

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2014-34
Pharmacist License of)	
ROBERT OSBORN)	NOTICE OF HEARING AND
License No. 19079,)	STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent was issued Iowa pharmacist license number 19709. Respondent's license is currently active and will expire on June 30, 2016.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 6, 2015, before the Iowa Board of Pharmacy. The hearing shall be held during the morning session, beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8th Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@iowa.gov.

Communications. You may contact the Board office (515)281-5944 with questions

regarding this notice and other matters relating to these disciplinary proceedings. However, you may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Meghan Gavin at (515)281-6736.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2013).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 155A, and 272C (2013) and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

C. CHARGES

Count I

VIOLATION OF A BOARD RULE

Respondent is charged with failing to comply with a Board order for a mental and physical examination as required by Board rule 657 Iowa Administrative 36.17 in violation of Iowa Code sections 147.55(9) and 155A.12(1),(3) and 657 Iowa Administrative Code rule 36.1(4)(u); .

Count II

VIOLATION OF A LAW RELATED TO THE PRACTICE OF PHARMACY

Respondent is charged with violation of a law of another state related to the practice of pharmacy or the distribution of controlled substances in violation of Iowa Code sections 147.55(5) and 155A.12(1), (3) and 657 Iowa Administrative Code rules 8.11(4); (8) and 36.1(4)(j).

D. FACTUAL CIRCUMSTANCES

1. Respondent is an Iowa-licensed pharmacist, living and working primarily in Rock Island, Illinois.

2. On August 27, 2014, the Board issued the Respondent a Confidential Order for Evaluation. The Order required the Respondent to obtain a complete physical and mental health

evaluation, including substance abuse evaluation, within thirty days. Alternatively, Respondent could file an objection to the Board's Order within thirty days.

3. More than two months have now passed since issuance of the Board's Confidential Order for Evaluation. Respondent has neither objected to the Order nor submitted copies of the required evaluations.

4. In October 2014, Respondent pled guilty to the attempted unlawful possession of a controlled substance, a Class A misdemeanor. Respondent was sentenced to two years conditional discharge, four days in county jail, a \$2000 fine, and required to participate in and successfully complete a substance abuse evaluation within six months.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Meghan Gavin.

F. PROBABLE CAUSE FINDING

On this the 19th day of November, 2014, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges.



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

BEFORE THE IOWA BOARD OF PHARMACY

IN RE:)	CASE NO: 2014-34
Pharmacist License of)	DIA NO: 14PHB059
ROBERT OSBORN)	
License No. 19079)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On November 19, 2014, the Iowa Board of Pharmacy (Board) filed a Notice of Hearing and Statement of Charges against Robert Osborn (Respondent), which alleged two counts:

Count I: Failure to comply with a Board Order for a mental and physical examination as required by Board rule 657 IAC 36.17, in violation of Iowa Code sections 147.55(9), 155A.12(1),(3) and 657 IAC 36.1(4)(u);

Count II: Violation of a law of another state related to the practice of pharmacy or the distribution of controlled substances, in violation of Iowa Code sections 147.55(5), 155A.12(1),(3) and 657 IAC 8.11(4),(8) and 36.1(4)(j).

A hearing was held before the Board on January 6, 2015. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. The following members of the Board presided at the hearing: Edward Maier, Chairperson; Susan Frey; Edward McKenna; James Miller; Sharon Meyer; and LaDonna Gratias. Respondent appeared and was self-represented. Assistant Attorney General Meghan Gavin represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing.

THE RECORD

The record includes the testimony of Compliance Officer Jim Wolfe, R.Ph., Debbie Jorgenson, and Respondent; State Exhibits 1-15, and Respondent Exhibits A-H.

