

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

Re:)	Case No. 2005-45
Pharmacy Technician Registration of:)	
DAWN TOWERS,)	STATEMENT OF CHARGES
Registration No. 2559,)	
Respondent.)	

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (2005).
3. The Board issued Respondent Dawn Towers a pharmacy technician registration number 2559, 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 is delinquent.
4. Respondent's address of record is 2405 Westover Blvd., Des Moines, Iowa 50322.
5. At all times material to this statement of charges, Respondent was employed as a pharmacy technician at Big Creek Pharmacy, 119 Second Street, Polk City, Iowa 50226.

A. CHARGES

COUNT I -- INABILITY TO PRACTICE DUE TO ALCOHOL AND DRUG ABUSE

Respondent is charged with the inability to practice as a pharmacy technician with reasonable skill and safety by reason of habitual intoxication, alcohol and drug abuse in violation of Iowa Code § 155A.6 (7) (2005) and 657 Iowa Administrative Code §§ 36.1(4)(d) and 36.1(4)(m).

COUNT II – UNLAWFUL POSSESSION AND DISTRIBUTION OF DRUGS

Respondent is charged with unlawful possession of prescription drugs and controlled substances in violation of Iowa Code § 155A.6(7) (2005) and 657 Iowa Administrative Code §§ 36.1(4)(H), (j) and (u).

COUNT III – FALSIFICATION OF RECORDS

Respondent is charged under Iowa Code § 155A.6(7) (2005) and 657 Iowa Administrative Code §

36.1(4)(cc) with a failure to maintain complete and accurate records relating to prescription medications and controlled substances.

B. FACTUAL CIRCUMSTANCES

On May 3, 2005 an investigation was commenced which revealed the following:

1. Respondent had been employed at the Big Creek Pharmacy for several years as a technician and pharmacy manager.
2. After a change of ownership, Respondent's activities were scrutinized and an audit of the pharmacy inventory was taken. The audit revealed substantial shortages of controlled substances (including alprazolam products, 20,000 tablets of hydrocodone and 6 gallons of hydrocodone syrup). An examination of pharmacy records revealed deposits of pharmacy receipts into Respondent's personal bank account.
3. Review of prescription records disclosed that some prescriptions for Respondent and her mother had been falsified, and that other, bona fide prescriptions had been refilled without refill authorization.
4. Respondent provided a urine sample on May 13, 2005 which revealed the presence of Benzodiazepine (alprazolam). Respondent did not possess a prescription for alprazolam.

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 Secretary/Director

On this 13th day of Sept. 2005, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


MICHAEL J. SEIFERT, Chairperson
Iowa Board of Pharmacy Examiners
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 EXAMINERS
OF THE STATE OF IOWA

Re: Technician Registration of)	CASE NO: 2005-44
)	DIA NO: 05PHB026
DAWN TOWERS)	
Registration No. 2559)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	and ORDER

This matter concerns a statement of charges filed against respondent Dawn Towers on September 13, 2005. Respondent is a registered pharmacy technician. She was charged with three counts: 1) inability to practice due to alcohol and drug abuse, 2) unlawful possession and distribution of drugs, and 3) falsification of records.

The case was set for hearing before the board on January 27, 2006. The following board members were present for the hearing: Katherine Linder, Vernon Benjamin, Michael Seifert, Lemman Olson, Paul Abramowitz, and Barbara O'Rourke. 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.

THE RECORD

The state's exhibits 1-5 were admitted. Jennifer Tiffany testified on the state's behalf.

FINDINGS OF FACT

Respondent worked as a pharmacy technician at Big Creek Pharmacy in Polk City, Iowa. The board received an anonymous complaint that respondent engaged in questionable practices regarding controlled substances. The complainant reported that respondent kept unlabeled bottles of pills in her purse, passed out nerve pills to acquaintances, and alleged she might be stealing drugs. The board assigned Jennifer Tiffany f/k/a Jennifer Kluza to investigate the complaint.

Ms. Tiffany interviewed a prior pharmacist and the current owner of Big Creek. Both denied having an opinion that respondent was abusing or stealing drugs. However, the owner, Alan Norgaard,

stated that he had some concerns with her activities. He felt she might be stealing money from the pharmacy.

On May 11, 2005, Ms. Tiffany interviewed respondent outside the pharmacy. Ms. Tiffany asked about unlabeled drugs in her purse. Respondent showed Ms. Tiffany an unlabeled bottle, but said they were diet pills known as "Release."

On May 13, 2005, Jennifer Mallicoat, another board investigator, went to Big Creek for the purpose of obtaining a urine sample from respondent. Respondent provided a sample. The sample tested positive for benzodiazepine alprazolam and one of its metabolites, alpha-OH-alprazolam. Alprazolam is used to treat anxiety. Ms. Tiffany obtained a prescription profile for respondent at two separate pharmacies. Neither showed a prescription for alprazolam. (Exhibits 5(C) and (D)).

