

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	Case No. 2010-72
Pharmacy Technician Registration of	)	
<b>KATHY J. SIMONTON</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 4159,	)	
Respondent	)	

**COMES NOW**, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Director of the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 155A and 272C (2011).
3. The Board issued Kathy J. Simonton (hereinafter, "Respondent") pharmacy technician registration number 4159, registering her as a pharmacy technician subject to the laws of the State of Iowa and the rules of the Board. Respondent's registration was last renewed on January 30, 2009, and will expire on June 30, 2011.
4. At all times material to this Statement of Charges, Respondent was employed as a pharmacy technician at Medicap Pharmacy, 10 Warrior Lane, Waukee, Iowa 50263.

**A. CHARGES**

**COUNT I – UNLAWFUL POSSESSION AND DISTRIBUTION OF DRUGS**

Respondent is charged pursuant to Iowa Code §§ 124.403, 155A.6A(5) and 155A.21 (2011), and 657 Iowa Administrative Code § 36.1(4)(h), with possession and distribution of prescription drugs, including controlled substances, for other than lawful purposes.

**COUNT II – VIOLATING LAWS RELATED TO PHARMACY**

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011) and 657 Iowa Administrative Code § 36.1(4)(j) with violating state laws related to the practice of pharmacy; specifically, laws relating to possession and distribution of controlled substances found at Iowa Code §§ 124.403 and 155A.21 (2011).

COUNT III – INABILITY TO PRACTICE DUE TO CHEMICAL ABUSE

Respondent is charged pursuant to Iowa Code § 155A.6A(5) (2011), and 657 Iowa Administrative Code § 36.1(4)(m) with the inability to practice as a pharmacy technician, with reasonable skill and safety, due to chemical abuse.

**B. CIRCUMSTANCES**

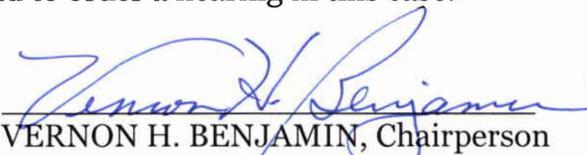
On June 28, 2010 an investigation was commenced which revealed the following:

1. At all material times, Respondent was employed as a pharmacy technician at Medicap Pharmacy, 10 Warrior Lane, Waukee, Iowa 50263.
2. Respondent admits to diverting from her employer small quantities of hydrocodone APAP and phentermine – both of which are controlled substances.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.

  
LLOYD K. JESSEN  
Executive Director

On this 27<sup>th</sup> day of April 2011, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

  
VERNON H. BENJAMIN, Chairperson  
Iowa Board of Pharmacy  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa

Simonton-tech SOC 4-11

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	Case No. 2010-72
Pharmacy Technician Registration of	)	
<b>KATHY SIMONTON</b>	)	<b>STIPULATION</b>
Registration No. 4159	)	<b>AND</b>
Respondent	)	<b>CONSENT ORDER</b>

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy (hereinafter, "Board") and Kathy Simonton (hereinafter, "Respondent"), enter into the following Stipulation and Consent Order settling a disciplinary proceeding currently pending before the Board.

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 a pharmacy technician registration number 4159, registering her as a pharmacy technician subject to the laws of the State of Iowa and the administrative rules of the Board.
2. The registration held by Respondent is active and current until June 30, 2013.
3. Respondent was, at all times material to the Statement of Charges, employed as a pharmacy technician at Medicap Pharmacy, 10 Warrior Lane, Waukee, Iowa 50263.
4. A Statement of Charges was filed against Respondent by the Board on April 27, 2011.
5. The Board has jurisdiction over the parties and jurisdiction over the subject matter of these proceedings.
6. Respondent has chosen not to contest the allegations set forth in the Statement of

Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

7. On the date of the Board's approval of this Stipulation and Consent Order, Respondent's pharmacy technician registration shall be suspended indefinitely. Suspension of Respondent's registration shall be stayed, however, for a period not exceeding thirty (30) days, during which period Respondent shall:

a. Obtain a complete, current physical and mental health evaluation, including a substance abuse evaluation, from a physician/treatment provider approved – in advance – by the Board.

b. Deliver 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 work as a pharmacy technician. *Any conclusion that the Respondent is fit to work as a pharmacy technician shall include an assessment of Respondent's ability to cope with the presence of controlled substances in the pharmacy setting.*

c. Permit the Board complete access to her medical records and records of evaluation and treatment.

