

BEFORE THE IOWA BOARD OF PHARMACY

Re:) Case No. 2008-8
Pharmacy Technician Registration of)
HILLARY REICH) **STATEMENT OF CHARGES**
Registration No. 4915,)
Respondent)

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 (2009).
3. The Board issued Hillary Reich, hereinafter "Respondent," pharmacy technician registration number 4915, 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 September 19, 2007.
4. Respondent's registration is current and active until June 30, 2010.
5. At all times material to this Statement of Charges, Respondent was employed as a pharmacy technician at Mercy Medical Center – North Iowa, 1000 4th Street SW, Mason City, Iowa.

A. CHARGES

COUNT I – INABILITY TO PRACTICE DUE TO CHEMICAL ABUSE

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2009), 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 II – UNLAWFUL POSSESSION AND DISTRIBUTION OF DRUGS

Respondent is charged pursuant to Iowa Code §§ 126.308 and 155A.6A(5) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(j), with possession and distribution of prescription drugs, including controlled substances, for other than lawful purposes.

COUNT III – VIOLATING LAWS RELATED TO PHARMACY

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2009) 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.

B. CIRCUMSTANCES

On or about January 17, 2008, an investigation was commenced which revealed the following:

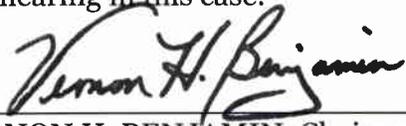
1. At all material times, Respondent was a pharmacy technician at Mercy Medical Center-North Iowa, 1000 4th Street SW, Mason City, Iowa.
2. Pharmacy employees had seen Respondent diverting drugs – taking unit dose medications (thought to be Fioricet) and putting them in her pocket. Respondent was confronted regarding the diversion, and discharged from employment January 7, 2008, following admissions to her employer that she had stolen drugs.
3. At the time she was confronted about diversion, Respondent had in her possession Fioricet, Prozac, Naproxen, Tylenol PM, Ibuprofen and Tramadol.
4. An inventory of the Medical Center pharmacy revealed significant shortages of both Fioricet and Carisoprodol.

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 20 day of July 2010, 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

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2008-8
DIA NO. 10PHB035

HILLARY REICH
Registration No. 4915

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On July 20, 2010, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges against Hillary Reich (Respondent), alleging the following violations:

Count I: 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)(2009) and 657 IAC 36.1(4)(m).

Count II: Unlawful possession and distribution of prescription drugs, including controlled substances, in violation of Iowa Code §§ 126.308¹, 155A.6A(5), 155A.21 (2009), and 657 IAC 36.1(4)(h) and (j).

Count III: Violating state laws related to the practice of pharmacy and distribution of controlled substances, in violation of Iowa Code §§ 124.403, 155A.6A(5)(2009), and 657 IAC 36.1(4)(j).

The hearing was held on November 2, 2010 at 1:25 p.m. The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Edward L. Maier; Mark Anliker; DeeAnn Wedemeyer Oleson; 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

¹ This citation is an error, there is no §126.308.

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 1-4.

FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 4915 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 expired on June 30, 2010. (State Exhibits 1, 2; Testimony of Debbie Jorgenson)

2. Respondent was employed as a pharmacy technician at Mercy Medical Center-North Iowa in Mason City, Iowa at all times relevant to this decision. Respondent's employment was terminated on January 7, 2008 after she admitted that she had been diverting drugs (Fioricet) from her place of employment. On more than one occasion, Respondent's co-workers observed her placing unit dose medications in her pocket. They had also observed her to have slurred speech and impaired behavior. (State Exhibit 1)

3. When Respondent's employer confronted her about the diversion, she had Fioricet, Prozac, Naproxen, Tylenol PM, Ibuprofen, and Tramadol in her possession. An inventory of the pharmacy revealed significant shortages of Fioricet and Carisoprodol, which is a muscle relaxant. (State Exhibit 1)

4. The Board initially attempted to serve Respondent with the Notice of Hearing and Statement of Charges by certified mail at her address of record with the Board. When the certified mail was returned to the Board as undeliverable, 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. (Testimony of Debbie Jorgenson; State Exhibit 4)

CONCLUSIONS OF LAW

Iowa Code §155A.6A(5)(2009) 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, ... 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(2009) 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 §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:

...

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

...

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.

...

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

The preponderance of the evidence established that Respondent is unable to practice as a pharmacy technician with reasonable skill and safety due to chemical abuse. Respondent's diversion of drugs from her workplace and the impaired behavior observed by her co-workers supports a finding that Respondent is not currently able to practice as a pharmacy technician with reasonable skill and safety due to her chemical abuse, in violation of Iowa Code §155A.6A(5)(2009) and 657 IAC 36.1(4)(m), as alleged in Count I.

The preponderance of the evidence established that Respondent unlawfully distributed and possessed prescription drugs, including controlled substances, in violation of Iowa

Code §§ 155A.6A(5), 155A.21(2009) and 657 IAC 36.1(4)(h) and (j), as alleged in 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 155A.6A(5), 155A.21, 124.403(2009), and 657 IAC 36.1(4) (j), as alleged in Count III.

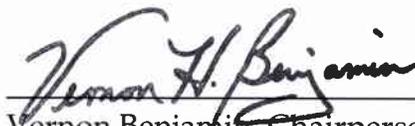
In light of these violations, Respondent's continued practice as a registered pharmacy technician presents a serious risk to the public health, safety, and welfare. The nature of the violations, Respondent's failure to appear for hearing, and Respondent's lapsed registration justify revocation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 4915, issued to Hillary Reich, 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 ¹⁴24 day of Nov. , 2010.



Vernon Benjamin, Chairperson
Iowa Board of Pharmacy

cc: Scott Galenbeck, 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.