BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re:	)	Case No. 2002-4890
Pharmacy Technician Registration of:	)	
LOIS A. OUELLETTE	)	**STATEMENT OF CHARGES**
Registration No. 4890	)	
Respondent	)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (2001).

3. On December 7, 1999, the Board issued the Respondent, Lois A. Ouellette, pharmacy technician registration number 4890 to be registered as a pharmacy technician, subject to the laws of the State of Iowa and the rules of the Board.

4. Registration number 4890 expired on October 31, 2001 and is delinquent.

5. Respondent's current address is 1501 ½ W. Third, Sioux City, Iowa 51103.

6. Upon information and belief, the Respondent is not currently employed as a pharmacy technician.

COUNT I

The Respondent is charged under Iowa Code § 155A.6(7) (1999) and 657 Iowa Administrative Code §§ 36.1(4), 22.18, & 22.21(2) with revealing confidential patient information without the consent of the patient.

THE CIRCUMSTANCES

1. The Board received a complaint alleging that the Respondent had released information about the complainant's prescription records to a third party without

authorization.

2. The Respondent admitted to a Board investigator that she had released the complainant's prescription drug records to the complainant's estranged husband.

3. The Respondent knew that the complainant and her ex-husband were in the process of a divorce when she provided the ex-husband with the complainant's medication records.

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 Secretary/Director

On this 4th day of March, 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.

Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:	)	CASE NO. 2002-4890
	)	DIA NO: 02PHB001
Pharmacy Technician Registration of:	)	
LOIS A. OUELLETTE	)	FINDINGS OF FACT,
Registration No. 4890	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

TO: LOIS A. OUELLETTE

On March 4, 2002, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Lois A. Ouellette (Respondent), a registered pharmacy technician. The Statement of Charges alleged that the Respondent violated Iowa Code section 155A.6(7) and 657 IAC 36.1(4), 22.18, and 22.21(2) by revealing confidential patient information without the consent of the patient.

The hearing on the Statement of Charges was held on June 18, 2002 at 2:00 p.m., in the conference room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Katherine A. Linder, Chairperson; Paul Abramowitz; Michael J. Seifert; Leman Olson; Vernon H. Benjamin; and Barbara E. O'Roake. The Respondent appeared and was not represented by counsel. The state was represented by Shauna Russell Shields, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code section 272C.6(1)(2001).

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 its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the deliberations.

THE RECORD

The record includes the Statement of Charges; Notice of Hearing; the testimony of the witnesses; and the following exhibits:

State Exhibit A: Statement of Charges, filed 3/4/02

State Exhibit B: Certified Mail Receipt

State Exhibit C: Investigative Report, 11/29/01 and nine attached exhibits

State Exhibit D: Statement of Charges, filed against Joy Eaton, 3/4/02

State Exhibit E: Voluntary Surrender of Pharmacist Technician Registration by Joy Eaton

State Exhibit F: Order Accepting Surrender- Joy Eaton

Respondent Exhibit 1: Cancelled checks

Respondent Exhibit 2: Affidavit of Tracy Davis

Respondent Exhibit 3: Affidavit of William T. Cowan, Sr.

Respondent Exhibit 4: Affidavit of John S. Moeller

FINDINGS OF FACT

1. On December 7, 1999, the Board issued the Respondent pharmacy technician registration number 4890, subject to the laws of the state of Iowa and the rules of the Board. Registration number 4890 expired on October 31, 2001 and is delinquent. The Respondent is not currently employed as a pharmacy technician. (Testimony of Respondent; Terry Witkowski; State Exhibit A)

2. The Respondent was initially employed in May 1998 as a pharmacy clerk by Thompson Dean Drug in Sioux City. She later became registered as a pharmacy technician and has been taking courses to become certified. The Respondent remained employed by Thompson Dean Drug until her termination on November 3, 2000, after a complaint was made that she had provided confidential prescription information to a patient's estranged husband, without the patient's authorization. (Testimony of Terry Witkowski; Respondent; State Exhibit C)

3. The Respondent and the patient's estranged husband had been friends for many years. The Respondent had been close to the husband's first wife and had helped him with his two children

after her death. The Respondent admits that they had a romantic relationship at one time, but testified that this relationship ended before his marriage to his second wife.