8. At the end of the thirty day period following the date of this Stipulation and Consent Order, the stay of suspension shall end and Respondent's registration shall be suspended indefinitely *unless* the Board-approved physician/treatment provider described in the preceding paragraph has provided to the Board – within the thirty-day period allowed – a fully documented, written summary of a current evaluation of Respondent

that affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician.

*Only if the approved physician/treatment provider provides – within the thirty-day period allowed – a fully documented, written summary of a current evaluation which affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician, will the suspension of Respondent's registration terminate. Respondent understands that if (a) the evaluation of the approved physician/treatment provider is not delivered to the board within the 30-day stay period or (b) the evaluation does not conclude Respondent is mentally and physically fit to work as a pharmacy technician, the suspension of Respondent's registration shall be in effect at the conclusion of the thirty-day stay period.*

9. In the event that Respondent's approved physician/treatment provider fails to provide or is unable to provide -- within the thirty-day stay period -- a written summary of a current evaluation which affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician, *Respondent's pharmacy technician registration shall be indefinitely suspended.* During such indefinite period of suspension, Respondent may seek to obtain a current evaluation which affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician. At such time as Respondent is able to obtain a current evaluation which affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician, Respondent may petition the Board for: (a) termination of Respondent's registration suspension and (b) commencement of a period of probation.

10. In the event either (a) Respondent's physician/treatment provider provides to the Board – within the thirty-day period stay period described in paragraph 7 above -- a fully documented, written summary of a current evaluation of Respondent that affirmatively concludes Respondent is mentally and physically fit to work as a pharmacy technician or (b) Respondent successfully petitions the Board – pursuant to the terms of paragraph 9 above – for termination of her registration suspension, Respondent's pharmacy technician 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 (5) years provided, however, that only those time periods during which Respondent is employed as a pharmacy technician shall count toward exhaustion of the probationary term.
- c. If Respondent is found, during a substance abuse evaluation, to be chemically dependent, Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate.
- d. Respondent shall inform the Board, in writing, of any change of home address, place of employment, home telephone number, or work telephone number, within ten (10) days of such a change.
- e. 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 this Stipulation and Consent Order,*

by date, and any further information deemed necessary by the Board from time to time. Quarterly reports shall be due not later than January 5<sup>th</sup>, April 5<sup>th</sup>, July 5<sup>th</sup>, and October 5<sup>th</sup>.

f. 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 Stipulation and Consent Order.

g. Within thirty (30) days after commencement of the probationary period, and within fifteen (15) days of 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.

h. 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.

i. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy.

j. 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.

k. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug screening, and to verify Respondent's compliance with this Stipulation and Consent 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.

l. 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 FirstLab, and hereby consents to disclosure to the Board, by FirstLab or any other testing facility, of all medical information, including test results, generated by Respondent's contact with the facility.

m. Respondent shall promptly provide, upon request of an agent of the Board, copies of or access to all her medical records.

n. 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.

o. Such other reasonable terms as the Board may wish to impose as a result of (i) findings that Respondent is chemically dependant, (ii) the length of time Respondent's registration is suspended pursuant to paragraphs 7 and 8 above or (iii) the amount or nature of chemical dependency treatment Respondent must participate in as directed by her physician/treatment provider.

11. Should Respondent violate or fail to comply with any of the terms and conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacy technician registration or to impose other discipline as authorized by Iowa Code chapters 272C and 155A (2011), and 657 Iowa Administrative Code § 36.

12. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent 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 Stipulation and Consent Order.

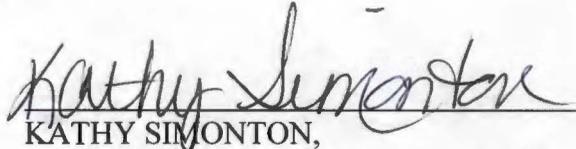
13. The State's legal counsel may present this Stipulation and Consent Order to the Board.