FINDINGS OF FACT

1. Respondent currently holds Iowa pharmacist license number 19079, which is active and will expire on June 30, 2016. Respondent was hired as a pharmacist by the Walmart Pharmacy in Aledo, Illinois on July 25, 2002. On February 21, 2014, Walmart terminated Respondent's employment as a pharmacist for gross misconduct. Three other employees were also terminated. (Testimony of Jim Wolfe; State Exhibits 1, 4)

2. Respondent was arrested on February 21, 2014 in Mercer County, Illinois and charged with the following three counts, in violation of Illinois law: Forgery (Count I), Unlawful Possession of a Controlled Substance (Count II), and Insurance Fraud (Count III). After the Board received notice of Respondent's arrest, it assigned Compliance Officer Jim Wolfe, R.Ph., to investigate the case. (State Exhibits 2, 11; Testimony of Jim Wolfe)

Mr. Wolfe sent two letters of inquiry to Respondent but received no response from him. Mr. Wolfe later emailed Respondent's criminal attorney but was told that Respondent would have no comment on the advice of his counsel. Mr. Wolfe contacted the Walmart Pharmacy in Aledo, Illinois and obtained copies of the pharmacy's internal investigation and reports. (State Exhibits 2-4; Testimony of Jim Wolfe)

According to the report of the internal investigation conducted by Walmart, Respondent admitted diverting medication by altering or inputting his own fraudulent prescriptions. These prescriptions included controlled substances (Lorazepam) and non-controlled legend drugs. (Testimony of Jim Wolfe; State Exhibit 4, pp. 14-18)

3. On August 27, 2014, the Board found probable cause to issue a Confidential Order for Evaluation to Respondent, pursuant to Iowa Code section 272C.9(2013) and 657 IAC 36.17. The probable cause for the evaluation order was based on Respondent's arrest and criminal charges for possession of a controlled substance, forgery and insurance fraud and his alleged forgery of prescriptions for 120 tablets of Lorazepam and 21 additional prescriptions for legend drugs that were not controlled substances. The evaluation order required Respondent to:

- submit to a comprehensive physical and mental health evaluation, including a substance abuse evaluation, with one of three named evaluators or with another facility, if preapproved by the Board. The evaluators named in the Order included Professionals Program of Resurrection Behavioral Health-Addiction

Services in Chicago, Illinois; Professional Recovery Network in Waukesha, Wisconsin; or Hazelden in Center City, Minnesota;

- notify the Board no less than five days prior to the date the evaluation is scheduled to begin and advise the Board of the date and time of the evaluation; and
- complete the evaluation within thirty (30) days of the date of the Order and cause a report of the evaluation and all test results, including copies of all records produced during the evaluation, to be forwarded to the Board on or before October 15, 2014.

The Order further provided that the Board shall provide the evaluator a copy of the Board's Order and all other information regarding the purpose and scope of the evaluation. The evaluation was required to include an assessment of Respondent's physical and mental condition, including substance abuse, and his ability to safely practice pharmacy. Respondent was responsible for ensuring that the evaluation did not begin until the evaluator received a copy of the Board's Order and all other necessary information.

Finally, the Order informed Respondent that he may request additional time to schedule or complete the evaluation or to ask the Board for approval of an alternative evaluation program. The Order further informed Respondent that he may file an objection to the Evaluation Order, as provided in 657 IAC 36.17(2). The Board's evaluation order was served on Respondent by restricted certified mail on August 30, 2014. (State Exhibits 5, 6; Testimony of Debbie Jorgenson)

4. Respondent called the Board office on September 9, 2014 and spoke to Debbie Jorgenson, who is the employee responsible for tracking licensee compliance with Board Orders for Evaluation. Respondent told Ms. Jorgenson that the facts were all wrong and that he did have a prescription. Ms. Jorgenson reviewed Jim Wolfe's investigative report and observed that Respondent had previously had no comment on the pending charges. Ms. Jorgenson gave Respondent the telephone number for Assistant Attorney General Meghan Gavin and advised Respondent that he should have his attorney call her. (Testimony of Debbie Jorgenson; State Exhibit 7)

5. On September 22, 2014, Respondent emailed Debbie Jorgenson and told her that he had a hardship and wanted to have the evaluation conducted closer to his residence in the Quad Cities. Debbie Jorgenson responded on October 2, 2014 and told Respondent to send her the information concerning where he was requesting to have the evaluation and to include the qualifications and credentials of the evaluator.

