

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2014-37
Pharmacy Support Person Registration)	
CHUCK LONG)	NOTICE OF HEARING
Registration No. 1054,)	& 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 pharmacy support person registration number 1054. Respondent's license is currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on June 30, 2014, 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, 148C, 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

UNETHICAL CONDUCT OR PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC

Respondent is charged with engaging in unethical conduct or practice harmful or detrimental to the public in violation of Iowa Code section 155A.6B and 657 Iowa Administrative Code rules 5.25(4) and 36.1(4)(c).

Count II

UNLAWFUL POSSESSION AND DISTRIBUTION OF PRESCRIPTION DRUGS

Respondent is charged with unlawful possession and distribution of prescription drugs, including controlled substances, for other than lawful purposes in violation of Iowa Code sections 124.401 and 155A.6B and 657 Iowa Administrative Code rules 5.26(1) and 36.1(4)(h); (s).

D. FACTUAL CIRCUMSTANCES

Case 2014-37

1. On February 28, 2014, pharmacy support person Katrina Lovan was reconciling invoices for Downtown Drug Pharmacy. She noticed that a long list of invoices had not been

paid to Dakota Drug over the course of several years. She informed Amy Moet of the discrepancies.

2. Pharmacist-in-charge Amy Moet noticed that quantities of prescription drugs, including controlled substances were being ordered from Dakota Drug in a pattern inconsistent with Downtown Drug's volume.

3. An investigation revealed that during pharmacy support person Chuck Long's (Respondent's) shifts, items had been added to the invoices. These additions included eleven 500 count bottles of hydrocodone.

4. On Monday, March 3, Mr. Long was observed placing product from that morning's Dakota Drug shipment inside the front register counter under his coat.

5. Two bottles of hydrocodone and two boxes of ondansetron were discovered under the counter.

6. Subsequent investigation revealed that at least 18,000 tablets of hydrocodone were unaccounted for in 2013 & 2014. At least 3700 tablets of alprazolam 2mg tablets were missing over that same period. Hundreds of tablets of multiple products were unaccounted for in 2011 and 2012, but the pharmacy's records were insufficient for an accurate accounting.

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 30th 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 Eighth Street, Suite E
Des Moines, Iowa 50309-4688

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

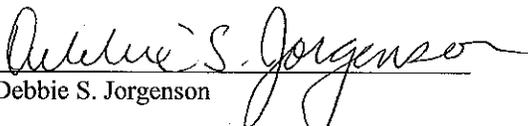
PROOF OF SERVICE

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 <u>9171999991703239255196</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

IN THE MATTER OF:)	
)	Docket No. 2014-37
Pharmacy Support Person Registration of)	DIA No. 14PHB025
CHUCK LONG)	
Registration No. 1054,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On April 30, 2014, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges & Notice of Hearing against Respondents Christopher Tuetken, Downtown Drug, Chuck Long, and Amy Moet.¹ The Statement of Charges alleges two counts against Respondent Long: 1) unethical conduct or practice harmful or detrimental to the public; and 2) unlawful possession and distribution of prescription drugs. The Statement of Charges alleges five counts against Respondent Downtown Drug and seven counts against Respondent Tuetken.

The hearing was held on June 30, 2014. The following members of the Board presided at the hearing: Edward Maier, Chairperson; James Miller; LaDonnaGratias; Susan Frey; Judith Trumpy; and Edward McKenna. Respondent Christopher Tuetken appeared and represented himself and Respondent Downtown Drug. Respondent Long did not appear. Assistant attorney general Meghan Gavin represented the State. The hearing was closed to the public at the election of Respondents Downtown Drug and Tuetken, 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 Long; a separate order is issued concurrently with regard to Respondents Downtown Drug and Tuetken.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges with regard to all three Respondents. The record also includes hearing testimony of Mark Mather and Christopher Tuetken. The State introduced Exhibits 1 through 24, which were admitted as evidence.

¹ Prior to hearing, the State filed a Motion to Dismiss the charges against Amy Moet. There is a separate dismissal order pertaining to the charges against Moet.

FINDINGS OF FACT

Respondent Downtown Drug, located in Cedar Rapids, Iowa, holds Iowa pharmacy license number 1281, which is currently active. Respondent Christopher Tuetken was the pharmacist-in-charge at Downtown Drug from 2011 to approximately October, 2013. Respondent Chuck Long began working at Downtown Drug as a pharmacy support person (PSP) sometime in 2011. (Mather testimony).

On February 28, 2014, PSP Katrina Lovan was reconciling invoices for the pharmacy. Lovan noticed that there was a long list of invoices that had not been paid to Dakota Drug, the pharmacy's drug wholesaler. Upon discovery, Lovan alerted pharmacist-in-charge Amy Moet to the unpaid invoices. (Exh. 17, p. 63).

