

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	Case No. 2014-11
Pharmacy Technician Registration of	)	
<b>KIMBERLY PARRISH</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 19520,	)	<b>&amp; NOTICE OF HEARING</b>
Respondent.	)	

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**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 certified pharmacist technician registration number 19520. Respondent's registration 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 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 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  
2<sup>nd</sup> 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](mailto: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 (2011).

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 (2011) 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**

#### **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 section 124.401 and 155A.6A(5) and 657 Iowa Administrative Code rule 36.1(4)(h); (j); (u).

### **Count II**

#### **COMMITTING UNETHICAL PRACTICE OR PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC**

Respondent is charged with committing unethical practice or practice harmful or detrimental to the public in violation of Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.30(1), 36.1(4)(c); (u).

## **D. FACTUAL CIRCUMSTANCES**

1. At all times material to this statement of charges, Respondent was a certified pharmacy technician at Walgreens Pharmacy in Newton, Iowa.

2. Respondent was terminated on December 13, 2013 after a Walgreens investigation discovered that 967 tablets of hydrocodone, in various strengths, were unaccounted for. The investigation revealed that the discrepancies occurred during Respondent's shifts.

3. Respondent admitted taking hydrocodone, lorazepam, and tramadol. She claimed to use the medication for pain "caused by the bulging disc, arthritis, and pain being caused by my need to have surgery for hysterectomy."

4. Respondent was charged with theft in the 3<sup>rd</sup> degree and possession of a controlled substance. The latter charge was dismissed by the court. Respondent received a deferred judgment on the theft charge. She is currently on probation.

#### **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

Chris Clausen  
ATTORNEY FOR RESPONDENT

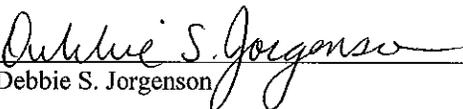
PROOF OF SERVICE

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>9171999991703239255158</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. 2014-11
Pharmacy Technician Registration of	)	DIA No. 14PHB023
<b>KIMBERLY PARRISH</b>	)	
Registration No. 19520,	)	<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 Kimberly Parrish. The Statement of Charges alleges two counts: 1) unlawful possession of prescription drugs; and 2) engaging in unethical behavior.

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. Respondent Kimberly Parrish appeared and was represented by attorney Christopher Clausen. The hearing was closed to the public at the election of the licensee, 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.

**THE RECORD**

The record includes the Notice of Hearing and Statement of Charges. The record also includes hearing testimony of Jean Rhodes and Kimberly Parrish. The State introduced Exhibits 1 through 8, which were admitted as evidence.

**FINDINGS OF FACT**

Respondent Kimberly Parrish holds Iowa certified technician registration number 19520, which is currently active and expires on January 31, 2015. During the time period at issue in this case, Parrish was employed at Walgreens Pharmacy in Newton, Iowa.

At some point prior to December 13, 2013, management at Walgreens Pharmacy in Newton discovered discrepancies in the counts of various strengths of hydrocodone tablets. Based on the discrepancies, Walgreens adjusted their surveillance cameras and Michael Lyons, the pharmacy manager, began daily counts for hydrocodone. Based on

the counts, the pharmacy discerned a pattern of shortages during time periods when Parrish was working. Surveillance footage from December 8, 2013 showed Parrish concealing hydrocodone 7.5/325. (Exh. 6, p. 15).

Shirley Phinney from Walgreens' loss prevention department interviewed Parrish on December 13, 2013. Parrish provided a written statement to Walgreens, in which she admitted to taking hydrocodone 7.5/325, hydrocodone 10/325, lorazepam, and tramadol from Walgreens pharmacy. Parrish indicated in the statement that she took the pills because of severe pain as a result of a bulging disc, arthritis, and the need to have a hysterectomy. Parrish wrote, "[M]y constant pain has caused me to become addicted." In her statement, Parrish wrote that she took approximately 1,020 hydrocodone tablets of varying strengths, 20 lorazepam tablets, and 20 tramadol tablets. (Exh. 5).

Parrish was charged with 3<sup>rd</sup> degree theft and possession of a controlled substance as a result of the events described above. Parrish pleaded guilty to the 3<sup>rd</sup> degree theft charge and received a deferred judgment, subject to successful completion of a one-year probation term and payment of a \$625 civil penalty. The possession of a controlled substance charge was dismissed. (Exh. 7; Parrish testimony).

Walgreens notified the Board on January 24, 2014 that Parrish had been terminated due to theft of various controlled substances. (Exh. 3).

At hearing, Parrish admitted that she stole hydrocodone tablets from Walgreens while employed there; she believes she took approximately 400 total. Parrish does not recall taking tramadol or lorazepam from Walgreens. Parrish acknowledged, however, that occasionally she did not remember parts of her shift because she was under the influence of hydrocodone. Parrish had been taking hydrocodone during this time period and had a prescription, but she was switching doctors and her doctor was going to take her off all painkillers in order to do a series of tests. (Parrish testimony).

After Walgreens discovered her theft and she was charged criminally, Parrish began drug treatment through Powell CDC at Lutheran. She completed approximately 120 days of outpatient treatment. Parrish currently attends AA/NA meetings approximately once a week. The only medication that Parrish currently takes to control her pain is Celebrex for arthritis. In addition, she sees a chiropractor once a week and receives cortisone shots under the care of a pain specialist. (Parrish testimony).

