

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
)	Docket No. 2020-0087
Pharmacy Technician Trainee Registration of)	DIA No. 21IDPHPB0001
AARON KIRKENDALL)	
Registration No. 29822,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On August 26, 2020, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Respondent Aaron Kirkendall (Kirkendall). The Statement of Charges alleges that Respondent diverted prescription drugs from a pharmacy for personal use or distribution.

The hearing was held on November 17, 2020. The following members of the Board presided at the hearing: Jason Hansel, chairperson; Edward McKenna; Joan Skogstrom, Gayle Mayer, Brett Barker; Kathryn Stone, and Dane Nealson. Assistant attorney general Laura Steffensmeier represented the State. Respondent Kirkendall did not appear.¹ The hearing was open to the public pursuant to Iowa Code section 272C.6(1). The hearing was digitally recorded. Administrative Law Judge Rachel Morgan assisted the Board in conducting the hearing and was instructed to prepare the Board’s written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges. The record also includes hearing testimony of James Wolfe. The State introduced Exhibits 1 through 6, which were admitted as evidence.

FINDINGS OF FACT

At the time of the events in question, Respondent Aaron Kirkendall held an Iowa certified technician trainee registration number 29822. Kirkendall applied for his technician trainee registration on June 8, 2020. At all times relevant to this action, Respondent was employed at Hartig Drug Co. (Hartig) in Dubuque, Iowa.

In June 2020, Hartig conducted its regular weekly C-2 controlled substance inventory cycle counts. During the count, it was discovered that one of the C-2 drugs,

¹ Kirkendall was served the Statement of Charges & Notice of Hearing by publication after other methods were unsuccessful. (Exh. 2).

hydromorphone 4mg, was missing 21 tablets. Dispensing history records for Hartig indicated that hydromorphone 4 mg had not been dispensed by the pharmacy in over a year. (Wolfe Testimony; Exh. 3).

An investigation was initiated by Hartig. As part of the investigation, video surveillance was reviewed. The video surveillance revealed that on June 12, 2020 Kirkendall lingered in front of the shelf containing hydromorphone. Kirkendall then appears to grab the hydromorphone 4mg bottle, move into the aisle away from camera view for a short period, and place the bottle back on the shelf. Kirkendall then “ma[de] a movement into the pocket of his pharmacy jacket.” (Exh. 3). Kirkendall leaves Hartig a few minutes later with his pharmacy jacket on. (*Id.*).

On July 14, 2020, the investigating officer for the Board interviewed the pharmacist in charge at Hartig, Carissa Gilligan. Gilligan confirmed the events contained on the video and provided still photos from the video to the investigator. (Wolfe Testimony; Exh. 3).

The investigator attempted to contact Kirkendall to interview him. He was unable to locate or contact Kirkendall. (Wolfe Testimony).

The Dubuque Police Department drafted an Incident/Investigation Report that reports the incident occurred and charges were filed against Kirkendall. However, the Dubuque Police Department have been unable to locate Kirkendall. (Wolfe Testimony; Exh. 3).

CONCLUSIONS OF LAW

Count I: Diversion of Drugs

Pursuant to Iowa Code section 155A.6A(5), the Board is authorized to deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of any rule of the Board. The Board’s rules provide that discipline may be imposed when a registrant diverts prescription drugs from a pharmacy for personal use or distribution.² The evidence establishes that Kirkendall was diverting drugs from Hartig for personal use. As such, the violation alleged in Count I has been established.

Sanction

The Board may consider a number of factors in determining the nature and severity of the disciplinary sanction to be imposed when a violation is established, including the relative seriousness of the violation as it relates to assuring a high standard of professional care; the facts of the violation; any extenuating circumstances; whether remedial action has been taken; and any other factors that reflect upon the competency, ethical standards, and professional conduct of the registrant.³

² 657 Iowa Administrative Code (IAC) 36.6(37).

³ 657 IAC 36.7(2).

The violations committed by Kirkendall demonstrate that he is unfit to hold a registration as a certified pharmacy technician or technician trainee and presents a danger to the public health, safety, and welfare. Kirkendall did not appear at hearing to respond to these charges. The violations justify revocation of Kirkendall's registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician trainee registration issued to Aaron Kirkendall is hereby REVOKED. If Respondent seeks reinstatement of his registration the burden will be placed on him to show that the basis for the revocation no longer exists and that it is in the public interest for his registration to be reinstated.

IT IS FURTHER ORDERED pursuant to Iowa Code section 272C.6 and 657 Iowa Administrative Code 36.10, that Respondent Aaron Kirkendall shall pay a \$75 fee to the Board for 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 30 days of receipt of the bill.

Dated this 16th day of December, 2020

A handwritten signature in black ink, appearing to read "JHansel", written in a cursive style.

Jason Hansel
Chairperson, Iowa Board of Pharmacy

cc: Laura Steffensmeier, 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 on the merits is timely initiated within the time provided by rule 35.30. 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 35.27. 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 35.27(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.