BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST:	CASE NO. 2015-25 DIA NO. 15PHB016
INIE CLEMENT License No. 16963 RESPONDENT	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

On June 23, 2015, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Inie Clement (Respondent), which alleged a violation of Iowa Code sections 147.55(9), 155A.12(1), (3) and 657 IAC 2.15 and 36.1(4)(u) by failing to notify the Board within ten days of a change of address. The hearing was held on November 3, 2015. The following members of the Board presided at the hearing: James Miller, Chairperson; Edward Maier; Edward McKenna; Sharon Meyer; Jason Hansel; and LaDonna Gratias. Assistant Attorney General Meghan Gavin represented the state. Respondent failed to appear for hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1), and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the testimony of Jennifer O'Toole, R.Ph., Debbie Jorgenson, two Notices of Hearing and Statement of Charges, and State Exhibits 1-7 (See Exhibit List for description).

FINDINGS OF FACT

1. The Board has issued Inie Clement (Respondent) license number 16963 to engage in the practice of pharmacy in the state of Iowa, subject to the statutes and rules of the Board. Respondent's license is current and will expire on June 30, 2017. Respondent has provided the Board with the following address of record for her license: 1168 22nd Street, Des Moines, Iowa 50311. Respondent's last known employment as a pharmacist was through RPh on the Go in 2012. (State Exhibits 1, 3, 4)

2. Respondent is the owner of multiple rental properties in Des Moines. The Iowa Department of Revenue has contacted the Board on four occasions to serve Respondent with license sanction certificates of non-compliance. The first two license sanctions were both issued in 2011 and were later withdrawn after Respondent paid the debt.

In 2012, the Board was unable to serve Respondent with the Department of Revenue's license sanction. The notice of license sanction was sent to Respondent by certified mail at her address of record at 1168 22nd Street, but the notice was returned to the Board marked "unclaimed." One of the Board's compliance officers, Jennifer O'Toole, then attempted to personally serve Respondent. Respondent's daughter answered the door at 1168 22nd Street and told Ms. O'Toole that her mother had moved out of state months earlier, and she did not know where she was. Respondent's daughter stated, however, that Respondent continued to receive her mail at 1168 22nd Street. Ms. O'Toole left a message asking Respondent to contact her, but Respondent never did. The Department of Revenue later withdrew the notice of sanction. (O'Toole testimony; State Exhibit 3)

3. In early 2015, the Board received the fourth Notice of Intention to Suspend License from the Iowa Department of Revenue. This notice stated that Respondent's license would be suspended effective 60 days following service of the notice. The notice of license sanction was sent to Respondent at 1168 22nd Street in Des Moines by certified mail, restricted delivery. On February 2, 2015, the notice of license sanction was returned to the Board by the United States Postal Service marked "Return to Sender, Vacant, Unable to Forward." (O'Toole testimony; State Exhibits 3, 7)

After the notice was returned, Jennifer O'Toole conducted an internet search (via Accurint) in an attempt to identify another address for Respondent. Ms. O'Toole also reviewed the Polk County Assessor's page in an attempt to identify properties that were owned by Respondent. Ms. O'Toole identified several possible addresses but none of them could be verified. Ms. O'Toole sent letters to all of the possible addresses for Respondent, none of which were returned to the Board by the postal service. Ms. O'Toole also followed up on information she obtained indicating that Respondent might be a Zumba instructor, but she was unable to identify any location where Respondent was listed as a Zumba instructor (O'Toole testimony; State Exhibits 3, 5)

4. On June 23, 2015, the Board issued a Notice of Hearing and Statement of Charges charging Respondent with failure to notify the Board of her change of address. The hearing was scheduled for September 1, 2015. The Notice of Hearing and Statement of Charges was initially sent to Respondent by restricted certified mail and by first-class

mail 1168 22nd Street, but the notice that was sent by certified mail was returned to the Board by the postal service. (O'Toole, Jorgenson testimony; State Exhibits 1, 4)

5. In late June or early July 2015, Respondent renewed her pharmacist license. She once again listed the mailing address of 1168 22nd Street in Des Moines on her renewal application. (State Exhibit 4)

6. The Board unsuccessfully attempted to personally serve Respondent with the Notice of Hearing and Statement of Charges for the September 1, 2015 hearing. The Board planned to reschedule the hearing and serve Respondent by publication. On September 1, 2015, however, Respondent appeared at the Board's office for her hearing. The state was not prepared to go forward with the hearing at that time. The Board's Administrative Assistant, Debbie Jorgenson, met with Respondent at that time and served Respondent with notice of the rescheduled hearing. Respondent signed an Acceptance of Service for this new notice, which scheduled the hearing for November 3, 2015 at 9:00 a.m. Respondent failed to appear for the hearing on November 3, 2015. (Jorgenson testimony; Notice of Hearing issued September 1, 2015; State Exhibit 2)

CONCLUSIONS OF LAW

I. Failure to Appear

657 IAC 35.5(1) allows a Notice of Hearing and Statement of Charges to be served on a licensee by personal service, certified mail return receipt requested, or publication, as provided in the Iowa Rules of Civil Procedure. In this case, Respondent was personally served with the Notice of Hearing and Statement of Charges on September 1, 2015 but failed to appear for hearing.

657 IAC 35.21 allows the Board to proceed with the hearing and render a decision in the absence of the licensee if the licensee fails to appear after proper service of notice. The Board was authorized to proceed with the hearing when Respondent failed to appear.

II. Failure to Report Change of Address to the Board

Pursuant to Iowa Code section 147.55(9), 155A.12(1), (3)(2015) and 657 IAC 36.1(4)"u," the Board is authorized to discipline a licensee for any violation of the Board's rules. 657 IAC 2.15 requires a pharmacist to report to the Board a change of the pharmacist's name, address, or pharmacy employment within ten days.

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(9), 155A.12(1), (3), and 657 IAC 36.1(4)"u" when she failed to timely notify the Board of an address change, as required by 657 IAC 2.15. When licensees fail to notify the Board of an address change, it becomes more difficult or even impossible for the Board to carry out its regulatory functions, such as contacting a licensee when a complaint is received and serving essential notices on the licensee. In this case, Respondent's failure to keep the Board informed of her current address prevented Board staff from timely serving her with a Department of Revenue notice of license sanction and with the Board's Notice of Hearing and Statement of Charges. As a result of Respondent's violation, the Board's staff was required to expend extraordinary time and resources locating and serving Respondent. Moreover, Respondent failed to appear for the hearing before the Board, even though she had been personally served with the Notice of Hearing and Statement of Charges. The Board believes that the circumstances of the violation warrants suspending Respondent's license to practice pharmacy until she has paid a civil penalty, has provided the Board with a verified current address, and has appeared before the Board for reinstatement.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 16963, issued to Respondent Inie Clement, is hereby suspended effective immediately upon service of this Decision and Order.

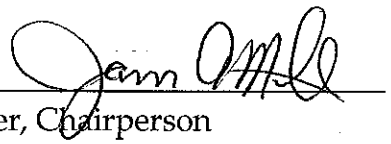
IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of one thousand dollars ($1000), within thirty (30) days of service of this Decision and Order.

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, within thirty (30) days of service of this Decision and Order.

IT IS FURTHER ORDERED that the suspension of Respondent's license shall continue until:

1) Respondent has paid the $1000 civil penalty and hearing fee in full;
2) Respondent has provided the Board with a verified current address; and
3) Respondent appears before the Board for a reinstatement hearing. *See* 657 Iowa Administrative Code (IAC) 36.13.

Dated this 12th day of January, 2016.



James Miller, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, 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.