

BEFORE THE IOWA BOARD OF PHARMACY

RE:
Pharmacist License of

ROBERT OSBORN
License No. 19079
Respondent

CASE NO. 2014-34

VOLUNTARY INACTIVE STATUS AGREEMENT

COME NOW the Iowa Board of Pharmacy ("Board") and Robert Osborn ("Respondent") and enter into this Voluntary Inactive Status Agreement, stating as follows:

1. Respondent holds Iowa pharmacist license number 19079, which is currently active through June 30, 2018.

2. On January 4, 2017, the Board issued an Order reinstating Respondent's Iowa pharmacist license with conditions. Respondent has not been employed as a pharmacist in Iowa since being reinstated.

3. At this time, Respondent is not pursuing employment as a pharmacist in Iowa. Consequently, Respondent wishes to place his Iowa pharmacist license on inactive status in lieu of complying with the conditions imposed by the Board's Order dated January 4, 2017.

4. Respondent understands that he may not engage in the practice of pharmacy in Iowa while his Iowa pharmacist license is inactive.

5. Respondent may apply for reactivation of his Iowa pharmacist license at any time pursuant to requirements for reactivation in 657 IAC 2.13(2).

6. The reinstatement conditions, namely that Respondent be referred to the IMP3 and participate, if eligible, shall be stayed until such time as Respondent's Iowa pharmacist license is reactivated. Upon reactivation, Respondent shall be referred to the IMP3 and participate, if eligible, as described in the Board's Order dated January 4, 2017.


7. Respondent acknowledges that he has read this Agreement in its entirety, understands its content, and is executing it freely and voluntarily.

8. Respondent acknowledges that he has the right to be represented by counsel on this matter.

9. Respondent understands the Board is required by federal law to report any adverse action to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank.

10. This Agreement, when fully executed, is a public record and is available for inspection and copying in accordance with the requirements of Iowa Code chapters 22 and 272C.

This Voluntary Inactive Status Agreement is voluntarily submitted by Respondent to the Board for its consideration on the 27 day of December, 2017.



ROBERT OSBORN
Respondent

This Voluntary Inactive Status Agreement is approved by the Iowa Board of Pharmacy on the 16th day of January, 2018.



Chairperson
Iowa Board of Pharmacy

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	CASE NO: 2014-34
Pharmacist License of:	)	DIA NO: 17PHB012
)	
ROBERT OSBORN	)	FINDINGS OF FACT,
License No. 19079	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On November 1, 2016, a hearing was held before the Iowa Board of Pharmacy (Board) concerning the reinstatement application filed by Robert Osborn (Respondent). The following members of the Board presided at the hearing: James Miller, Chairperson; Edward McKenna; Sharon Meyer; Jason Hansel; LaDonna Gratiyas; and Kay Jessen. Assistant Attorney General Meghan Gavin represented the state. Respondent appeared and was self-represented. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2015), and was recorded by a certified court reporter. 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 its decision. The administrative law judge was instructed to prepare the written decision, in conformance with the Board's deliberations, for Board review and approval.

THE RECORD

The record includes the testimony of Respondent and State Exhibits 1-10.

FINDINGS OF FACT

Respondent's Licensure History and Criminal History. In 1998, Respondent obtained a B.S. in Pharmacy from Drake University and then was issued pharmacist licenses in Illinois and Iowa (license no. 19079). Respondent was employed as a retail pharmacist at various pharmacies in Illinois from 1998 to 2014. (State Exhibits 4, 5; Respondent testimony)

In 2014, several criminal charges (Forgery, Unlawful Possession of a Controlled Substance, and Insurance Fraud) were filed against Respondent in Illinois in connection with his employment as a pharmacist in that state. The Iowa Board opened an investigation after receiving notice of these criminal charges. On August 27, 2014, the

Board found probable cause to issue Respondent a Confidential Order for Evaluation, pursuant to Iowa Code section 272C.9(2013) and 657 IAC 36.17. The Order for Evaluation required Respondent to:

- submit to a comprehensive physical and mental health evaluation, including a substance abuse evaluation, with one of three named evaluators or with another facility, if preapproved by the Board;
- notify the Board no less than five days prior to the date the evaluation was scheduled to begin and advise the Board of the date and time of the evaluation;
- provide the evaluator with a copy of the Board's Order and all other information regarding the purpose and scope of the evaluation; and
- complete the evaluation within thirty (30) days of the date of the Board's Order and cause a report of the evaluation and all test results, including copies of all records produced during the evaluation, to be forwarded to the Board on or before October 15, 2014.

