

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2012-59
Certified Technician Registration of)	
)	NOTICE OF HEARING AND
LACY MASON)	STATEMENT OF CHARGES
Registration No. 15738)	
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges against Lacy Mason, PO Box 471, Conrad, Iowa 50621, pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent's Iowa certified technician registration number 15738 is currently active and expires on December 31, 2013.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 13, 2014, before the Board. The hearing shall be held during the afternoon session beginning at 1 p.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 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
2nd 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.

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 (2013) 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 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.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).

Count III

FRAUD IN PROCURING A LICENSE

Respondent is charged with fraud in procuring an initial license and in representations made in subsequent renewal submissions in violation of Iowa Code section 155A.23(1)(m), pursuant to Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.30(1) and 36.1(4)(a).

D. FACTUAL CIRCUMSTANCES

1. Respondent holds Iowa certified technician registration number 15738, which is currently active and expires on December 31, 2013.
2. Respondent was employed as a technician at Walgreens #3196, 5 E. Anson St., Marshalltown, Iowa 50158.
3. After investigation by Walgreen's loss prevention, Respondent admitted to diverting approximately 800 tablets of hydrocodone/APAP.
4. On April 3, 2012, Respondent was terminated, arrested, and charged with second degree theft.
5. On December 10, 2012, the employee pled guilty to and was sentenced for prohibited acts, unlawful possession of a Schedule IV or V controlled substance.
6. Respondent admitted to personal use of approximately 8-10 tablets of the diverted hydrocodone/APAP per day for approximately thirty days preceding her arrest.
7. Respondent admitted to providing some of the diverted hydrocodone/APAP tablets to a friend.
8. Respondent failed to disclose a conviction for public intoxication in her initial application for licensure and in renewal applications, and failed to disclose a second conviction for public intoxication in a renewal application.

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 5th day of November, 2013, 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

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
)	Docket No. 2012-59
Certified Technician Registration of)	DIA No. 13PHBo69
LACY MASON)	
Registration No. 15738,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On November 5, 2013, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges & Notice of Hearing against Respondents Walgreens #3196, Pooja Amit Shah, and Lacy Mason. The Statement of Charges alleges that Respondent Walgreens and Respondent Shah failed to maintain control over prescription drugs and failed to report theft of controlled substances. The Statement of Charges alleges three counts against Respondent Mason: 1) unlawful possession and distribution of prescription drugs; 2) engaging in unethical behavior – theft; and 3) fraud in procuring a license.

The hearing was held on January 13, 2014. The following members of the Board presided at the hearing: Edward Maier, Chairperson; James Miller; LaDonna Gratiias; Susan Frey; Judith Trumpy; and Sharon Meyer. Respondents Walgreens and Shah appeared and were represented by attorney Kevin Reynolds. Respondent Mason did not appear.¹ Assistant attorney general Laura Cathelyn represented the State. The hearing was open to the public at the election of Respondents Walgreens and Shah, 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 Mason; a separate order is issued concurrently with regard to Respondents Walgreens and Shah.

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 Jim Wolf, Pooja Shah, Shirley Phinney, and Mike Fuller. The State introduced Exhibits 1 through 13,

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

which were admitted as evidence. Respondents Walgreens and Shah introduced Exhibits A through H, which were admitted as evidence.

FINDINGS OF FACT

Counts I and II: Unlawful Possession and Distribution of Prescription Drugs and Engaging in Unethical Behavior – Theft

Respondent Walgreens holds Iowa pharmacy license number 802, which is currently active and expires on December 31, 2013. Respondent Pooja Shah holds Iowa pharmacist license number 21196, which is currently active and expires on June 30, 2014. Respondent Lacy Mason holds Iowa certified technician registration number 15738, which is currently active and expires on December 31, 2013.²

At all times relevant to this action, Shah was employed at Walgreens #3196 in Marshalltown, Iowa as a pharmacist-in-charge and Mason was employed at Walgreens #3196 as a registered pharmacy technician.

On or about March 15, 2012, Shah was informed by one of the senior pharmacy technicians that the pharmacy was short on hydrocodone tablets. The technician was attempting to fill a prescription for hydrocodone and was unable to do so despite the fact that the pharmacy's computer inventory showed that the pharmacy should have had enough tablets to fill the prescription. Shah requested that the technician double check the count. He did so and had the store manager, Ryan Humphrey, come in as well to confirm the shortage.³ A spot audit of the pharmacy's hydrocodone tablets was completed; a discrepancy of 1,390 tablets was discovered. (Shah testimony; Exh. 7).

Shah was off work on the day the shortage was reported to her. First thing the next morning, Shah came in and checked for the missing hydrocodone tablets. Shah was unable to locate the missing tablets. She verified that the computer inventory showed that the pharmacy should still have hydrocodone tablets in stock. Shah immediately contacted her immediate supervisor, Mike Fuller, district pharmacy supervisor for Walgreens, and Shirley Phinney, the district loss prevention manager for Walgreens, to report the shortage. (Shah testimony).

