

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2011-32
Pharmacy Technician Registration of)	
ELLEN M. SAMPLE)	STATEMENT OF CHARGES
Registration No. 5344,)	
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 (2011).
3. The Board issued Ellen M. Sample (hereinafter, "Respondent") pharmacy technician registration number 5344, registering her as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration is current through December 31, 2013.
4. At all times material to this Statement of Charges, Respondent was employed as a pharmacy technician at Valu Med Pharmacy, Sioux City, Iowa.

A. CHARGE

COUNT I – INABILITY TO PRACTICE DUE TO CHEMICAL ABUSE

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011), 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 alcohol abuse.

B. CIRCUMSTANCES

An investigation was commenced on March 28, 2011, which revealed the following:

- a. At all times material, Respondent was employed as a pharmacy technician at Valu Med Pharmacy, Sioux City, Iowa.
- b. Respondent acknowledges heavy use of alcohol. Co-workers report that Respondent has smelled of alcohol while at work.

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.



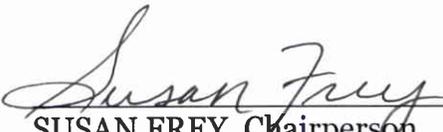
LLOYD K. JESSEN
Executive Director

On this 10th day of November 2011, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

SUSAN FREY, 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

Sample-tech SOC 10-11



SUSAN FREY, 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. 2011-32
DIA NO. 11PHB037

ELLEN M. SAMPLE
Registration No. 5344

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On November 10, 2011, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges against Ellen M. Sample (Respondent), charging her with inability to practice as a pharmacy technician with reasonable skill and safety by reason of alcohol abuse, in violation of Iowa Code § 155A.6A(5)(2011) and 657 IAC 36.1(4)(m).

The hearing was held on January 18, 2012 at 9:15 a.m. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Mark Anliker; James Miller; DeeAnn Wedemeyer Oleson; Margaret Whitworth and LaDonna Gratias. 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)(2011) 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 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 Jennifer O'Toole and Debbie Jorgenson and State Exhibits 1-5.

FINDINGS OF FACT

1. The Board has issued Respondent pharmacy technician registration number 5344, 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 is current through December 31, 2013. (State Exhibits 1, 3)

2. Respondent was employed as a pharmacy technician by ValuMed Pharmacy in Sioux City, Iowa at all times relevant to this decision. On March 3, 2011 and again on March 21, 2011, Respondent's co-workers in the pharmacy reported that they detected the smell of alcohol on Respondent's clothing. The pharmacist-in-charge gave Respondent two written warnings for personal hygiene. She was advised that she would be terminated if any supervisor smelled alcohol on her breath. Respondent admitted that her husband was concerned about her alcohol use. The pharmacist-in-charge provided Respondent the contact information for the Impaired Pharmacy Professional and Technician Recovery Program (IPRN). (Testimony of Jennifer O'Toole; State Exhibit 1)

3. Respondent admitted having 4-5 drinks a night and that her drinking had caused problems in her relationship with her husband. She admitted having blackouts. However, she denied ever drinking after midnight or being impaired by alcohol while at work. Respondent eventually signed an IPRN contract but has failed to follow up with IPRN or attend meetings. Respondent was admitted to the Mercy Hospital detoxification unit in April 2011. Respondent's husband told her employer that she had been drinking far more than she admitted to.

On August 29, 2011, Respondent told the Board's investigator that she had completed two 30 day treatment programs. Respondent stated that she would not apply for another pharmacy technician job until she knew she was finished drinking. (Testimony of Jennifer O'Toole; State Exhibits 1, 2)

4. The Board 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 unclaimed, Respondent was served with the Statement of Charges and Notice of Hearing by publication, as authorized by 657 IAC 35.5(1)"g." Respondent failed to appear for hearing. (Testimony of Debbie Jorgenson; State Exhibits 4, 5)

CONCLUSIONS OF LAW

Iowa Code § 155A.6A(5)(2011) 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.

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:

...

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

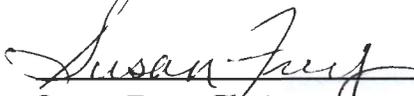
The preponderance of the evidence established that Respondent is unable to practice as a pharmacy technician with reasonable skill and safety due to chemical (alcohol) abuse, in violation of Iowa Code § 155A.6A(5)(2011) and 657 IAC 36.1(4)(m). The nature of the violation and Respondent's failure to appear for hearing justify revocation of her registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacy technician registration number 5344, issued to Ellen M. Sample, 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 7th day of March, 2012.



Susan Frey, 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).

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.