

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2013-145
Technician Registration of)	
)	NOTICE OF HEARING AND
DUSTIN SHIRLEY)	STATEMENT OF CHARGES
Registration No. 6122)	
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges against Dustin Shirley pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent's Iowa technician trainee registration number 6122 is currently active and expires on July 31, 2014.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 14, 2014, before the Board. 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 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:

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 by e-mail at Meghan.Gavin@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

ENGAGING IN UNETHICAL BEHAVIOR

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

Count II

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) and 36.1(4)(j).

Count III

FRAUD IN PROCURING A LICENSE/REGISTRATION

Respondent is charged with committing fraud in procuring his technician trainee registration by intentionally perverting the truth pursuant to Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.30 and 36.1(4)(a).

Count IV

FAILING TO TIMELY SUBMIT REGISTRATION APPLICATION

Respondent is charged with failing to submit a technician registration application to the Board within thirty days in violation of 657 Iowa Administrative Code rule 3.3(3), pursuant to Iowa Code section 155A.6A(5) and 657 Iowa Administrative Code rules 3.3, 3.30, and 36.1(4)(v).

D. FACTUAL CIRCUMSTANCES

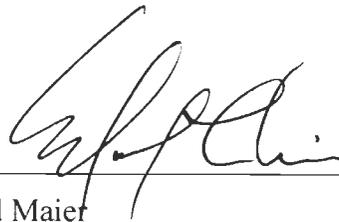
1. Respondent was hired at Methodist Jennie Edmundson Hospital Pharmacy on July 1, 2013.
2. While employed at Jennie Edmundson, Respondent admitted to diverting hydrocodone from the Pyxis machine.
3. Respondent admitted to personal use of the diverted hydrocodone.
4. Upon admitting to the drug diversions, Respondent resigned from Jennie Edmundson on July 31, 2013.
5. Respondent was hired as a pharmacy technician by Walgreens pharmacy on July 28, 2013.
6. Respondent did not disclose to Walgreens that he resigned from his previous employer due to the drug diversions.
7. The Board received Respondent's pharmacy technician trainee application on September 6, 2013.
8. Respondent was issued Iowa technician trainee registration number 6122 on September 6, 2013.
9. On his application, Respondent disclosed two convictions for driving under the influence from 2008 and 2009.
10. On his application, Respondent failed to disclose additional charges for offenses that occurred on August 26, 2009, including charges related to prescription drugs.
11. Respondent holds Iowa technician trainee registration number 6122, which is currently active and expires on July 31, 2014.

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 Meghan Gavin at (515) 281-6736.

F. FINDING OF PROBABLE CAUSE

On this 15th day of October, 2013, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



Edward Maier
Iowa Board of Pharmacy
400 SW Eight Street, Suite E
Des Moines, Iowa 50309-4688

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

Inspections and Appeals

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 type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number <u>9171999991703104136971</u> | <input type="checkbox"/> other _____ |

on the ____ day of October, 2013.

Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2013-145
Technician Registration of)	
DUSTIN SHIRLEY)	SETTLEMENT AGREEMENT AND
Registration No. 6122)	FINAL ORDER
Respondent.)	

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2013), the Iowa Board of Pharmacy ("Board") and Dustin Shirley ("Respondent") enter into the following Settlement Agreement and Final Order to settle a disciplinary proceeding currently pending before the Board.

The allegations contained in a Statement of Charges against Respondent shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. Respondent was issued Pharmacy Technician Registration No. 6122.
2. Iowa Pharmacy Technician Registration Number 6122 is active and will expire on July 31, 2014.
3. Respondent has ceased practice as a pharmacy technician.
4. The Board has jurisdiction over the parties and the subject matter of these proceedings.
5. A Statement of Charges was filed against the Respondent on October 15, 2013.
6. Respondent has chosen not to contest the allegations in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.
7. Respondent agrees to **VOLUNTARILY SURRENDER** his pharmacy technician registration to resolve this matter.
8. This voluntary surrender is considered a revocation under 657 Iowa Administrative Code rule 36.15 for purposes of reinstatement. Respondent may not request reinstatement for at least one year from the date of this Order.
9. Respondent may request reinstatement of his Iowa pharmacy technician registration by filing an application for reinstatement under 657 Iowa Administrative Code rule 36.13. Respondent's registration shall not be reinstated except upon a showing by Respondent that the basis for suspension of her registration no longer exists, and that it is in the public interest for the registration to be reinstated.
10. Respondent agrees not to engage in any aspect of the practice of a pharmacy technician after the date of his signature on this Order.

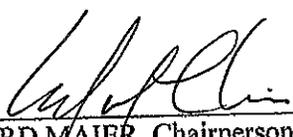
11. Should Respondent violate the terms of this Settlement Agreement and Final Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2013) and 657 Iowa Administrative Code chapter 36.
12. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Final Order.
13. The State's legal counsel may present this Settlement Agreement and Final Order to the Board *ex parte*.
14. Respondent acknowledges that he has a right to be represented by counsel on this matter.
15. This Settlement Agreement and Final Order is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Settlement Agreement and Final Order, it shall be the full and final resolution of this matter.
16. The Board's approval of this Settlement Agreement and Final Order shall constitute a FINAL ORDER of the Board.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 16 day of December, 2013.



DUSTIN SHIRLEY, Pharmacy Technician
Respondent

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 14th day of January, 2013.



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

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