After discovering the shortage, Walgreens instituted daily counts of its hydrocodone tablets. Typically, either Shah or Humphrey carried out the daily count. Shah kept the matter as quiet as possible and attempted to minimize disclosure to pharmacy staff so that Walgreens could proceed with an investigation to determine the cause of the shortage. In addition to implementing daily counts, Phinney changed the positioning of the closed circuit video monitors in the pharmacy so that they were trained on the area

² The information regarding the status of Respondent Walgreens' license and Respondent Mason's technician registration number comes from the respective Statements of Charges, which were issued prior to December 31, 2013. In the absence of evidence to the contrary, the Board presumes that Respondent Walgreens' license was renewed and remains active and that Respondent Mason's registration was renewed and remains active.

³ Humphrey is also a certified pharmacy technician.

where the hydrocodone tablets were kept. Additionally, a camera was trained on the back door of the pharmacy to monitor activity there. (Phinney; Shah testimony).

After examination of the daily counts and video surveillance, Walgreens determined that the person responsible for the theft of hydrocodone tablets was pharmacy technician Lacy Mason. Phinney interviewed Mason, who admitted to stealing hydrocodone tablets from the pharmacy. Mason signed a voluntary statement on April 3, 2012 admitting to taking hydrocodone tablets for the past three to four weeks. Mason reported that she would simply take a handful of the tablets as she dumped the large wholesale bottle into the Baker cell for automated distribution. While Mason denied taking as many tablets as the pharmacy's count showed were missing, there is no evidence that anyone else was involved in the theft. (Exh. 8; Phinney, Wolf testimony).

After Mason admitted to theft of the hydrocodone tablets, she was terminated from her employment with Walgreens immediately. When interviewed by the Marshalltown police department, Mason also admitted to theft of the hydrocodone tablets. Mason stated to both the police and Phinney that she gave some of the tablets to a friend, though she declined to provide the friend's identity. Mason was charged with theft 2nd. (Exh. 8, 11; Shah, Phinney testimony).

Count III: Fraud in Procuring a License

Mason renewed her pharmacy technician registration on January 17, 2012. On her renewal application, she answered "yes" to question number 8: Have you ever been charged, convicted, found guilty of, or entered a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$100)? As an explanation, Mason wrote: "On June 9th 2011 I received an OWI. I informed the board a [sic] pharmacy when this happened." (Exh. 12).

In reviewing Mason's renewal application, Board staff discovered that, in addition to the OWI conviction that Mason reported, she also had two other convictions: 1) an October 31, 2011 conviction for consumption/intoxication; and 2) a November 3, 2008 conviction for consumption/intoxication. Mason was sentenced to one year of probation and a suspended jail term for the 2011 conviction and received a fine as a result of the 2008 conviction. (Exh. 12).

CONCLUSIONS OF LAW

Count I: Unlawful Possession and Distribution 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, including Iowa Code chapter 124.

Iowa Code section 124.401 makes it unlawful for any person to deliver, or possess with the intent to manufacture or deliver a controlled substance. 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 Mason violated the above-referenced provisions of Iowa Code chapters 155A and 124. Mason admitted to taking and possessing controlled substances for which she had no prescription, as required. Mason also admitted to police that she delivered some of the hydrocodone tablets to a friend. 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.⁴

The preponderance of the evidence in this case clearly demonstrates that Mason violated the Board's prohibition against a pharmacy technician engaging in unethical behavior; in this case, theft. Mason admitted to stealing hydrocodone tablets from the pharmacy at which she was currently employed. The violation alleged in Count II has been established.

Count III: Fraud in Procuring a License

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 Chapter 155A or rule of the Board. Iowa law prohibits any person from making false or fraudulent statements to the Board or any of its representatives regarding any matter within the scope of Chapter 155A.⁵ The Board's regulations provide that it may impose disciplinary sanctions when a registrant is guilty of fraud in procuring a license. Under the regulations, fraud in procuring a license includes false representations of a material fact, including by way of concealing something that should have been disclosed when making application for a license or registration.⁶

The State has proven by a preponderance of the evidence that Mason committed fraud in procuring a license. While Mason disclosed that she had been convicted of a crime on her renewal application, she failed to disclose all of her convictions. The violation alleged in Count III has been established.

⁴ 657 IAC 3.28(4).

⁵ Iowa Code § 155A.23(1)(m) (2013).

⁶ 657 IAC 36.1(4)(a).

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.⁷

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

DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician registration issued to Lacy Mason 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.

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 5th day of ^{February} ~~January~~, 2014



Edward Maier
Chairperson, Iowa Board of Pharmacy

cc: Laura Cathelyn, Assistant Attorney General
Kevin Reynolds, Attorney for Respondents Walgreens and Shah

⁷ 657 IAC 36.1(3).

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.