/10 with amlodipine 5 mg tablets. Respondent transferred, entered, and verified the prescription.

On June 23, 2009, Respondent was disciplined for this error by the Arizona State Board of Pharmacy. Respondent admitted violating statutes and rules applicable to his practice as a pharmacist in the state of Arizona. Respondent was ordered to pay a \$500 civil penalty. (State Exhibit 1)

3. On September 2, 2009, the Board received a certified copy of the public disciplinary documents concerning Respondent's Arizona pharmacist license. Respondent has not notified the Iowa Board that his license had been disciplined in Arizona. (Testimony of Debbie Jorgenson; State Exhibit 1)

4. The Statement of Charges and Notice of Hearing were sent to Respondent at his Arizona address by certified mail, return receipt requested. The post office returned the certified mailing marked "unclaimed-unable to forward." Subsequently, notice was served on Respondent by publication in a newspaper of general circulation, as permitted by 657 IAC 35.5(1)"d." Respondent failed to appear for hearing. (State Exhibits 2, 3; Testimony of Debbie Jorgenson)

### CONCLUSIONS OF LAW

Iowa Code section 155A.12(1) and (8)(2009) provide that the Board may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a license on probation, if the Board finds that the licensee has done any of the following:

1. Violated any provision this chapter or any rules of the Board adopted under this chapter.

.....

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....

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:

....

k. Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary action.

....

ad. Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.

The Board charged Respondent with violating the drug laws or rules of Arizona while under Arizona's jurisdiction, in violation of Iowa Code sections 155A.12(1) and (8)(2009) and 657 IAC 36.1(4)(ad)[Count I]. The Board further charged Respondent with failure to notify the Iowa Board within 30 days of discipline in the state of Arizona, in violation of Iowa Code section 155A.12(1) and 657 IAC 36.1(4)(k)[Count II]. The preponderance of the evidence supports both counts. Respondent's Arizona license was disciplined by the Arizona Board in June 2009, but he did not report the disciplinary action to this Board.

Respondent's Iowa license has expired, but he retains the right to reactivate his Iowa license absent disciplinary action in this state. In addition to the violations established in this record, Respondent has failed to notify the Board of his current address and has failed to respond to the Board's charges. Based on these circumstances, it is appropriate to indefinitely suspend Respondent's Iowa pharmacy license.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacist license no. 17524, issued to Daniel B. O'Connor, shall be INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order.

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.

A handwritten signature in cursive script that reads "Vernon H. Benjamin". The signature is written in black ink and is positioned above a horizontal line.

Vernon Benjamin, Chairperson  
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).

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.