(State Exhibits 3, 4, 5)

On October 2, 2014, Respondent entered a guilty plea to an amended class A misdemeanor charge of Attempted Unlawful Possession of a Controlled Substance. The remaining criminal charges against Respondent were dismissed. Respondent was placed on conditional discharge for a period of two (2) years, was fined \$2000, and was required to complete a substance abuse evaluation within six months of sentencing. Respondent continues to deny that he unlawfully possessed a controlled substance and testified that he entered the guilty plea on the advice of his attorney and because he could not afford the legal fees to take the criminal case to trial. (State Exhibit 5; Respondent testimony)

Respondent did not complete the confidential evaluation as ordered by the Board. On November 19, 2014, the Board charged Respondent with failure to comply with the Board's Confidential Evaluation Order and with violating another state's laws relating to the practice of pharmacy. (State Exhibit 4; Respondent testimony)

On December 22, 2014 (and after the failure to comply charges were filed), the Board received an evaluation report for Respondent from the Unity Point Health-Robert Young Center in Moline, Illinois. This evaluation and report did not satisfy the Board's Confidential Evaluation Order because the evaluator was not preapproved by the Board, and the evaluator was not provided a copy of the Board's Order or other information concerning the purpose and scope of the evaluation. Respondent was not

referred for any substance abuse treatment as a result of this evaluation. (State Exhibit 5)

An evidentiary hearing was held before the Board concerning Respondent's failure to comply with the Confidential Evaluation Order and concerning his conviction of a crime related to pharmacy practice. On March 10, 2015, the Board issued its Findings of Fact, Conclusions of Law, Decision and Order. The Board's Decision and Order concluded that Respondent had violated statutes and rules of the Board when he failed to timely and fully comply with the Board's Confidential Order for Evaluation, and when he was convicted of a crime related to the practice of pharmacy. The Board's Decision and Order indefinitely suspended Respondent's license to practice pharmacy in Iowa. (State Exhibits 4, 5)

The March 10, 2015 Decision and Order specified that prior to filing a reinstatement application, Respondent was required to:

- fully comply with the Board's Confidential Order for Evaluation by completing a comprehensive physical and mental examination, including substance abuse;
- have prior Board approval for any evaluator and give the Board at least five days prior notice of the date and time of the evaluation;
- ensure that the evaluation does not begin until the evaluator has received a copy of the Board's Order and all other necessary information;
- ensure that the Board receives a report of the evaluation, and all test results, including copies of all records and documents relevant to the evaluation; and
- fully comply with the recommendations for treatment, if any, made by the Board approved evaluator.

The Board's Decision and Order further specified that the Board may, in its discretion, impose conditions of probation if Respondent's license is reinstated. (State Exhibit 5)

On December 2, 2015, the Illinois Board of Pharmacy reprimanded Respondent's Illinois pharmacist license. The Illinois Board has not taken any other disciplinary actions against Respondent's Illinois license. Respondent's Illinois license to practice pharmacy is in good standing, and he has complied with the continuing education requirements in Illinois. (State Exhibit 9; Respondent testimony)

Respondent's Compliance with the Board's Order. On September 22, 2016, Respondent completed a comprehensive multidisciplinary evaluation at a Board approved facility. Prior to the evaluation, the Board provided the facility with information from the

Board's investigative file. Following the evaluation, the facility provided the Board with a detailed written report that included diagnoses, a psychosocial history, psychiatric assessment, a mental status examination, a list of medications, a substance abuse assessment, the results of some drug screens, and treatment recommendations. The facility did not diagnose Respondent with a substance abuse disorder, but Respondent was diagnosed with an anxiety disorder and major depressive disorder, moderate and in full remission. The evaluation team concluded that Respondent was safe to practice pharmacy with the implementation of some treatment recommendations, which included weekly individual therapy to address the stressors in his life and reduce reactivity, some professional monitoring, psychiatric follow-up, and a weekend course to address professionalism. (State Exhibits 6, 8; Respondent testimony)

Respondent was divorced in 2013, and he is responsible for the financial support of his four children. Respondent has had difficulty finding employment as a pharmacist in Illinois while his Iowa license was suspended. In order to support himself and his family, Respondent became a licensed realtor and has been working in a family owned real estate and home building business. While Respondent enjoys working in real estate, the income is less reliable than his employment as a pharmacist, and he also misses working with pharmacy customers. Respondent hopes to find employment as a retail pharmacist in a small town in Illinois or Iowa. (Respondent testimony)

Respondent recently got married, and he reports that he has made some positive lifestyle changes. Respondent is currently in therapy, and he expressed his willingness to comply with the treatment and monitoring recommendations that were made in the most recent evaluation report. (Respondent testimony)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if

the license...was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

...