Respondent did not reply to this email. (Testimony of Debbie Jorgenson; State Exhibit 7)

6. On October 2, 2014, Respondent entered a guilty plea to an amended charge of Attempted Unlawful Possession of a Controlled Substance, a Class A Misdemeanor, and the remaining criminal counts against him were dismissed. Respondent was placed on conditional discharge for a period of two (2) years, was fined \$2000 and was required to complete a substance abuse evaluation within six months of the court's order. (State Exhibits 11, 12; Testimony of Jim Wolfe, Respondent)

7. On October 10, 2014, Debbie Jorgenson sent Respondent a letter, which included a review of all of the requirements of the Board's evaluation order and a summary of Respondent's email contacts with Jorgenson. Ms. Jorgenson advised Respondent that he must respond with the credentials of the evaluator that he wanted to see no later than October 16, 2014. (Testimony of Debbie Jorgenson; State Exhibits 7, 8)

On October 15, 2014 at 8:38 p.m., Respondent sent an email to Debbie Jorgenson advising her that the only clinic in his area that he could find that does mental and substance abuse evaluations was the Robert Young Center in Rock Island. Respondent further stated that the recommended doctor at the Robert Young Center was John Ciaccio, who graduated from Rush University in 1997 and who is board certified in Iowa and Illinois. Ms. Jorgenson responded on October 16, 2014 and told Respondent that his case would be reviewed by the Board at their next meeting on November 19, 2014 because he had not complied with the deadlines in the Board's evaluation order. (State Exhibit 9; Testimony of Debbie Jorgenson)

8. At their meeting on November 19, 2014, the Board found probable cause to file the pending Statement of Charges against Respondent for his failure to comply with the Board's Evaluation Order and for his violation of another state's laws relating to the practice of pharmacy. (State Exhibit 1)

9. On December 22, 2014, the Board received an evaluation report for Respondent from the Unity Point Health-Robert Young Center in Moline, Illinois. The evaluation had been conducted on October 29, 2014. The report indicates that the evaluation lasted 75 minutes, and the report was signed by Scott Griffith, LMSW/QMHP as the "Clinician" and by an LPHA/Supervisor, whose signature is not legible but whose credentials are listed as "ILSW, LPHA." Dr. John Ciaccio was not listed as one of the evaluators. The "Clinical Summary/Justification" section of the report included a description of Respondent's criminal charges and guilty plea. During the evaluation,

Respondent denied using any substances not prescribed for him and reported that he was prescribed lorazepam and Zoloft for mild depression, anxiety, and stress related to his recent/current employment and legal situation. It was noted that Respondent's symptoms have not interfered with his ability to care for his children or to become licensed in real estate to build and sell houses. Respondent was not referred for substance abuse treatment as a result of this evaluation. (State Exhibit 10; Respondent Exhibit A; Testimony of Debbie Jorgenson, Respondent)

The Board had not approved the Robert Young Center to perform Respondent's comprehensive evaluation. The Board did not receive any prior notice from Respondent that the evaluation was scheduled for October 29, 2014. The Board did not provide any documentation to the Robert Young Center prior to Respondent's evaluation. Respondent admits that he was required to obtain a substance abuse evaluation as a requirement of the sentencing order issued by the criminal court in Mercer County, Illinois. (Testimony of Debbie Jorgenson; Respondent)

10. At the hearing before the Board, Respondent denied that he has forged any prescriptions or unlawfully possessed any prescription drugs. Respondent submitted documentation from a physician concerning her February 12, 2013 prescription of lorazepam, which authorized Respondent to receive a maximum of 60 tablets with 2 refills. Respondent testified that he originally filled the prescription at a pharmacy near his home in Iowa and then later transferred the prescription to his employing pharmacy in Aledo, Illinois. Respondent testified that he pled guilty to the amended criminal charge based on the advice of his counsel and because he could not afford the legal fees to take his case to trial. (Testimony of Respondent; Respondent Exhibits D, E)

CONCLUSIONS OF LAW

COUNT I

Iowa Code section 147.55(9)(2013) authorizes the Board to revoke or suspend a license or to otherwise discipline a licensee for acts or offenses specified by Board rule. In addition, Iowa Code sections 155A.12(1), (3) and 657 IAC 36.1(4)(u) authorize the Board to discipline licensees for violations of Iowa Code chapters 147, 155A, or any Board rule.