On May 16, 2005, Ms. Tiffany audited several products at Big Creek, including two alprazolam products and five hydrocodone combination products. The half milligram strength alprazolam product was short. Four of the hydrocodone products were also short. Hydrocodone is used as a painkiller. (Exhibit 5(E)).

Mr. Norgaard stated that he began paying more attention to respondent's actions after the board commenced its investigation. He discovered that respondent cashed a check written out to Big Creek into her own personal account. The check was written for \$1,366.32. (Exhibit 5(F)).

Ms. Tiffany also reviewed prescription profiles for respondent and her mother, Linda Towers, relating to hydrocodone. The prescriptions were filled at Big Creek. Ms. Tiffany called several doctors' offices to determine whether the prescriptions were legitimate. Four of the doctors reported that they did not prescribe all drugs listed on the two prescription profiles from Big Creek. (Exhibit 5).

After the board filed its statement of charges, respondent sent an electronic mail messages to Ms. Tiffany on November 13, 2005. The message stated that respondent would not appear for the hearing and would surrender her registration "for the time being."¹ She took no accountability for her actions, but provided no detailed information that would exonerate her. She

¹ The hearing was initially scheduled for November 15, but was rescheduled due to a board conflict.

instead accused Mr. Norgaard of being an abusive boss, and referred to the board investigation as a "joke."

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, deliver, 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

Count I - Inability to practice - use of drugs or alcohol: The board may impose discipline if a registrant is unable to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis, or the excessive use of drugs.⁵ The board may also impose discipline if a registrant is not able to practice with reasonable skill and safety by reason of chemical abuse.⁶

The board does not find sufficient evidence to support count I. There is evidence that drugs were missing from the pharmacy, but there is not a preponderance of evidence to show that respondent was the person who took the drugs. There is evidence showing respondent obtained hydrocodone through fictitious prescriptions, but there is no evidence to show that respondent used hydrocodone. The most pertinent evidence in support of this charge is the failed drug test; however, there is no evidence to show how respondent's use of alprazolam impacted her ability to practice.

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)(d).

⁶ 657 IAC 36.1(4)(m).

Counts II and III - Unlawful possession and falsification of records: The board may impose discipline if a registrant distributes prescription drugs for any unlawful purpose.⁷ The board may also discipline a registrant who fails to maintain complete and accurate records as required by law.⁸ These two charges revolve around similar facts and will be considered together.

The undisputed evidence showed that respondent created false prescriptions from four doctors. Respondent personally received hydrocodone pursuant to these false prescriptions. The record is not clear whether she personally used the hydrocodone or delivered it to another person. However, she clearly used false means to obtain a prescription drug for an unlawful purpose.

Respondent's failed drug test further supports a violation of count II. Respondent's drug test showed the presence of alprazolam. However, her prescription profile did not reveal a prescription for alprazolam. Respondent obtained, possessed, and used alprazolam without a prescription.

Both violations are supported by the audit showing shortages in hydrocodone and alprazolam. The audit findings do not establish an independent violation due to the lack of evidence linking the shortages to respondent. However, the fact that the pharmacy had shortages in the same two drugs that were the subject of the false prescriptions and the failed drug tests, shows a greater likelihood that violations occurred.

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.⁹ 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.¹⁰

The charges in this case are extremely serious. On several occasions, respondent created false prescriptions so she could

⁷ 657 IAC 36.1(4)(h), (j).

⁸ 657 IAC 36.1(4)(ac).

⁹ 657 IAC 35.21(9).

¹⁰ Iowa Code section 155A.6(7).

obtain prescription drugs. She tested positive for a second drug for which she did not have a prescription. The board's concern is heightened because Ms. Tiffany's audit showed shortages of hydrocodone and alprazolam. Respondent's only response to the charges has been to demean the board's investigation and blame other people of wrongdoing. She did not offer any evidence to rebut the charges.

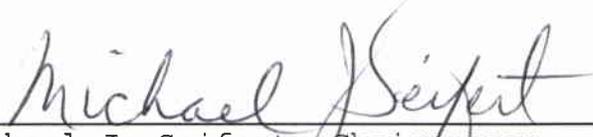
Respondent's misconduct is directed to her former position in the pharmacy profession. She has harmed the integrity of the profession and jeopardized the public safety and welfare. Revocation is the appropriate sanction.

DECISION AND ORDER

The Iowa Board of Pharmacy Examiners revokes the pharmacy technician registration held by Dawn Towers, registration no. 2559, effective immediately. Respondent shall immediately return her pharmacy technician registration to the Iowa Board of Pharmacy Examiners, 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 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 days of receipt of the bill.

Dated this 8th day of March, 2006.



Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

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.