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board...

36.13(4) Burden of Proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) Order. An order for reinstatement shall be based upon a decision that incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

Respondent has now satisfied the conditions for reinstatement that were established by the Board in the March 10, 2015 Decision and Order. Respondent has completed a Board approved comprehensive physical and mental examination, and he has provided the Board with a detailed report from the evaluation. Based on the findings in that evaluation report, the Board concludes that it is in the public interest for Respondent's pharmacist license to be reinstated, so long as he fully complies with the stipulations established in this Decision and Order.

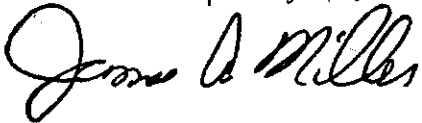
DECISION AND ORDER

IT IS THEREFORE ORDERED, that upon receipt of verification that Respondent has completed the required continuing education and has paid the fees required for license reinstatement, the pharmacist license issued to Respondent Robert A. Osborn (No. 19079) shall be REINSTATED.

IT IS FURTHER ORDERED that following his license reinstatement, the Board will immediately refer Respondent to the Iowa Monitoring Program for Pharmacy

Professionals (IMP3) Committee.¹ Respondent shall not accept any employment as a pharmacist and shall not begin practicing pharmacy until the Committee has completed its review and has made a determination whether or not Respondent is an appropriate candidate for participation in the IMP3 program. Respondent shall fully cooperate with this referral and shall provide the IMP3 Committee with any information that it requests during its review. If the IMP3 Committee determines that Respondent is an appropriate candidate for participation in the IMP3 program, then Respondent shall not begin any practice as a pharmacist until after he has entered into a recovery contract with the IMP3 committee. Respondent shall fully cooperate with the Committee and shall fully comply with the terms of participation specified in any recovery contract with the Committee. If Respondent fails to cooperate with the IMP3 Committee or fails to comply with a recovery contract, the Board may take further disciplinary action against his license.

Dated this 4th day of January, 2017.



James Miller, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

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.

¹ Formerly known as the Impaired Pharmacy Professional and Technician Recovery Program. See 657 IAC chapter 30

STATE OF IOWA
BEFORE THE IOWA BOARD OF PHARMACY

In the Matter of the)	
Request for Reinstatement	)	2014-34
of Pharmacist License)	
ROBERT A. OSBORN,	)	NOTICE OF HEARING
Registration No. 19079)	
Respondent.)	

YOU ARE HEREBY NOTIFIED that the Iowa Board of Pharmacy received a Request for Reinstatement from Respondent dated October 3, 2016, requesting reinstatement of his Iowa pharmacist license.

IT IS HEREBY ORDERED that a reinstatement hearing be held on November 1, 2016, before the Board. The hearing shall be held during the morning session beginning at 9:00 a.m. and shall be held in a conference room located at 400 S.W. 8th Street, Des Moines, Iowa. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

At hearing, you may appear personally or be represented by counsel at your own expense. The procedural rules governing the conduct of the hearing are found at 657 I.A.C. 35.19.

The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of all pleadings filed with the Board should be provided to counsel for the State at the following address:

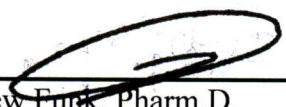
Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319

Ms. Gavin can also be reached by phone at (515) 281-6736 or email at meghan.gavin@iowa.gov.

Respondent's current address is 3232 36th Avenue, Rock Island, IL 61201.

If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 IAC 35.21.

Dated this 3rd day of October, 2016.