14. This Stipulation and Consent 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 Stipulation and Consent

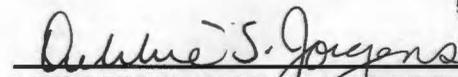
Order, it shall be the full and final resolution of this matter.

15. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER of the Board.

This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 21 day of February 2012

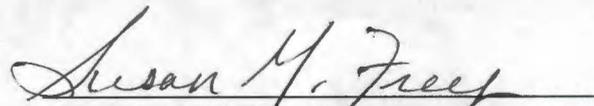
  
KATHY SIMONTON,  
Respondent

Subscribed and sworn to before me by Kathy Simonton on this 21 day of February 2012.

  
NOTARY PUBLIC IN AND FOR  
THE STATE OF IOWA



This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 7<sup>th</sup> day of March 2012.

  
SUSAN M. FREY, Chairperson  
Iowa Board of Pharmacy  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck  
Assistant Attorney General  
Office of the Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319

**BEFORE THE IOWA BOARD OF PHARMACY**

---

Re:	)	Case No. 2010-72
Pharmacy Technician Registration of	)	
<b>KATHY J. SIMONTON,</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 4159,	)	<b>&amp; NOTICE OF HEARING</b>
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 pharmacist technician registration 4159. Respondent's registration is currently active and is on probation under a Stipulation and Consent Order filed March 7, 2012.

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

Hearing. A disciplinary contested case hearing shall be held on March 12, 2013, 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.

Theresa O'Connell Weeg  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor Hoover State Office Building  
Des Moines, Iowa 50319

Ms. Weeg can also be reached by phone at (515)281-5328 or e-mail at [Theresa.Weeg@iowa.gov](mailto:Theresa.Weeg@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—FAILURE TO COMPLY WITH BOARD ORDER**

Respondent is charged with failing to comply with an order of the Board, in violation of Iowa Code sections 147.55(8), 272C.10(8), 272C.9(1) and 657 Iowa Administrative Code 36.17.

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent is a licensed pharmacy technician in the State of Iowa. Her registration is currently active and expires on June 30, 2013. Her registration is currently on probation under a Stipulation and Consent Order filed March 7, 2012.
2. In April 2011, the Board filed a Statement of Charges against Respondent for diverting hydrocodone/APAP and phentermine from her employer.
3. Respondent entered into a Stipulation and Consent Order with the Board on March 7, 2012, which placed her registration on a five year probation subject to a number of terms. These terms include a requirement that she not possess

any controlled substance or prescription drug in any form unless the drug has been authorized and prescribed for her; a requirement that she provide random urine specimens to the Board upon request, to be used for alcohol and drug screening; and a requirement that she submit quarterly reports to the Board.

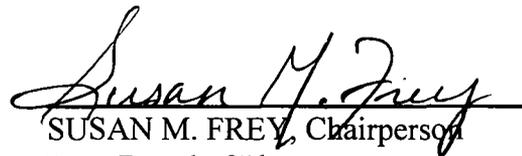
4. Respondent is currently practicing as a pharmacy technician at Hammer Pharmacy in Des Moines.
5. In August of 2012, Respondent submitted a urine specimen for testing. The specimen tested positive for phentermine. Respondent does not have prescription for phentermine.
6. Respondent failed to file her quarterly report due by December 5, 2012.

#### 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 16<sup>th</sup> day of January, 2013, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.

  
SUSAN M. FREY, Chairperson  
Iowa Board of Pharmacy  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Theresa O'Connell Weeg  
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 9171999991703105609795  | <input type="checkbox"/> other _____      |

on the 17<sup>th</sup> day of January, 2013.

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

---

RE:  
Pharmacy Technician Registration of

CASE NO. 2010-72  
DIA NO. 13PHB012

KATHY J. SIMONTON,  
Registration No. 4159,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER

RESPONDENT

---

On January 16, 2013, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Kathy J. Simonton (Respondent), alleging that she failed to comply with an order of the Board in violation of Iowa Code sections 147.55(8), 272C.10(8), 272C.9(1) and 657 IAC 36.17.<sup>1</sup>

The hearing was held on March 12, 2013. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Edward McKenna; James Miller; DeeAnn Wedemeyer Oleson; LaDonna Gratias and Margaret Whitworth. Respondent appeared for hearing and was self-represented. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1), and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the testimony of Sue Mears, Respondent, and State Exhibits 1-17 (See Exhibit List for description).

