

BEFORE THE IOWA BOARD OF PHARMACY

Re:) Case No. 2008-121
Pharmacy Technician Registration of:)
ANDREW ROJAS,) **STATEMENT OF CHARGES**
Registration No. 13942,)
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 Andrew Rojas (hereinafter, "Respondent") a pharmacy technician registration number 13942, authorizing him to serve as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration is current and active through March 31, 2009.
4. Respondent's address of record is 1002 Adventureland Drive, Apartment 310, Altoona, IA 50009.
5. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at two Walgreens Pharmacies located at 101 8th Street SE, Altoona, IA, 50009, and at 310 Story Street, Boone, IA 50036.

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.

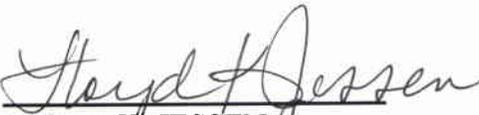
COUNT III – UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCES

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 17 day of February 2009, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.


LEMAN OLSON, 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

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BEFORE THE IOWA BOARD OF PHARMACY
OF THE STATE OF IOWA

Re: Technician Registration of)	CASE NO: 2008-121
)	DIA NO: 09PHB003
ANDREW ROJAS)	
Registration No. 13942)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	and ORDER

This matter concerns a statement of charges filed against respondent Andrew Rojas on February 18, 2009. Respondent is a registered pharmacy technician. He was charged with three counts: 1) unlawful possession, distribution and use of prescription drugs, 2) unlawful distribution of prescription medications, and 3) unlawful possession and use of controlled substances.

The case was set for hearing before the board on November 17, 2009. The following board members were present for the hearing: Vernon Benjamin, Ed Maier, Susan Frey, Mark Anliker, and Margaret Whitworth. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the board. Scott Galenbeck, an assistant attorney general, represented the public interest. Respondent did not appear.¹

THE RECORD

The state's exhibits 1-4 were admitted. The State called Dennis Dobesh and Debbie Jorgenson as witnesses.

FINDINGS OF FACT

Respondent worked as a registered pharmacy technician at Walgreens pharmacies in Altoona and Boone, Iowa. The pharmacy supervisor at the Boone pharmacy suspected diversion due to negative adjustments in inventory. The pharmacy placed two cameras and directed them at the supply for hydrocodone. The pharmacy monitored the cameras and conducted a medication count on a daily basis. (Exhibit 1A).

On August 29, 2008, the video showed respondent pouring tablets out of stock bottles and putting them in his pockets. The pharmacy later interviewed respondent, and he

¹ Respondent did not accept attempts for service by certified mail, so the Board served notice by publication. (See exhibit 4; Jorgenson testimony.)

admitted stealing 1422 10/500 mg hydrocodone tablets and 2042 10/325 mg hydrocodone tablets from the Boone pharmacy. He also admitted stealing 7200 mg vials of depo testosterone, 12 alprazolam tablets, and 13 100 mg Viagra tablets. Respondent further admitted to stealing 1416 tablets of hydrocodone from the Altoona pharmacy. The counts were verified through the pharmacy loss prevention specialist. Walgreens terminated respondent's employment, and reported his actions to the Boone Police Department. (Exhibits 1A, 1B).

CONCLUSIONS OF LAW

Regulatory framework: The board was created for the express purpose to promote, preserve and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy.² The board regulates the area, in part, through the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices.

A pharmacy technician is defined as a person registered by the board who is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical functions of the practice.³ The board may deny, suspend, or revoke a pharmacy technician registration for any violation of the laws of a state or the federal government relating to prescription drugs, or any violation of several listed statutes or the board's regulations.⁴

Discussion of substantive charges: The three charges are related and will be discussed together. The board may impose discipline if a registrant unlawfully possesses, distributes, or uses prescription drugs or controlled substances.⁵ The board may also discipline a registrant who violates laws related to the distribution of prescription medications and the practice of pharmacy.⁶

The evidence in this case is overwhelming and undisputed. Respondent's employer suspected theft and directed cameras on the pharmacy's hydrocodone. The tapes from the cameras showed respondent taking numerous tablets and putting them in his pockets. The medication counts showed a sizeable number of missing drugs. The pharmacy interviewed respondent and he admitted to the thefts at the Boone pharmacy, as well as thefts of medications from the Altoona pharmacy. The amounts of missing drugs are

² Iowa Code section 155A.2.

³ Iowa Code section 155A.3(29).

⁴ Iowa Code section 155A.6(7).

⁵ 657 IAC 36.1(4)(h), (j).

⁶ 657 IAC 36.1(4)(ac).

verified by reports from the pharmacies. There is no evidence in rebuttal. Each of the counts is supported by the record.

SANCTION

The board is empowered to consider any sanction consistent with the request for relief made in the statement of charges and embraced in its issues.⁷ The statement of charges requests any relief deemed "appropriate under the law." The board is authorized to revoke the registration of a pharmacy technician for any violation of the laws of the state, the board's authorizing statute, or the board's rules.⁸

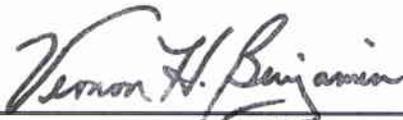
The evidence in this case demands revocation as a sanction. Respondent stole controlled substances for his own personal use. It is unclear whether he sold the drugs or used them himself, but he illegally diverted the drugs in any event. The theft was not a one-time event, and the total amount taken was considerable. There are no grounds to consider leniency.

DECISION AND ORDER

The Iowa Board of Pharmacy revokes the pharmacy technician registration held by Andrew Rojas, registration no. 13942, effective immediately. Respondent shall immediately return his pharmacy technician registration to the Iowa Board of Pharmacy, 400 SW 8th St., Suite E, Des Moines, Iowa 50309-4688.

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 days of receipt of the bill.

Dated this 26th day of January, 2010.



Vernon Benjamin, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

⁷ 657 IAC 35.21(9).

⁸ Iowa Code section 155A.6(7).

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Notice

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.