Andrew Funk, Pharm.D.
Executive Director
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, IA 50309-4688

Copies to:

Robert A. Osborn
3232 36th Ave.
Rock Island, I L 61201
remaxrobbqc@gmail.com

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover Bldg.
Des Moines, IA 50319
meghan.gavin@iowa.gov

Inspections and Appeals

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2014-34
Pharmacist License of)	
ROBERT OSBORN	)	NOTICE OF HEARING AND
License No. 19079,	)	STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent was issued Iowa pharmacist license number 19709. Respondent's license is currently active and will expire on June 30, 2016.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 6, 2015, before the Iowa Board of Pharmacy. The hearing shall be held during the morning session, beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8th Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@iowa.gov.

Communications. You may contact the Board office (515)281-5944 with questions

regarding this notice and other matters relating to these disciplinary proceedings. However, you may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Meghan Gavin at (515)281-6736.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2013).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 155A, and 272C (2013) and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

C. CHARGES

Count I

VIOLATION OF A BOARD RULE

Respondent is charged with failing to comply with a Board order for a mental and physical examination as required by Board rule 657 Iowa Administrative 36.17 in violation of Iowa Code sections 147.55(9) and 155A.12(1),(3) and 657 Iowa Administrative Code rule 36.1(4)(u); .

Count II

VIOLATION OF A LAW RELATED TO THE PRACTICE OF PHARMACY

Respondent is charged with violation of a law of another state related to the practice of pharmacy or the distribution of controlled substances in violation of Iowa Code sections 147.55(5) and 155A.12(1), (3) and 657 Iowa Administrative Code rules 8.11(4); (8) and 36.1(4)(j).

D. FACTUAL CIRCUMSTANCES

1. Respondent is an Iowa-licensed pharmacist, living and working primarily in Rock Island, Illinois.
2. On August 27, 2014, the Board issued the Respondent a Confidential Order for Evaluation. The Order required the Respondent to obtain a complete physical and mental health

evaluation, including substance abuse evaluation, within thirty days. Alternatively, Respondent could file an objection to the Board's Order within thirty days.

3. More than two months have now passed since issuance of the Board's Confidential Order for Evaluation. Respondent has neither objected to the Order nor submitted copies of the required evaluations.

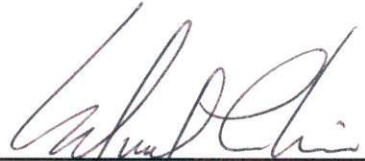
4. In October 2014, Respondent pled guilty to the attempted unlawful possession of a controlled substance, a Class A misdemeanor. Respondent was sentenced to two years conditional discharge, four days in county jail, a \$2000 fine, and required to participate in and successfully complete a substance abuse evaluation within six months.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Meghan Gavin.

F. PROBABLE CAUSE FINDING

On this the 19th day of November, 2014, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges.



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

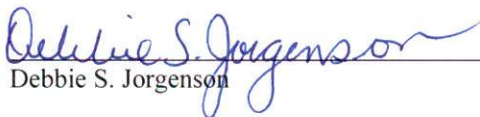
PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

- | | |
|--|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input checked="" type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number 917199999170310675705 | <input type="checkbox"/> other _____ |

on the 19th day of November, 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.


Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

IN RE:	)	CASE NO: 2014-34
Pharmacist License of	)	DIA NO: 14PHB059
ROBERT OSBORN)	
License No. 19079	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

On November 19, 2014, the Iowa Board of Pharmacy (Board) filed a Notice of Hearing and Statement of Charges against Robert Osborn (Respondent), which alleged two counts:

Count I: Failure to comply with a Board Order for a mental and physical examination as required by Board rule 657 IAC 36.17, in violation of Iowa Code sections 147.55(9), 155A.12(1),(3) and 657 IAC 36.1(4)(u);

Count II: Violation of a law of another state related to the practice of pharmacy or the distribution of controlled substances, in violation of Iowa Code sections 147.55(5), 155A.12(1),(3) and 657 IAC 8.11(4),(8) and 36.1(4)(j).

A hearing was held before the Board on January 6, 2015. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. The following members of the Board presided at the hearing: Edward Maier, Chairperson; Susan Frey; Edward McKenna; James Miller; Sharon Meyer; and LaDonna Gratias. Respondent appeared and was self-represented. Assistant Attorney General Meghan Gavin represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing.

THE RECORD

The record includes the testimony of Compliance Officer Jim Wolfe, R.Ph., Debbie Jorgenson, and Respondent; State Exhibits 1-15, and Respondent Exhibits A-H.