---

<sup>1</sup> The legal citations in this count were incorrect and do not relate to failure to comply with a Board order. At the start of the hearing, the state moved to amend the count to reflect the correct legal citation, which is Iowa Code section 272C.3(2)(a). Respondent did not object to the state's Motion to Amend, and it was granted by the Board.

## FINDINGS OF FACT

1. The Board has issued Respondent pharmacy technician registration number 4159. Respondent's registration is currently active and on probation. (State Exhibits 2, 3)

2. On April 27, 2011, the Board filed a Statement of Charges charging Respondent with unlawful possession and distribution of drugs, violating laws relating to pharmacy, and inability to practice as a pharmacy technician due to substance abuse. These charges were based on Respondent's admission that she diverted small quantities of hydrocodone and phentermine from her employer. Hydrocodone/APAP is a controlled substance used to treat pain. Phentermine is a controlled substance used for weight loss. (State Exhibits 1, 7)

On March 7, 2012, Respondent and the Board entered into a Stipulation and Consent Order to resolve the Statement of Charges. The Stipulation and Consent Order indefinitely suspended Respondent's registration, but the suspension was stayed for a period not to exceed thirty (30) days. During the 30 day stay of suspension, Respondent was required to obtain a complete, current physical and mental evaluation, including a substance abuse evaluation, from a Board approved treatment provider. Respondent was also required to deliver to the Board a written evaluation report documenting that she is currently fit to return to work as a pharmacy technician. Respondent agreed to allow the Board access to her medical records and the records of evaluation and any treatment. (State Exhibit 2; Mears testimony)

3. Respondent obtained the required mental and physical evaluations and submitted reports to the Board stating that she was mentally and physically fit to practice as a pharmacy technician. (State Exhibit 6; Mears testimony)

Pursuant to the terms of the Stipulation and Consent Order, Respondent's registration as a pharmacy technician was then placed on probation for a period of five years, subject to a number of terms and conditions relating to substance abuse. The conditions of probation included, in relevant part:

- j. 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.

k. Respondent shall provide witnessed blood, hair, or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug screening, and to verify Respondent's compliance with this Stipulation and Consent 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.

(Mears testimony; State Exhibit 2)

4. On August 3, 2012, Respondent provided a random urine sample for laboratory testing, as required by the Board's Order. The laboratory results showed the presence of alprazolam and phentermine. Alprazolam is a controlled substance used to treat anxiety. Respondent provided the Board's compliance officer, Sue Mears, R.Ph., with a copy of her valid prescription for alprazolam. Respondent also provided documentation showing that she had recently filled the prescription for alprazolam. (Mears testimony; State Exhibits 7, 8, 9, 10, 14)

Respondent was unable to provide a valid prescription for phentermine. Respondent has never had a prescription for phentermine, and she denied taking any phentermine. The level of phentermine on Respondent's laboratory report was  $\geq 2,500$ ng/ml, which is five times the minimum level (500ng/ml) necessary for a positive result. Respondent reported that she had taken pseudoephedrine on August 1, 2012, which was two days prior to providing the urine sample. (Mears testimony; State Exhibits 7, 8, 11, 14)

Pseudoephedrine and phentermine are listed in the same category of stimulants on the laboratory report. The laboratory was asked if taking pseudoephedrine a couple of days before the test could result in testing positive for alprazolam. The laboratory responded that Respondent's specimen had been tested twice, and was screened by immunoassay and confirmed by GC/MS (gas chromatography). The laboratory denied that the positive phentermine result could have been caused by Respondent taking pseudoephedrine. (State Exhibit 12; Mears testimony)

5. On August 9, 2012, Respondent was again selected to provide a random urine sample for laboratory testing. The sample was negative for both alprazolam and

phentermine. Respondent told Sue Mears that she did not take any pseudoephedrine prior to providing the August 9, 2012 urine sample. (Mears testimony; State Exhibits 7, 14)