In October 2000, the husband called Thompson Dean Drug to request prescription profiles for his family members. He had two children from his first marriage and one child from his second marriage. At the time of this request, his wife had moved to her parents' home with their son. According to the husband's affidavit, his wife had resisted his request for visitation because he did not know what medications their son was taking. He decided that he should find out about his son's medications by getting a printout of the medications from the pharmacy. He called the Respondent and requested prescription printouts for all of his family members. There were no prescriptions on file for his children from his first marriage. The Respondent provided him with prescription printouts for his wife and their son. Neither the husband nor the Respondent could provide the Board's investigators with an explanation for why the wife's prescription records were needed or why they had been provided. (Testimony of Respondent; State Exhibit C; Respondent Exhibit 3)

4. Several days after the Respondent provided the prescription printouts, the complainant went home to get some things and became very angry when she saw the printouts on the dining room table. She filed a Petition for Dissolution of Marriage the following day and subsequently complained to the Respondent's employer and to the Board. As of May 22, 2002, the dissolution was not yet final. (Testimony of Respondent; State Exhibit C; Respondent Exhibits 3, 4)

5. According to the Respondent, family members frequently requested prescription printouts at Thompson Dean Drug, and they were routinely provided. She felt that it was appropriate to provide the prescription printouts to her friend because they were for his wife and son, and he carried the insurance for them. While she knew that the wife was staying at her mother's, she asserts that the wife had moved out before and the couple had always reconciled. She denied that she provided the printouts for use in a dissolution proceeding.

The Respondent provided the affidavit of a former co-employee at Thompson Dean Drug and Walgreen's, who is a certified pharmacy technician. She stated that in her six years of employment as a pharmacy technician, no customer/client/patient was ever questioned about the legitimacy of their printout request. She further stated that printouts were provided to husbands, wives, parents, etc. on a daily basis at Thompson Dean Drug. In her opinion, any other employee would have also complied with the husband's request for the prescription printouts for his wife and child. (Testimony of Respondent; Respondent Exhibit 2)

CONCLUSIONS OF LAW

Iowa Code section 155A.6(7)(1999) 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, another state, or the United States relating to prescription drugs, or for any violation of this chapter or chapter 124, 124A, 126, 147, or 205, or any rule of the board.

657 IAC 22.18 provides that the Board may impose discipline on pharmacy technicians for violation of Iowa Code sections 124, 124A, 124B, 126, 147, 155A, 205, or any rule of the Board. Possible sanctions include revocation, suspension, or nonrenewal of a pharmacy technician registration, prohibitions of specific acts, probation, civil penalties, and citations and warnings.

657 IAC 22.21 provides, in relevant part:

> **657-22.21(147,155A) Unethical conduct or practice.** Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in 657-22.18(155A).
>
> ...
>
> **22.21(2)** *Confidentiality.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information, the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to the patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber.

The preponderance of the evidence established that the Respondent violated 657 IAC 22.21(2) when she provided a prescription printout for a patient to the patient's estranged

husband. Due to her personal relationship with the husband, the Respondent knew that the patient and her husband were having marital problems and were not residing together at the time of his request. Although the couple was still legally married at the time of the request, the Respondent's personal knowledge of the circumstances of their estranged relationship gave her reason to believe that the husband was not an authorized representative for his wife. Under these circumstances, the Respondent should not have released the wife's prescription printout to the husband without the wife's express authorization.

In reaching this decision, the Board did not consider the hearsay statements of Kenna Norby, which were contained in the investigative report. Although she was scheduled to testify, Ms. Norby failed to appear. The investigators were also unavailable to testify. Given these circumstances, the Respondent's sworn testimony refuting the hearsay statements was given more weight by the Board than the hearsay statements in the investigative report.

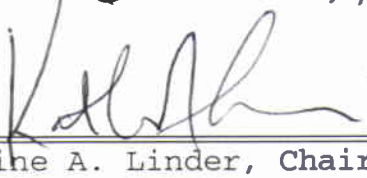
After listening to the testimony and reviewing the exhibits, the Board was convinced that the Respondent would not repeat this error if she is allowed to renew her registration as a pharmacy technician and pursue certification. The Board determined that a citation and warning is a sufficient and appropriate sanction for this violation.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that Lois A. Ouellette, Registration No. 4890, is hereby CITED for her violation of 657 IAC 22.21(2) and WARNED that any subsequent violations will result in more serious sanctions.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, that the Respondent shall pay $75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 6th day of August 2002.



Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields, Assistant Attorney General
Lois A. Ouellette

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.