FINDINGS OF FACT

1. Respondent currently holds Iowa pharmacist license number 19079, which is active and will expire on June 30, 2016. Respondent was hired as a pharmacist by the Walmart Pharmacy in Aledo, Illinois on July 25, 2002. On February 21, 2014, Walmart terminated Respondent's employment as a pharmacist for gross misconduct. Three other employees were also terminated. (Testimony of Jim Wolfe; State Exhibits 1, 4)

2. Respondent was arrested on February 21, 2014 in Mercer County, Illinois and charged with the following three counts, in violation of Illinois law: Forgery (Count I), Unlawful Possession of a Controlled Substance (Count II), and Insurance Fraud (Count III). After the Board received notice of Respondent's arrest, it assigned Compliance Officer Jim Wolfe, R.Ph., to investigate the case. (State Exhibits 2, 11; Testimony of Jim Wolfe)

Mr. Wolfe sent two letters of inquiry to Respondent but received no response from him. Mr. Wolfe later emailed Respondent's criminal attorney but was told that Respondent would have no comment on the advice of his counsel. Mr. Wolfe contacted the Walmart Pharmacy in Aledo, Illinois and obtained copies of the pharmacy's internal investigation and reports. (State Exhibits 2-4; Testimony of Jim Wolfe)

According to the report of the internal investigation conducted by Walmart, Respondent admitted diverting medication by altering or inputting his own fraudulent prescriptions. These prescriptions included controlled substances (Lorazepam) and non-controlled legend drugs. (Testimony of Jim Wolfe; State Exhibit 4, pp. 14-18)

3. On August 27, 2014, the Board found probable cause to issue a Confidential Order for Evaluation to Respondent, pursuant to Iowa Code section 272C.9(2013) and 657 IAC 36.17. The probable cause for the evaluation order was based on Respondent's arrest and criminal charges for possession of a controlled substance, forgery and insurance fraud and his alleged forgery of prescriptions for 120 tablets of Lorazepam and 21 additional prescriptions for legend drugs that were not controlled substances. The evaluation order required Respondent to:

- submit to a comprehensive physical and mental health evaluation, including a substance abuse evaluation, with one of three named evaluators or with another facility, if preapproved by the Board. The evaluators named in the Order included Professionals Program of Resurrection Behavioral Health-Addiction

Services in Chicago, Illinois; Professional Recovery Network in Waukesha, Wisconsin; or Hazelden in Center City, Minnesota;

- notify the Board no less than five days prior to the date the evaluation is scheduled to begin and advise the Board of the date and time of the evaluation; and
- complete the evaluation within thirty (30) days of the date of the Order and cause a report of the evaluation and all test results, including copies of all records produced during the evaluation, to be forwarded to the Board on or before October 15, 2014.

The Order further provided that the Board shall provide the evaluator a copy of the Board's Order and all other information regarding the purpose and scope of the evaluation. The evaluation was required to include an assessment of Respondent's physical and mental condition, including substance abuse, and his ability to safely practice pharmacy. Respondent was responsible for ensuring that the evaluation did not begin until the evaluator received a copy of the Board's Order and all other necessary information.

Finally, the Order informed Respondent that he may request additional time to schedule or complete the evaluation or to ask the Board for approval of an alternative evaluation program. The Order further informed Respondent that he may file an objection to the Evaluation Order, as provided in 657 IAC 36.17(2). The Board's evaluation order was served on Respondent by restricted certified mail on August 30, 2014. (State Exhibits 5, 6; Testimony of Debbie Jorgenson)

4. Respondent called the Board office on September 9, 2014 and spoke to Debbie Jorgenson, who is the employee responsible for tracking licensee compliance with Board Orders for Evaluation. Respondent told Ms. Jorgenson that the facts were all wrong and that he did have a prescription. Ms. Jorgenson reviewed Jim Wolfe's investigative report and observed that Respondent had previously had no comment on the pending charges. Ms. Jorgenson gave Respondent the telephone number for Assistant Attorney General Meghan Gavin and advised Respondent that he should have his attorney call her. (Testimony of Debbie Jorgenson; State Exhibit 7)

5. On September 22, 2014, Respondent emailed Debbie Jorgenson and told her that he had a hardship and wanted to have the evaluation conducted closer to his residence in the Quad Cities. Debbie Jorgenson responded on October 2, 2014 and told Respondent to send her the information concerning where he was requesting to have the evaluation and to include the qualifications and credentials of the evaluator.

