

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2010-20
Pharmacist License of)	
GABRIEL L. WEEFAR)	STATEMENT OF CHARGES
License No. 20732)	
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 147, 155A and 272C (2009).
3. On June 2, 2008, the Board issued Gabriel L. Weefar (hereinafter, "Respondent"), after examination, a license to engage in the practice of pharmacy as evidenced by license number 20732, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2012.
5. Respondent's address of record is 13627 West Boca Raton Road, Surprise, Arizona 85379.
6. Respondent was, at all times material to this statement of charges, employed outside the State of Iowa and licensed in Arizona.

A. CHARGES

COUNT I – VIOLATING LAWS OF ANOTHER JURISDICTION

Respondent is charged under Iowa Code §§ 155A.12(1) and 155A.12(8) (2009), and 657 Iowa Administrative Code § 36.1(4)(ad), with violating Arizona law relating to licensure of pharmacists.

COUNT II – FAILURE TO TIMELY REPORT DISCIPLINARY ACTION

Respondent is charged under Iowa Code § 155A.12(1) (2009), and 657 Iowa Administrative Code § 36.1(4)(k), with failing to report to the Board the final decision

and disciplinary sanction of a licensing authority in another state within thirty days of that decision.

B. CIRCUMSTANCES

An investigation was commenced on March 12, 2010 which revealed the following:

1. Respondent is licensed as a pharmacist in the State of Arizona.
2. On October 6, 2009 Respondent signed a disciplinary agreement with the Arizona State Board of Pharmacy, which was finalized November 19, 2009.
3. The disciplinary agreement arose from a dispensing mistake in which Respondent failed to catch an erroneous dosage amount both upon review of the data entry and again when he purported to verify that the product was consistent with the prescription.
4. The disciplinary agreement provides for Respondent to pay a \$2000 fine and promptly complete 8 additional hours of continuing education, all dealing with error prevention.
5. Respondent has not given the Iowa Board of Pharmacy notice of the disciplinary action in Arizona.

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 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

RE:)	CASE NO. 2010-20
Pharmacist License of)	DIA NO: 10PHB023
GABRIEL L. WEEFAR)	FINDINGS OF FACT,
License No. 20732)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On July 20, 2010, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Gabriel L. Weefar (Respondent), alleging the following violations:

Count I: Violating Arizona law relating to licensure of pharmacists, in violation of Iowa Code §§155A.12(1), (8)(2009) and 657 IAC 36.1(4)(ad);

Count II: Failure to notify the Board within 30 days of discipline in the state of Arizona, in violation of Iowa Code §155A.12(1)(2009) and 657 IAC 36.1(4)(k).

The hearing was held on November 2, 2010 at 1:30 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 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. On June 2, 2008, the Board issued Respondent license number 20732 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. Respondent's Iowa pharmacist license is current and active until June 30, 2012. (State Exhibit 1)

2. Respondent also holds license number S016257 to practice as a pharmacist in the state of Arizona. While working as a pharmacist at a Walgreens Pharmacy in Phoenix, Arizona, Respondent took a prescription order for prelone 15 mg/5ml syrup for a seven year old patient. The pharmacy incorrectly entered the directions on the prescription, which resulted in the patient receiving too little medication. Respondent did not catch this error on his review of the data entry or when he verified the product.

On November 20, 2009, Respondent entered into a Consent Order with the Arizona State Board of Pharmacy based on this error. Respondent admitted violating statutes and rules applicable to his practice as a pharmacist in the state of Arizona. Respondent was ordered to pay a \$2000 civil penalty and to complete and provide proof of successful completion of eight contact hours of continuing education on topics dealing with error prevention. The continuing education was to be completed within six (6) months of the effective date of the Consent Order. (State Exhibit 4)

3. Respondent notified the Iowa Board of the Arizona Consent Order when he filed his application to renew his Iowa license on June 7, 2010. This was more than thirty days after the effective date of the Consent Order. (Testimony of Debbie Jorgenson)

4. The Statement of Charges and Notice of Hearing were sent to Respondent at his Arizona address by restrictive certified mail, return receipt requested. Respondent failed to appear for hearing. (State Exhibits 2, 3; Testimony of Debbie Jorgenson)

CONCLUSIONS OF LAW

Iowa Code section 155A.12(1) and (8)(2009) provide that the Board may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a license on probation, if the Board finds that the licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the Board adopted under this chapter.

...

8. Violated the pharmacy or drug laws or rules of any other state or the United States while under the other state's jurisdiction.

...

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:

...

k. Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary action.

...

ad. Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.

The Board charged Respondent with violating the drug laws or rules of Arizona while under Arizona's jurisdiction, in violation of Iowa Code sections 155A.12(1) and (8)(2009) and 657 IAC 36.1(4)(ad)[Count I]. The Board further charged Respondent with failure to notify the Iowa Board within 30 days of discipline in the state of Arizona, in violation of Iowa Code section 155A.12(1) and 657 IAC 36.1(4)(k)[Count II]. The preponderance of the evidence supports both counts. Respondent's Arizona license was disciplined by the Arizona Board in November 2009, but he did not report the disciplinary action to this Board until June 2010.

DECISION AND ORDER

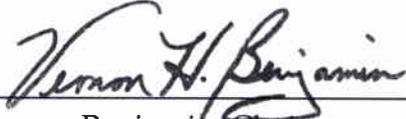
IT IS THEREFORE ORDERED that Respondent Gabriel L. Weefar shall pay a civil penalty of \$500.

IT IS FURTHER ORDERED that pharmacist license no. 20732, issued to Gabriel L. Weefar, shall be INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order. The indefinite suspension shall continue

until Respondent submits verification that he has completed the continuing education required by the Arizona Board and until Respondent pays the \$500 civil penalty and hearing fees assessed in this Decision and Order.

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 24th day of November, 2010.



Vernon Benjamin, 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.