6. On August 17, 2012, the Board's investigator audited the pharmacy where Respondent works as a pharmacy technician. Respondent had been working at the pharmacy since the summer of 2010. Ms. Mears gathered controlled substance invoices and prescription dispensing history starting with the pharmacy's May 3, 2010 annual inventory. The audit showed that the pharmacy had a shortage of 124 tablets of 37.5mg phentermine for the period from April 29, 2011 through August 17, 2012. The pharmacist in charge conducted her own audit with the same result. It was unclear, however, if Respondent was responsible for the shortage of phentermine. Sue Mears recommended that the pharmacy implement a perpetual inventory for phentermine if Respondent remained employed there as a pharmacy technician. (Mears testimony; State Exhibits 7, 13, 17)

7. Respondent provided additional random urine samples on November 12, 2012 and December 14, 2012. The sample on November 12, 2012 was positive for alprazolam, pseudoephedrine, ethylglucuroine and ethyl sulfate. Pseudoephedrine is a Schedule V over the counter controlled substance used to treat nasal congestion. Ethylglucuroine and ethyl sulfate are metabolites of alcohol. Respondent's probation does not prohibit her use of alcohol. The December 14, 2012 sample was only positive for alprazolam. (State Exhibits 2, 16, 17).

8. On January 22, 2013, Sue Mears returned to the pharmacy where Respondent works as a pharmacy technician. The pharmacist in charge reported that they had instituted a double count of all prescriptions filled for any controlled substance. She reported that the checks for phentermine had been "spot on" since August 2012. (Mears testimony; State Exhibit 17)

9. Respondent has denied using any phentermine while on probation or in the last two years. She also denies taking phentermine from the pharmacy where she works. Respondent is unable to explain how her urine sample from August 3, 2012 tested positive for phentermine if she did not take any phentermine. Respondent continues to believe that pseudoephedrine somehow caused the August 3, 2012 sample to test positive for phentermine. (Respondent testimony)

## CONCLUSIONS OF LAW

The Board is authorized to discipline a licensee for failure to comply with a Board Order imposing license discipline.<sup>2</sup> The preponderance of the evidence established that Respondent violated Iowa Code §272C.3(2)(a)(2011) by testing positive for phentermine, a controlled substance for which she did not have a valid prescription. The laboratory tested the sample several times and effectively refuted Respondent's suggestion that her use of pseudoephedrine could be responsible for the positive phentermine result.

## DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent shall be issued a Citation and Warning for her failure to comply with the March 7, 2012 Stipulation and Consent Order. The Board has decided not to fine Respondent due to the cost of ongoing urine testing. Further violations, however, will result in greater sanctions.

IT IS FURTHER ORDERED that Respondent shall fully comply with the terms and conditions of the March 7, 2012 Stipulation and Order and with all of the terms and conditions of her probation. Respondent will continue to be subject to random urinalysis throughout the period of her probation.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondent shall pay \$75.00 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 thirty (30) days of receipt of the bill.

Dated this 27<sup>th</sup> day of April, 2013.

  
Susan Frey  
Chairperson  
Iowa Board of Pharmacy

---

<sup>2</sup> Iowa Code §272C.3(2)(a)(2011).

cc: Theresa O'Connell Weeg, 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.

**BEFORE THE IOWA BOARD OF PHARMACY**

---

Re:	)	CASE NO. 2010-72
Certified Technician Registration of	)	
	)	<b>NOTICE OF HEARING AND</b>
<b>KATHY SIMONTON</b>	)	<b>STATEMENT OF CHARGES</b>
Registration No. 4159	)	
Respondent.	)	

---

COMES NOW the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing and Statement of Charges against Kathy Simonton ("Respondent"), 319 Oak Street, De Soto, Iowa 50069, pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent's Iowa certified technician registration number 7197 is currently active and expires on June 30, 2015.

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

Hearing. A disciplinary contested case hearing shall be held on March 11, 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:

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 by e-mail at [meghan.gavin@iowa.gov](mailto: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 VIOLATING A BOARD ORDER**

Respondent is charged with violating a lawful order of the Board, pursuant to Iowa Code sections 147.55(9) and 155A.6A(5), and 657 Iowa Administrative Code rules 3.30(1) and 36.1(4)(i).

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent holds Iowa certified technician registration number 4159, which is currently active and expires on June 30, 2015.

2. On March 7, 2012, Respondent's certified technician registration was placed on probation for five years.

3. One of the conditions of Respondent's probation is that she be subject to random urinalysis throughout the probationary period.