After being alerted by Lovan, Moet reviewed the unpaid invoices from Dakota Drug and noticed that products had been ordered in amounts that the pharmacy would not normally utilize. Downtown Drug is a fairly low volume pharmacy, filling approximately 10 to 15 prescriptions per day. Moet noticed that there were numerous orders for 500 count bottles of hydrocodone tablets, which are larger than the pharmacy would typically order given its volume of business. Moet was certain that the 500-count bottles had never made it onto the shelves. (Exh. 17, p. 63).

On the same date, Moet checked the invoice history on the pharmacy's Dakota Drug website for items ordered on that day, February 28, 2014. Moet saw that someone had accessed the site and added one 500 count bottle of hydrocodone/APAP 10/325 tablets and one 500 count bottle of hydrocodone/APAP 7.5/325 tablets. Other prescription medications that Moet did not order or authorize were also on the invoice; these were not controlled substances. Moet checked with Tuetken and he indicated he did not order those items either. (Exh. 17, pp. 63-64).

Moet investigated further, reviewing invoices from Dakota Drug for hydrocodone/APAP 10/325 going back to mid-2012. During the time period Moet reviewed, 12 500 count bottles of that product had been ordered. Moet was able to determine which products were ordered legitimately based on the purchase order number on the invoices. She determined that approximately 18,000 tablets of hydrocodone were ordered during 2013 and 2014 without authorization. (Exh. 17, p. 64; Exh. 21).

After discovering the fraudulent ordering, Moet went back and cross-referenced staff schedules with the dates that the unauthorized orders were made. Moet determined that the only person who was on duty on all of the dates when unauthorized orders were made was Long. Moet contacted Tuetken with this information, and Tuetken in turn contacted Board compliance officer Mark Mather. The three made a plan to observe Long on Monday, March 3 when the Dakota Drug shipment containing the two unauthorized hydrocodone bottles arrived. (Exh. 17, p. 64).

After the Dakota Drug order arrived on March 3, Long was observed placing product from the order inside the front register counter under his coat. At 9:30 AM, Tuetken and Mather attempted to ask Long questions in Tuetken's office. Long denied any

wrongdoing, started yelling and swearing, stormed out of the office, and went to the front counter to retrieve his coat before exiting the store. Long left the hydrocodone behind and Tuetken and Mather retrieved it from the area where Long's coat had been stored. (Exh. 17, p. 64).

Tuetken and Mather contacted the Cedar Rapids police department and a police report was taken. During the police investigation, the controlled substance invoice from Dakota Drug was found wadded up in the pharmacy's trash can, along with the product stickers. (Exh. 17, p. 64).

The typical practice at Downtown Drug was that when shipments were received from Dakota Drug, the pharmacy's wholesaler, Long would receive the shipment. Long was supposed to give the prescription drugs to a pharmacist, but he would keep the over-the-counter medications to put them into the inventory. (Tuetken testimony).

Long had access to the computer system the pharmacy used to order drugs from its wholesaler because he was responsible for inputting information regarding over-the-counter medications that were sold each day. With that access, he was also able to place orders for controlled substances, though ordering controlled substances was not part of Long's job duties. The drugs that Long diverted were never entered into the pharmacy's inventory since Long diverted them before they could be logged. (Tuetken testimony).

CONCLUSIONS OF LAW

Count I: Engaging in Unethical Behavior – Theft

Pursuant to Iowa Code section 155A.6B(5), the Board is authorized to deny, suspend, or revoke the registration of, or otherwise discipline, a pharmacy support person for any violation of any rule of the Board. The Board's rules provide that a pharmacy support person shall not exhibit unethical behavior in connection with the pharmacy support person's pharmacy employment. Unethical behavior includes theft.²

The preponderance of the evidence in this case clearly demonstrates that Long violated the Board's prohibition against a pharmacy support person engaging in unethical behavior; in this case, theft. Long stole over 18,000 doses of controlled substances over a two-year period from Downtown Drug's inventory. The violation alleged in Count II has been established.

Count II: Unlawful Possession and Distribution of Prescription Drugs

Pursuant to Iowa Code section 155A.6B(5), the Board is authorized to deny, suspend, or revoke the registration of, or otherwise discipline, a pharmacy support person 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, including Iowa Code chapter 124.

²657 Iowa Administrative Code (IAC) 3.28(4).

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 Long violated the above-referenced provisions of Iowa Code chapter 155A. Long was responsible for the unauthorized ordering and diversion of over 18,000 doses of controlled substances from Downtown Drug's inventory during an approximately two year period. As such, 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.³

Long's violations demonstrate that he is unfit to hold a registration as a pharmacy support person and presents a grave danger to the public health, safety, and welfare. Long failed to appear at hearing to respond to these charges. The violations justify revocation of Long's registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy support person registration issued to Chuck Long is permanently REVOKED.

IT IS FURTHER ORDERED pursuant to Iowa Code section 272C.6 and 657 Iowa Administrative Code 36.18(2), that Respondent 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 27th day of August, 2014

Susan Frey, Acting Chairperson

~~Edward Maier~~

Acting,
Chairperson, Iowa Board of Pharmacy

³657 IAC 36.1(3).

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.