Respondent did not reply to this email. (Testimony of Debbie Jorgenson; State Exhibit 7)

6. On October 2, 2014, Respondent entered a guilty plea to an amended charge of Attempted Unlawful Possession of a Controlled Substance, a Class A Misdemeanor, and the remaining criminal counts against him were dismissed. Respondent was placed on conditional discharge for a period of two (2) years, was fined \$2000 and was required to complete a substance abuse evaluation within six months of the court's order. (State Exhibits 11, 12; Testimony of Jim Wolfe, Respondent)

7. On October 10, 2014, Debbie Jorgenson sent Respondent a letter, which included a review of all of the requirements of the Board's evaluation order and a summary of Respondent's email contacts with Jorgenson. Ms. Jorgenson advised Respondent that he must respond with the credentials of the evaluator that he wanted to see no later than October 16, 2014. (Testimony of Debbie Jorgenson; State Exhibits 7, 8)

On October 15, 2014 at 8:38 p.m., Respondent sent an email to Debbie Jorgenson advising her that the only clinic in his area that he could find that does mental and substance abuse evaluations was the Robert Young Center in Rock Island. Respondent further stated that the recommended doctor at the Robert Young Center was John Ciaccio, who graduated from Rush University in 1997 and who is board certified in Iowa and Illinois. Ms. Jorgenson responded on October 16, 2014 and told Respondent that his case would be reviewed by the Board at their next meeting on November 19, 2014 because he had not complied with the deadlines in the Board's evaluation order. (State Exhibit 9; Testimony of Debbie Jorgenson)

8. At their meeting on November 19, 2014, the Board found probable cause to file the pending Statement of Charges against Respondent for his failure to comply with the Board's Evaluation Order and for his violation of another state's laws relating to the practice of pharmacy. (State Exhibit 1)

9. On December 22, 2014, the Board received an evaluation report for Respondent from the Unity Point Health-Robert Young Center in Moline, Illinois. The evaluation had been conducted on October 29, 2014. The report indicates that the evaluation lasted 75 minutes, and the report was signed by Scott Griffith, LMSW/QMHP as the "Clinician" and by an LPHA/Supervisor, whose signature is not legible but whose credentials are listed as "ILSW, LPHA." Dr. John Ciaccio was not listed as one of the evaluators. The "Clinical Summary/Justification" section of the report included a description of Respondent's criminal charges and guilty plea. During the evaluation,

Respondent denied using any substances not prescribed for him and reported that he was prescribed lorazepam and Zoloft for mild depression, anxiety, and stress related to his recent/current employment and legal situation. It was noted that Respondent's symptoms have not interfered with his ability to care for his children or to become licensed in real estate to build and sell houses. Respondent was not referred for substance abuse treatment as a result of this evaluation. (State Exhibit 10; Respondent Exhibit A; Testimony of Debbie Jorgenson, Respondent)

The Board had not approved the Robert Young Center to perform Respondent's comprehensive evaluation. The Board did not receive any prior notice from Respondent that the evaluation was scheduled for October 29, 2014. The Board did not provide any documentation to the Robert Young Center prior to Respondent's evaluation. Respondent admits that he was required to obtain a substance abuse evaluation as a requirement of the sentencing order issued by the criminal court in Mercer County, Illinois. (Testimony of Debbie Jorgenson; Respondent)

10. At the hearing before the Board, Respondent denied that he has forged any prescriptions or unlawfully possessed any prescription drugs. Respondent submitted documentation from a physician concerning her February 12, 2013 prescription of lorazepam, which authorized Respondent to receive a maximum of 60 tablets with 2 refills. Respondent testified that he originally filled the prescription at a pharmacy near his home in Iowa and then later transferred the prescription to his employing pharmacy in Aledo, Illinois. Respondent testified that he pled guilty to the amended criminal charge based on the advice of his counsel and because he could not afford the legal fees to take his case to trial. (Testimony of Respondent; Respondent Exhibits D, E)

CONCLUSIONS OF LAW

COUNT I

Iowa Code section 147.55(9)(2013) authorizes the Board to revoke or suspend a license or to otherwise discipline a licensee for acts or offenses specified by Board rule. In addition, Iowa Code sections 155A.12(1), (3) and 657 IAC 36.1(4)(u) authorize the Board to discipline licensees for violations of Iowa Code chapters 147, 155A, or any Board rule.