4. The Board uses FirstLab to administer the random urinalyses, which requires Respondent to call-in every week day.

5. On August 3, 2012, Respondent tested positive for phentermine, for which she did not have a valid prescription.

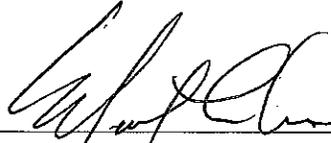
6. From August 2012 through September 2013, Respondent missed 35 of the required daily call-ins.

**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 14<sup>th</sup> day of January, 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

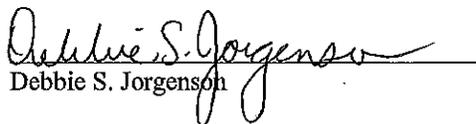
cc: Meghan Gavin  
Assistant Attorney General  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319

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 917199999170339553193   | <input type="checkbox"/> other _____      |
- on the 15th day of January, 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. 2010-72
Certified Technician Registration of	)	DIA No. 14PHB005
<b>KATHY SIMONTON</b>	)	
Registration No. 4159,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>DECISION, AND ORDER</b>
	)	

---

**STATEMENT OF THE CASE**

On January 15, 2014, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Respondent Kathy Simonton, alleging that she violated a lawful order of the Board, pursuant to Iowa Code sections 147.55(9) and 155A.6A(5) and 657 Iowa Administrative Code (IAC) rules 3.30(1) and 36.1(14)(i).

The hearing was held on March 11, 2014. The following members of the Board presided at the hearing: Edward Maier, Chairperson; James Miller; LaDonna Gratiias; Susan Frey; Edward McKenna and Sharon Meyer. Respondent appeared and was self-represented. Assistant attorney general Meghan Gavin represented the State. The hearing was closed to the public at the election of Respondent, 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 with regard to all three Respondents. The record also includes hearing testimony of Sue Mears and Kathy Simonton. The State introduced Exhibits 1 through 10, which were admitted as evidence.

**FINDINGS OF FACT**

Respondent Kathy Simonton holds Iowa certified technician registration number 4159, which is currently active and expires on June 30, 2015. Respondent is currently employed as a pharmacy technician at Hammer Pharmacy.

On April 27, 2011, the Board filed a Statement of Charges alleging that two counts: 1) unlawful possession and distribution of drugs; and 2) violating laws related to possession and distribution of controlled substances. Following the filing of a

Statement of Charges, Respondent entered into a Stipulation and Consent Order on March 7, 2012. Under the terms of that order, Respondent's registration was placed on probation for a period of five years. (Exh. 7, 8).

Under the terms of the probation, Respondent is required to provide witnessed urine specimens on demand by the Board or its agents within 24 hours of request. In order to facilitate testing, Respondent is required to establish a specimen testing program through FirstLab. (Exh. 8).

On January 17, 2013, the Board filed a Statement of Charges alleging that Respondent violated a Board order based on submission of a urine specimen for testing that tested positive for phentermine, for which Respondent did not have a prescription. The terms of Respondent's probation prohibit Respondent from possessing any controlled substance or prescription drug unless the drug has been authorized or prescribed for her. (Exh. 9).

The Board issued an order on April 24, 2013 finding that Respondent violated Iowa Code section 272C.3(2)(a) by testing positive for phentermine, a controlled substance for which she did not have a valid prescription. The Board issued a Citation and Warning for the violation, but did not impose a monetary fine. The Board ordered Respondent to continue to fully comply with the terms and conditions of the March 7, 2012 Stipulation and Consent Order; the order noted that Respondent would continue to be subject to random urinalysis for the duration of her probation. (Exh. 10).

In approximately October, 2013, the Board initiated an investigation based on a report from FirstLab, the drug testing company that Respondent uses to comply with the terms of her probation, that Respondent had failed to call in a total of 35 times between August 1, 2012 and September 30, 2013. Under her arrangement with FirstLab, Respondent is required to call in every day, Monday through Friday, to find out whether she is required to provide a urine specimen. According to FirstLab's records, of the 35 days that Respondent failed to call, she would have been required to provide a sample on at least two occasions. (Exh. 3, 4).

