

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	CASE NO. 2013-205
Certified Technician Registration of	)	
	)	<b>NOTICE OF HEARING AND</b>
<b>AMBER BAUER</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 6889	)	
Respondent.	)	

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**COMES NOW** the Iowa Board of Pharmacy (“Board”) and files this Notice of Hearing and Statement of Charges against Amber Bauer (“Respondent”), 228 10<sup>th</sup> Street, DeWitt, Iowa 52742, pursuant to Iowa Code sections 17A.12(2) and 17A.18(3) (2013). Respondent’s Iowa certified technician registration number 6889 is currently active and expires on September 30, 2014.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on June 30, 2014, before the Board. The hearing shall be held during the afternoon session beginning at 1:00 p.m. and shall be located in the Board conference room located at 400 S.W. 8<sup>th</sup> 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 pre-hearing matters, and be present to assist and advise the Board at the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. If you need to request an alternative time or date for the hearing, you must comply with the requirements in 657 Iowa Administrative Code rule 35.16. The hearing may be open to the public or closed to the public at your discretion.

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

Laura Cathelyn  
Assistant Attorney General  
Iowa Attorney General’s Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Ms. Cathelyn can also be reached by phone at (515) 281-6690 or by e-mail at [laura.cathelyn@iowa.gov](mailto:laura.cathelyn@iowa.gov).

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the 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.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 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 147, 155A, and 272C and under 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**

#### **UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS**

Respondent is charged with unlawful possession of prescription drugs, including controlled substances, for other than lawful purposes, in violation of Iowa Code sections 124.401 and 155A.21(1), pursuant to Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.30(1), 36.1(4)(h), and 36.1(4)(j).

### **Count II**

#### **ENGAGING IN UNETHICAL BEHAVIOR—THEFT**

Respondent is charged with engaging in unethical behavior—theft—in violation of 657 Iowa Administrative Code rule 3.28(4), pursuant to Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.30(1), 36.1(4)(c), and 36.1(4)(u).

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent holds Iowa certified technician registration number 6889, which is currently active and expires on September 30, 2014.
2. In October, 2013, Respondent was seen on surveillance video diverting hydrocodone/APAP from the pharmacy where Respondent was employed.
3. On November 6, 2013, Respondent admitted to diverting 3 hydrocodone tablets and was terminated from employment.

4. On March 4, 2014, Respondent was charged criminally with one count of prohibited acts (theft), a class C felony, and one count of unlawful possession of a prescription drug, a serious misdemeanor.

**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 36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Laura Cathelyn at (515) 281-6690.

**F. FINDING OF PROBABLE CAUSE**

On this 30<sup>th</sup> day of April, 2014, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



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

cc: Laura Cathelyn  
Assistant Attorney General  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319

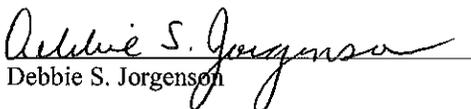
PROOF OF SERVICE

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 <u>9171999991703239553506</u>                                 | <input type="checkbox"/> other _____      |

on the 1st day of May, 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

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IN THE MATTER OF:	)	
	)	Docket No. 2013-205
Certified Technician Registration of	)	DIA No. 14PHB022
<b>AMBER BAUER</b>	)	
Registration No. 6889,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>DECISION, AND ORDER</b>

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**STATEMENT OF THE CASE**

On April 30, 2014, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Respondent Amber Bauer and a Notice of Hearing and Statement of Charges against Respondent Aimee Brummett. The Statement of Charges against Bauer alleges two counts: 1) unlawful possession of prescription drugs; and 2) engaging in unethical behavior – theft. The Statement of Charges against Brummett alleges three counts.

The hearing was held on June 30, 2014. The following members of the Board presided at the hearing: Edward Maier, Chairperson; James Miller; LaDonna Gratias; Susan Frey; Edward McKenna and Judith Trumpy. Assistant attorney general Laura Cathelyn represented the State. Neither Respondent Bauer nor Respondent Brummett appeared. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Laura Lockard assisted the Board in conducting the hearing and was instructed to prepare the Board's written decision in accordance with its deliberations.

