

**BEFORE THE BOARD OF PHARMACY
OF THE STATE OF IOWA**

Re:) Case No. 2006-133
Pharmacy Technician Registration of:)
NANCY A. ROBERSON,) **STATEMENT OF CHARGES**
Registration No. 5753,)
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 Respondent Nancy A. Roberson a pharmacy technician registration number 5753, 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 January 26, 2006.
4. Respondent's technician registration expired on April 30, 2007, and is delinquent.
5. Respondent's address of record is 210 S. Prairie View Drive, Apt. 616, West Des Moines, Iowa 50266.
6. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at Hy-Vee Care Pharmacy, 3998 N.W. Urbandale Drive, Urbandale, IA 50322.

A. CHARGE

COUNT I -- INABILITY TO PRACTICE DUE TO DRUG ABUSE

Respondent is charged with the inability to practice as a pharmacy technician with reasonable skill and safety by reason of habitual drug abuse in violation of Iowa Code § 155A.6 (7) (2007) and 657 Iowa Administrative Code §§ 36.1(4)(d) and 36.1(4)(m).

COUNT II – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 155A.6(7) (2007), 155A.21 (2007) and 657 Iowa Administrative Code § 36.1(4)(j).

COUNT III – VIOLATION OF CONTROLLED SUBSTANCES LAW

Respondent is charged with violations of the laws of Iowa relating to controlled substances and prescription drugs in violation of Iowa Code § 124.403(1)(c) and 155A.6(7) (2007), and 657 Iowa Administrative Code § 36.1(4)(j).

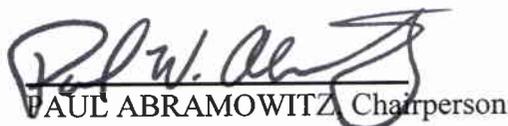
B. FACTUAL CIRCUMSTANCES

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 25 day of October 2007, 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 BOARD OF PHARMACY
OF THE STATE OF IOWA

IN THE MATTER OF THE)	CASE NO. 2006-133
STATEMENT OF CHARGES AGAINST:)	DIA NO. 07PHB023
)	
NANCY A. ROBERSON)	FINDINGS OF FACT,
Registration No. 5753)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
RESPONDENT)	

TO: Nancy A. Roberson

On October 25, 2007, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Nancy A. Roberson (Respondent), alleging the following violations:

Count I: Inability to practice as a pharmacy technician with reasonable skill and safety by reason of habitual drug abuse, in violation of Iowa Code §§ 155A.6(7)(2007) and 657 IAC 36.1(4)(d) and (m);

Count II: Unlawful possession and use of prescription drugs, in violation of Iowa Code §§ 155A.6(1), 155A.21 (2007), and 657 IAC 36.1(4)(j);

Count III: Violations of the laws of Iowa relating to controlled substances and prescription drugs, in violation of Iowa Code §§ 124.403(1)(c), 155A.6(7)(2007) and 657 IAC 36.1(4)(j).

The hearing was held on January 23, 2008 at 2:10 p.m. The following members of the Board presided at the hearing: Paul Abramowitz, Chairperson; DeeAnn Wedemeyer Oleson; Lemar Olson; Vernon Benjamin; and Margaret Whitworth. 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: Investigative Report, 2/23/07
State Exhibit B: Statement of Charges, 10/25/07
State Exhibit C: Notice of Hearing
State Exhibit D: Postal Service Return Receipt
State Exhibit E: Iowa Court Information System report,
1/17/08

FINDINGS OF FACT

1. The Board issued Respondent pharmacy technician registration number 5753, authorizing her to serve as a pharmacy technician, subject to the laws of the state of Iowa and the rules of the Board. At all times relevant to the Statement of Charges, Respondent was employed as a pharmacy technician at Hy-Vee Care Pharmacy, 3998 N.W. Urbandale Drive, Urbandale, Iowa. (State Exhibits A, B).
2. On November 29, 2006, the police were called to Respondent's apartment on a report that Respondent had taken numerous prescription pills, had slurred speech, and seemed drowsy. Upon arriving at the apartment, the police spoke to Respondent and she asked them to take her for detoxification. Respondent was found in possession of twenty-six prescription medications that had not been prescribed to her and four over-the-counter medications with a combined value of \$2981.23. Respondent admitted taking the drugs from her employer, Hy-Vee. The prescription medications included both scheduled and unscheduled drugs. (State Exhibit A)
3. Respondent was arrested and charged with 2nd Degree Theft, Possession of a Controlled Substance, and Unlawful Possession of a Prescription Drug. On December 8, 2006, Hy-Vee terminated Respondent's employment for gross misconduct- removal of drugs from pharmacy for personal use. (State Exhibit A)
4. Respondent wrote a letter to the Board on December 17, 2006, self-reporting her dependence on medications. Respondent reported increasing use over the prior 18 months due to personal losses and devastating family events. Respondent further reported that she was seeing a therapist and had entered treatment. (State Exhibit A)

5. The Board's investigator contacted Respondent while she was in treatment. Respondent stated that she did not want to participate in the Iowa Pharmacy Recovery Network (IPRN) program and did not want to return to work as a pharmacy technician. (State Exhibit A)

6. On March 30, 2007, the district court accepted Respondent's guilty pleas and granted deferred judgments on the charges of 2nd Degree Theft and Possession of Controlled Substances. Two additional criminal charges were dismissed. (State Exhibit E)

7. Respondent was served with the Statement of Charges and Notice of Hearing by certified mail, return receipt requested, on November 1, 2007. Respondent failed to appear for hearing. (State Exhibit B-D; 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:

...

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

...

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill or safety.

...

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.

...

II. *The Violations*

A. *Count I*

The preponderance of the evidence established that Respondent is unable to practice as a pharmacy technician with reasonable skill and safety by reason of habitual drug use, in violation of Iowa Code §155A.6(7)(2007) and 657 IAC 36.1(4)(d) and 36.1(4)(m). Respondent has admitted that she is dependent upon prescription medications and has declined to participate in the Iowa Pharmacy Recovery Network (IPRN) program. She failed to appear for hearing and has not provided any information to the Board to establish that she has successfully completed a drug treatment program or that she is currently in successful recovery.

B. Count II

The preponderance of the evidence established that Respondent unlawfully possessed and used both scheduled and unscheduled 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)"j." On November 29, 2006, police officers found Respondent in possession of numerous prescription medications for which she had no prescription. Respondent was observed to be under the influence of drugs at the time. Respondent admitted that she took the medications from her place of employment.

C. Count III

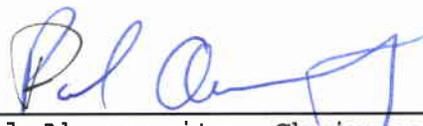
The preponderance of the evidence established that Respondent violated laws relating to controlled substances and prescription drugs, in violation of Iowa Code §§155A.6(7), 124.403(1)(c)(2007) and 657 IAC 36.1(4)"j." On March 30, 2007, Respondent entered guilty pleas to the crimes of 2nd Degree Theft, in violation of Iowa Code §714.2(2) and Possession of a Controlled Substance, in violation of Iowa Code §124.401(5).

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 5753, issued to Nancy A. Roberson, 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 4th day of March, 2008.



Paul Abramowitz, Chairperson
Iowa Board of Pharmacy Examiners

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).