

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	Case No. 2007-118
Pharmacy Technician Registration of:	)	
<b>DERRIS N. PRICE,</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 12476,	)	
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 (2007).
3. The Board issued Derris N. Price (hereinafter, "Respondent") a pharmacy technician registration number 12476, 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 was renewed December 19, 2006.
4. Respondent's address of record is 1107 Maplewood Drive, Apartment 4, Cedar Falls, Iowa 50613. Her current address is 1911 Springview, Waterloo, Iowa 50703.
5. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at CVS Pharmacy, 2068 Logan Avenue, Waterloo, Iowa 50703.

**A. CHARGES**

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

Respondent is charged pursuant to Iowa Code §§ 155A.6(7) and 155A.21 (2007), and 657 Iowa Administrative Code § 36.1(4)(h) with unlawful possession, distribution and use of prescription drugs.

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

Respondent is charged pursuant to Iowa Code §§ 124.403, 155A.6(7) and 155A.21 (2007), and 657 Iowa Administrative Code § 36.1(4)(i), with violating state laws related to the distribution of prescription medications and the practice of pharmacy.

COUNT III – UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCES

Respondent is charged pursuant to Iowa Code §§ 155A.6(7) and 124.403 (2007), and 657 Iowa Administrative Code § 36.1(4)(j) with unlawful possession and use of controlled substances.

**B. FACTUAL CIRCUMSTANCES**

The circumstances supporting the charges are set forth on Attachment A.

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 4<sup>th</sup> day of March 2008, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

  
PAUL ABRAMOWITZ, 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

BEFORE THE IOWA BOARD OF PHARMACY

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IN THE MATTER OF THE  
STATEMENT OF CHARGES AGAINST:

DERRIS N. PRICE  
Registration No. 12476

RESPONDENT

)  
) CASE NO. 2007-118  
) DIA NO. 08PHB003  
)  
) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) DECISION AND ORDER  
)

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TO: Derris N. Price

On March 4, 2008, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Derris N. Price (Respondent), alleging the following violations:

Count I: Unlawful possession, distribution and use of prescription drugs, in violation of Iowa Code §§ 155A.6(7), 155A.21 (2007), and 657 IAC 36.1(4)(h);

Count II: Violations of the state laws relating to the distribution of prescription drugs, in violation of Iowa Code §§ 124.403, 155A.6(7), and 155A.21(2007) and 657 IAC 36.1(4)(i).

Count III: Unlawful possession and use of controlled substances, in violation of Iowa Code §§ 155A.6(7), 124.403 (2007), and 657 IAC 36.1(4)(j).

The hearing was held on June 4, 2008 at 9:15 a.m. The following members of the Board presided at the hearing: Leman Olson, Chairperson; Susan Frey; DeeAnn Wedemeyer Oleson; Edward L. Maier; Margaret Whitworth; and Ann Diehl. Respondent failed to appear for the hearing. Assistant Attorney General Scott Galenbeck represented the state. The hearing 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

State Exhibit A: Statement of Charges, 3/4/08  
State Exhibit B: Notice of Hearing, 3/6/08  
State Exhibit C: Certified Mail Return Receipt  
State Exhibit D: Investigative Report, 1/4/08

FINDINGS OF FACT

1. The Board issued pharmacy technician registration number 12476 to Respondent Derris Price, 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 was renewed on December 19, 2006. At all times relevant to the Statement of Charges, Respondent was employed as a pharmacy technician at CVS Pharmacy #8546, 2068 Logan Avenue, Waterloo, Iowa. (State Exhibits A, D).
2. On November 6, 2007, Respondent's employer filed an Initial Notification of Suspected Controlled Substance Theft or Significant Loss. The pharmacy had identified a large variance between the dispensed, on hand, and ordered quantities of hydrocodone/APAP 10-/650 mg. The pharmacy had also identified significant shortages of Alprazolam, Ambien, and Clonazepam. Multiple cameras were placed in the pharmacy in an attempt to detect internal theft. (State Exhibit D; Testimony of Bernard Berntsen, R.Ph.)
3. The cameras did not operate correctly when they were first installed. After the cameras were corrected, Respondent was recorded on video putting a bottle of Hydrocodone/APAP down her pants before leaving the pharmacy through a secondary door to the back room. Respondent was confronted and admitted taking Hydrocodone, Potassium 20 MEQ, Clonazepam, and Cellcept from the pharmacy by concealing them in her clothing and then carrying them out in her purse. Respondent reported that she took the drugs for a person(s) who were in pain or sick and could not afford them. Criminal charges were filed against Respondent. (State Exhibit D; Testimony of Bernard Berntsen, R.Ph.)
4. Respondent was served with the Statement of Charges and Notice of Hearing by certified mail, return receipt requested, on or about March 12, 2008. Respondent signed the return receipt card but failed to appear for hearing. (State Exhibit A-C; Testimony of Debbie Jorgenson)

CONCLUSIONS OF LAW

I. *Applicable Statutes and Rules.*

Iowa Code §155A.6(7)(2007) 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, ...relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

Iowa Code § 155A.21(2007) provides, in relevant part:

**155A.21. Unlawful possession of prescription drug-penalty.**

1. A 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 chapter 124 is the Controlled Substances Act. Iowa Code §124.403(1)(c)(2007) provides that it is unlawful for any person knowingly or intentionally to 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:

...

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.

...

## *II. The Violations*

### *A. Count I*

The preponderance of the evidence established that Respondent unlawfully possessed and distributed prescription drugs, which she obtained without prescriber authorization by stealing them from the pharmacy where she was employed, in violation of Iowa Code §§ 155A.6(7), 155A.21(2007) and 657 IAC 36.1(4)"h." Respondent has admitted taking numerous prescription medications from her place of employment and providing them to others.

### *B. Count II*

The preponderance of the evidence, including the pharmacy's records, the pharmacy's surveillance videotape, and Respondent's admissions, established that Respondent violated laws relating to controlled substances and prescription drugs, in violation of Iowa Code §§155A.6(7),155A.21, 124.403(1)(c)(2007) and 657 IAC 36.1(4)"i."

### *C. Count III*

The preponderance of the evidence established that Respondent unlawfully possessed controlled substances, in violation of Iowa Code §§ 155A.6(7), 124.403(1)(c) and 657 IAC 36.1(4)"j," when she stole them from the pharmacy where she was employed.

## DECISION AND ORDER

The serious nature of the violations and Respondent's failure to respond to the Statement of Charges or appear for the hearing more than justify revocation of her pharmacy technician

registration. IT IS THEREFORE ORDERED that pharmacy technician registration number 12476, issued to Derris N. Price, is hereby REVOKED.

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 29<sup>th</sup> day of July, 2008.



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Leman Olson, 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).