The Iowa Code and Board rules provides that a pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person who is licensed or registered by the board is, as a condition of licensure or registration, under a duty to submit to a mental or physical examination within a time period specified by the board. Iowa Code section

272C.9(1)(2013); 657 IAC 36.17. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person. *Id.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing, which shall specifically identify the factual and legal issues upon which the licensee bases the objection. 657 IAC 36.17(2).

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(9), 155A.12(1),(3), and 657 IAC 36.1(4)(u) when he failed to timely and fully comply with a Board's Confidential Order for Evaluation issued on August 26, 2014. Respondent was required to schedule a comprehensive physical and mental evaluation, including substance abuse, at a Board approved facility within ten (10) days of the date of the Order and to complete the evaluation within thirty (30) days. He was also required to notify the Board at least five days prior to the evaluation so that the Board could provide documentation to the evaluator and explain the scope and purpose of the evaluation. Respondent was required to ensure that the Board received a written evaluation report, with all test results and copies of all records produced during the evaluation, on or before October 15, 2014.

Respondent was served with the Board's Evaluation Order on August 30, 2014. The evaluation should have been scheduled no later than September 9, 2014 and should have been completed by September 29, 2014. Respondent did not file an objection to the Order and did not request a hearing.

On October 15, 2014, Respondent provided the name of a facility (Robert Young Center in Rock Island) and the name of a doctor at that facility in an email to Board staff. Respondent was never given Board approval for the Robert Young Center, and he never notified the Board that he had scheduled an evaluation at the Robert Young Center. Respondent was evaluated at the Robert Young Center on October 29, 2014 with no prior notice to the Board. The Board did not provide any documentation to the Robert Young Center and did not have the opportunity to explain the scope of the evaluation. The report prepared by the Robert Young Center did not include an assessment of Respondent's ability to safely practice pharmacy.

At hearing, Respondent explained his delay in obtaining the evaluation as due to financial issues. Respondent waited until he was approved for medical assistance before completing the evaluation. Respondent provided no explanation, however, for his failure to obtain Board approval for the Robert Young Center and his failure to notify the Board in advance of his scheduled evaluation.

COUNT II

Iowa Code section 147.55(5) authorizes the Board to discipline a licensee who is convicted of a crime related to the profession or occupation or for the conviction of any crime that would affect the licensee's ability to practice within the profession. Board rule 657 IAC 36.1(4)(j) authorizes the Board to discipline a licensee for violating a statute or law of this state, another state, or the United States, without regard to its status 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 violated Iowa Code section 147.55(5), 155A.12(1), (3) and 657 IAC 36.1(4)(j) when he pled guilty to and was convicted of the crime of Attempted Possession of a Controlled Substance, which is a Class A Misdemeanor under Illinois law. This type of conviction is clearly and directly related to the practice of pharmacy. At hearing, Respondent denied that he ever unlawfully possessed or attempted to possess a controlled substance. Respondent testified that he entered the guilty plea on advice of his counsel and because he could not afford to take his case to trial. The fact remains that Respondent pled guilty and was convicted. He may not collaterally attack his conviction through this administrative proceeding.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacist license number 19079, issued to Respondent Robert Osborn, is hereby Suspended Indefinitely. Prior to filing an application for reinstatement, Respondent shall:

- fully comply with the Board's Confidential Order for Evaluation by completing a comprehensive physical and mental examination, including substance abuse;
- have prior Board approval for any evaluator and must give the Board at least five days prior notice of the date and time of the evaluation;
- ensure that the evaluation does not begin until the evaluator has received a copy of the Board's Order and all other necessary information, including the required scope of the evaluation;
- ensure that the Board receives a report of the evaluation, and all test results, including copies of all records and documents relevant to the evaluation; and
- fully comply with the recommendations for treatment, if any, made by the Board approved evaluator.

If Respondent's license is reinstated following his compliance with all of the requirements of this Order, the Board may, in its discretion, impose conditions of probation on his license.

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 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 ^{10th} day of ^{March} ~~January~~, 2015.



Edward Maier, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

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.