## **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, including Iowa Code chapter 124. 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.

Parrish does not dispute that the violation alleged in Count I occurred and the preponderance of the evidence in this case clearly demonstrates that Parrish violated Iowa Code chapter 155A.21. Parrish admitted to taking and possessing controlled substances for which she had no prescription. As such, the violation alleged in Count I has been established.

Count II: Engaging in Unethical Behavior

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 Parrish violated the Board's prohibition against a pharmacy technician engaging in unethical behavior; in this case, theft. Parrish admitted to stealing hydrocodone tablets from the pharmacy at which she was employed. 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>

While the Board is impressed with the steps that Parrish has taken to address her addiction, the Board has concerns about allowing Parrish to be employed as a pharmacy technician, with unfettered access to prescription drugs, at this point in her recovery. A relatively brief suspension will allow Parrish to focus on her recovery and come back to the Board with information that will help inform its decision about whether Parrish is able to resume practice as a pharmacy technician in a safe manner.

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

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

### DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician registration issued to Respondent Kimberly Parrish is hereby SUSPENDED for a period of no less than one year from the date of issuance of this order. Suspension of Respondent's registration may be terminated only at such time as Respondent:

- a. Obtains a complete physical and mental health evaluation, including a substance abuse evaluation, from a physician/treatment provider approved in advance by the Board; and
- b. Delivers to the Board a written, fully documented and current physical and mental health evaluation, including a substance abuse evaluation, of Respondent which concludes that Respondent is mentally and physically fit to practice as a pharmacy technician. Any conclusion that the Respondent is fit to return to employment as a pharmacy technician must include an assessment of Respondent's ability to cope with the presence of controlled substances in the pharmacy setting.

IT IS FURTHER ORDERED that at such time as Respondent is able to deliver to the Board a written, fully documented and current physical and mental health evaluation, including a substance abuse evaluation, which concludes that Respondent is mentally and physically fit to resume employment as a pharmacy technician, Respondent may petition the Board for (a) termination of the suspension of Respondent's registration; and (b) commencement of a period of probation.

IT IS FURTHER ORDERED that in the event the Board determines that Respondent's registration suspension should be terminated, Respondent's registration shall be placed on probation on terms which shall include, but not be limited to, the following:

- a. Respondent agrees to comply with the terms of probation.
- b. The period of probation shall be five years; provided, however, that only those periods during which Respondent is employed as a pharmacy technician shall count toward exhaustion of the probationary term.
- c. Respondent shall report to the Board quarterly, in writing. The report shall include Respondent's place of employment, current address, Respondent's most recent efforts to implement the provisions of her probationary period, and any further information deemed necessary by the Board from time to time.
- d. Respondent shall notify all employers and prospective employers (no later than at the time of an employment interview), including any pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this Order.

- e. Within 15 days after undertaking new employment as a pharmacy technician, Respondent shall cause her pharmacy employer and any pharmacist-in-charge she works under, to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.
- f. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing her performance as a pharmacy technician during Respondent's probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.
- g. Respondent shall obey all federal and state laws, rules, and regulations related to her employment as a pharmacy technician.
- h. Respondent shall not possess or use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider. Respondent shall inform any treating physician or other treating health care provider of her medical history, including any history of chemical dependency.
- i. Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN), under the direct support of a pharmacist advocate.
- j. If, as a result of the physical and mental health examinations of Respondent, Respondent's physician/treatment provider recommends a substance abuse treatment program, Respondent shall comply with such recommendations. In the event Respondent is participating in a substance abuse treatment program, Respondent's physician/treatment provider shall submit quarterly reports to the Board documenting Respondent's compliance with the treatment program.
- k. Respondent shall participate in AA/NA as recommended in the substance abuse evaluation.
- l. Respondent shall provide witnessed blood, hair, or urine specimens on demand by the Board or its agents. The specimens shall be used for drug screening, and to verify Respondent's compliance with this Order and any drug therapy ordered by Respondent's physician or treatment provider. All costs related to the analysis of such specimens shall be paid by Respondent.
  - a. To facilitate performance of the preceding paragraph, Respondent shall report to and provide a specimen to any healthcare provider specified by the Board – said healthcare provider to be located in reasonable proximity to Respondent – within 24 hours after notice from the Board requesting that Respondent provide a specimen. Respondent agrees to cooperate with the Board in establishing a specimen testing program through NTS, and hereby consents to disclosure to the Board, by NTS or any other

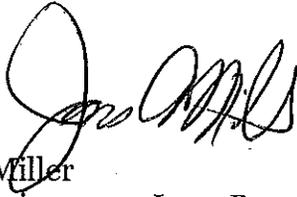
testing facility, of all medical information, including tests results, generated by Respondent's contact with the facility.

- m. The Board may impose other reasonable terms as a result of: (i) findings that Respondent is chemically dependent; (ii) the length of time Respondent's registration is suspended; or (iii) the amount or nature of chemical dependency treatment Respondent must participate in as directed by her physician/treatment provider.

IT IS FURTHER ORDERED that should Respondent violate or fail to comply with any of the terms and conditions of this Order, the Board may initiate action to revoke or suspend Respondent's pharmacy technician registration or to impose other licensee discipline as authorized by Iowa law and the Board's regulations.

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 26<sup>th</sup> day of August, 2014



James Miller  
Vice-Chairperson, Iowa Board of Pharmacy

cc: Laura Cathelyn, 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.*