This Decision and Order relates only to Respondent Bauer; a separate order is issued concurrently with regard to Respondent Brummett.

**THE RECORD**

The record includes the Notice of Hearing and Statement of Charges against Bauer and the Notice of Hearing and Statement of Charges against Brummett. The record also includes hearing testimony of Jim Wolfe. The State introduced Exhibits 1 through 13, which were admitted as evidence.

## FINDINGS OF FACT

Respondent Amber Bauer holds Iowa certified technician registration number 6889, which is currently active and expires on September 30, 2014. During the time period at issue in this case, Respondent Bauer was employed at Scott Drug Pharmacy in DeWitt, Iowa.

During the latter part of September 2013, Patti Trenkamp and Jennifer Walker, co-owners of Scott Drug Pharmacy, became suspicious that a staff member was stealing hydrocodone from the pharmacy. Their suspicions arose when a hydrocodone/acetaminophen (APAP) 7.5/500 mg tablet was found by a pharmacy staff member on the break room floor on September 26, 2013. (Exh. 6, 7).

In response to the discovery of the hydrocodone tablet in the break room, Trenkamp and Walker took steps to install additional security cameras in the stocking area; the cameras were installed on October 3, 2013. That night, the co-owners did counts on all strengths of hydrocodone tablets in their retail pharmacy location and their long-term care pharmacy location. On October 6, 2013, the co-owners did another physical count of the hydrocodone tablets. After comparing the October 3 and October 6 counts and accounting for all of the hydrocodone tablets dispensed during that time period, there were 19 tablets missing from the long-term care pharmacy. (Exh. 6, 7).

Surveillance footage from the long-term care pharmacy showed Bauer taking the bottle of hydrocodone/APAP 5/325 mg bottle off the shelf, stepping with the bottle to an area out of surveillance range, then coming back and leaving the bottle on the counter. Bauer was the only employee who touched that bottle during the 48-hour time frame during which the 19 tablets of hydrocodone/APAP 5/325 mg went missing. (Exh. 6, 7).

Walker and Trenkamp communicated their findings to the DeWitt Police Department. Bauer gave a written statement to police on November 6, admitting that she had taken three hydrocodone 5/325 mg tablets while filling a cassette for a patient. She asserted that this was the only occasion when she had taken pills from the pharmacy. (Exh. 9).

Bauer was ultimately arrested and charged with one count of prohibited acts (theft) and one count of unlawful possession of a prescription drug. (Exh. 12).

## CONCLUSIONS OF LAW

### Count I: Unlawful Possession of Prescription 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 the laws of Iowa, another state, or the United States related to prescription drugs, controlled substances, or any violation of chapter 155A or other specifically enumerated chapters. Iowa Code section 155A.21 provides that a person found in possession of a drug limited to dispensation by prescription, unless the drug was lawfully dispensed, commits a serious misdemeanor.

The preponderance of the evidence in this case clearly demonstrates that Bauer violated the provisions of Iowa Code chapter 155A regarding possession of prescription drugs without a prescription. As such, the violation alleged in Count I has been established.

Count II: Engaging in Unethical Behavior – Theft

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 a pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior includes theft.<sup>1</sup>

The preponderance of the evidence in this case clearly demonstrates that Bauer violated the Board's prohibition against a pharmacy technician engaging in unethical behavior; in this case, theft. Bauer admitted to stealing hydrocodone tablets from the pharmacy at which she was employed. In addition to Bauer's admission, surveillance footage supports the conclusion that she also stole prescription medication from the long-term care pharmacy stock. The violation alleged in Count II 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.<sup>2</sup>

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

**DECISION AND ORDER**

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

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<sup>1</sup> 657 Iowa Administrative Code (IAC) 3.28(4).

<sup>2</sup> 657 IAC 36.1(3).

IT IS FURTHER ORDERED pursuant to Iowa Code section 272C.6 and 657 Iowa Administrative Code 36.18(2), that Respondent Amber Bauer shall pay \$75 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 30 days of receipt of the bill.

Dated this 11<sup>th</sup> day of September, 2014



Edward Maier  
Chairperson, Iowa Board of Pharmacy

cc: Laura Cathelyn, 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.*