The Iowa Code and Board rules provides that a pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person who is licensed or registered by the board is, as a condition of licensure or registration, under a duty to submit to a mental or physical examination within a time period specified by the board. Iowa Code section

272C.9(1)(2013); 657 IAC 36.17. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person. *Id.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing, which shall specifically identify the factual and legal issues upon which the licensee bases the objection. 657 IAC 36.17(2).

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 he failed to timely and fully comply with a Board's Confidential Order for Evaluation issued on August 26, 2014. Respondent was required to schedule a comprehensive physical and mental evaluation, including substance abuse, at a Board approved facility within ten (10) days of the date of the Order and to complete the evaluation within thirty (30) days. He was also required to notify the Board at least five days prior to the evaluation so that the Board could provide documentation to the evaluator and explain the scope and purpose of the evaluation. Respondent was required to ensure that the Board received a written evaluation report, with all test results and copies of all records produced during the evaluation, on or before October 15, 2014.

Respondent was served with the Board's Evaluation Order on August 30, 2014. The evaluation should have been scheduled no later than September 9, 2014 and should have been completed by September 29, 2014. Respondent did not file an objection to the Order and did not request a hearing.

On October 15, 2014, Respondent provided the name of a facility (Robert Young Center in Rock Island) and the name of a doctor at that facility in an email to Board staff. Respondent was never given Board approval for the Robert Young Center, and he never notified the Board that he had scheduled an evaluation at the Robert Young Center. Respondent was evaluated at the Robert Young Center on October 29, 2014 with no prior notice to the Board. The Board did not provide any documentation to the Robert Young Center and did not have the opportunity to explain the scope of the evaluation. The report prepared by the Robert Young Center did not include an assessment of Respondent's ability to safely practice pharmacy.

At hearing, Respondent explained his delay in obtaining the evaluation as due to financial issues. Respondent waited until he was approved for medical assistance before completing the evaluation. Respondent provided no explanation, however, for his failure to obtain Board approval for the Robert Young Center and his failure to notify the Board in advance of his scheduled evaluation.

COUNT II

Iowa Code section 147.55(5) authorizes the Board to discipline a licensee who is convicted of a crime related to the profession or occupation or for the conviction of any crime that would affect the licensee's ability to practice within the profession. Board rule 657 IAC 36.1(4)(j) authorizes the Board to discipline a licensee for violating a statute or law of this state, another state, or the United States, without regard to its status as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

The preponderance of the evidence established that Respondent violated Iowa Code section 147.55(5), 155A.12(1), (3) and 657 IAC 36.1(4)(j) when he pled guilty to and was convicted of the crime of Attempted Possession of a Controlled Substance, which is a Class A Misdemeanor under Illinois law. This type of conviction is clearly and directly related to the practice of pharmacy. At hearing, Respondent denied that he ever unlawfully possessed or attempted to possess a controlled substance. Respondent testified that he entered the guilty plea on advice of his counsel and because he could not afford to take his case to trial. The fact remains that Respondent pled guilty and was convicted. He may not collaterally attack his conviction through this administrative proceeding.

DECISION AND ORDER

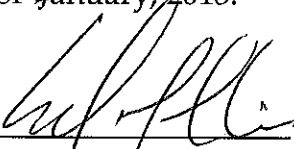
IT IS THEREFORE ORDERED that pharmacist license number 19079, issued to Respondent Robert Osborn, is hereby Suspended Indefinitely. Prior to filing an application for reinstatement, Respondent shall:

- fully comply with the Board's Confidential Order for Evaluation by completing a comprehensive physical and mental examination, including substance abuse;
- have prior Board approval for any evaluator and must give the Board at least five days prior notice of the date and time of the evaluation;
- ensure that the evaluation does not begin until the evaluator has received a copy of the Board's Order and all other necessary information, including the required scope of the evaluation;
- ensure that the Board receives a report of the evaluation, and all test results, including copies of all records and documents relevant to the evaluation; and
- fully comply with the recommendations for treatment, if any, made by the Board approved evaluator.

If Respondent's license is reinstated following his compliance with all of the requirements of this Order, the Board may, in its discretion, impose conditions of probation on his license.

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 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 ^{10th} day of ^{March} ~~January~~, 2015.



Edward Maier, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

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.