Compliance officer Sue Mears contacted Respondent by telephone on October 13, 2013. Respondent expressed surprise that she had missed so many calls. Respondent acknowledged that she thought she missed about two calls per month and stated that she believed she did not have to call in on weekday holidays. Mears double-checked the lab's policy and communicated with Respondent by e-mail at some point after the October 13 conversation informing her that she was required to call in every weekday, including holidays. (Mears testimony; Exh. 3).

During the October 13 conversation, Mears discussed with Respondent strategies she could employ to increase her call-in compliance. Mears suggested an electronic alert on her phone. Respondent noted that she planned to put a larger sticky note on her computer at work. (Mears testimony; Exh. 3).

At hearing, Respondent testified that she sometimes missed calling in to FirstLab because she had poor phone reception at her home in De Soto, Iowa; for this reason, Respondent stated that she would often wait until she got to work to call, but sometimes got busy and forgot. In response to questioning regarding whether she had missed any calls after her conversation with Mears in October, 2013, Respondent stated that she hoped not. (Simonton testimony).

According to records from FirstLab, Respondent failed to call in eight times from October 17, 2013 through January 31, 2014. (Mears testimony).

### CONCLUSIONS OF LAW

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 allow for discipline to be imposed when the Board determines that a registrant has willfully or repeatedly violated a lawful order of the Board in a disciplinary hearing.<sup>1</sup>

The evidence clearly demonstrates that Respondent violated the terms of the March 17, 2012 Stipulation and Consent Order. Records maintained by FirstLab show that Respondent failed to call in 35 times between August 1, 2012 and September 30, 2013. Even after being cautioned by Mears about her noncompliance with the call-in procedures, Respondent missed an additional eight calls in the next three to four months.

#### 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>

In this case, Respondent has already been found to have violated the terms of the probation imposed in March, 2012 on one occasion. Now, only two years after the probation was first imposed, Respondent has a second violation. The initial Statement of Charges that led to consent order establishing probationary terms was related to concerns that Respondent was diverting and potentially using controlled substances. The testing protocol that the Board established in the March, 2012 order is meant to allow Respondent to continue performing her professional duties while assuring the Board that the public is not being endangered by such practice. If the Respondent is only sporadically complying with the testing protocol, the Board lacks assurance that the public interest is adequately protected.

---

<sup>1</sup> 657 Iowa Administrative Code (IAC) 36.1(4)(i).

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

In short, the Board has grave concerns regarding Respondent's continued noncompliance with the terms of her probation. The Board imposed a lenient sanction after the first probation violation, but is not inclined to be lenient going forward. The fact that Respondent missed an additional eight calls after being warned by Mears in October, 2013 about her noncompliance does not reflect that Respondent is taking the terms of her probation seriously. It is critical for Respondent to understand that she must comply fully with the terms of the probation set forth in the March 17, 2012 order and that any further violations will result in more serious sanctions. The Board believes that a short, two-week suspension is appropriate in this instance and hopes that the suspension will demonstrate to Respondent the seriousness of her failure to follow the terms of her probation.

If she wishes for her registration to be reinstated after the expiration of the two-week suspension, Respondent must follow the procedures outlined in 657 Iowa Administrative Code 36.13, which provides:

**Reinstatement.** Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacist-intern registration, pharmacy technician registration, or pharmacy support person registration has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

**36.13(1) Prerequisites.** The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

...

**36.13(3) Proceedings.** The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license, registration, or permit. The application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or surrendered. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule ~~657—~~ 36.14(17A,124B,147,155A,272C).

**36.13(4) Burden of proof.** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists

and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

In summary, Respondent's registration will not automatically be reinstated at the expiration of the two-week suspension period. Respondent must make a written application for reinstatement to the Board that alleges facts that will allow the Board to determine that the basis for the suspension no longer exists and that it is in the public interest for the registration to be reinstated.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician registration issued to Kathy Simonton is hereby SUSPENDED for a period of not less than two weeks. After the suspension period has passed, Respondent may seek reinstatement pursuant to 657 Iowa Administrative Code 36.13. 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 30<sup>th</sup> day of April, 2014



Edward Maier  
Chairperson, Iowa Board of Pharmacy

cc: Meghan Gavin, 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.*