

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2014-189
DIA NO. 15PHB008

SHERRI MARSHALL
Registration No. 18129

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On March 10, 2015, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Sherri Marshall (Respondent), which charged her with three counts:

Count I: Obtaining or attempting to obtain a prescription drug by forging a prescription, in violation of Iowa Code section 155A.23 and pursuant to Iowa Code sections 147.55(8), 155A.6A(5) and 657 IAC 3.30 and 36.1(4)"j."

Count II: Making a statement tending to deceive, misrepresent, or mislead anyone, or being a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy, in violation of 657 IAC 3.28(1), and pursuant to Iowa Code sections 147.55(3) and (9), 155A.6A(5) and 657 IAC 3.30 and 36.1(4)"c" and "u."

Count III: Engaging in unethical behavior, in violation of 657 IAC 3.28(4), and pursuant to Iowa Code sections 147.55(3) and (9), 155A.6A(5) and 657 IAC 3.30 and 36.1(4)"c" and "u."

The hearing was held on June 23, 2015 at 9:10 a.m. The following members of the Board presided at the hearing: Edward Meier, Chairperson; Edward McKenna; James Miller; Sharon Meyer; Jason Hansel; and LaDonna Gratias. Assistant Attorney General Laura Steffensmeier represented the state. Respondent failed to appear for hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2015), and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate their decision. The administrative law judge

was instructed to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the testimony of Jennifer Tiffany, R.Ph. and State Exhibits 1-17. Protective orders were issued for Exhibits 2, 6, 7, 8, 10, 11, and 13 because they include information that is confidential under Iowa Code section 22.7(2).

FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 18129 to Respondent, which authorizes her to serve as a pharmacy technician, subject to the laws of the state of Iowa and the rules of the Board. Respondent's pharmacy technician registration is active and will expire on March 31, 2016. (State Exhibits 1, 5)

2. In October and November 2014, Respondent was employed as a pharmacy technician by the Wal-Mart Pharmacy located at SE 14th Street in Des Moines. On November 7, 2014, Wal-Mart notified the Board that Respondent's employment had been terminated based on her involvement with forged prescriptions for hydrocodone/acetaminophen 10/325 mg. Board Compliance Officer Jennifer Tiffany, R.Ph. was assigned to investigate this complaint. (State Exhibits 2, 3, 4; Tiffany testimony).

3. On November 20, 2014, Jennifer Tiffany met with a member of Wal-Mart's Security/Loss Prevention team, who provided documentation from Wal-Mart's investigation and security video footage from the pharmacy. Wal-Mart's investigation was initiated after an individual (JH) contacted the pharmacy on October 9, 2014. JH is subject to a pain management contract that requires him to fill all of his prescriptions at Walgreens. Upon checking the Prescription Monitoring Program (PMP) data base, JH's pain management physician discovered that a prescription in JH's name had been filled at the SE 14th Street Wal-Mart Pharmacy. The prescription was for 240 tablets of hydrocodone/apap 10/325, and it was filled under JH's name on September 25, 2014. (Tiffany testimony; State Exhibits 6, 7)

After JH notified Wal-Mart that he was not aware of this prescription and did not pick it up, a Wal-Mart pharmacist contacted the nurse practitioner who was listed on the prescription as the prescriber. The nurse practitioner confirmed that she did not

authorize the prescription and that it was a forgery. The nurse practitioner signed a statement attesting to that fact. (State Exhibits 6, 7; Tiffany testimony)

JH filed a criminal complaint with the Des Moines Police Department, and Des Moines Police Officer Rahn Bjornson was assigned to investigate the criminal matter. JH told Officer Bjornson that the nurse practitioner whose name was on the prescription worked at the same clinic as his pain management physician, but she did not provide treatment for him. He also told Officer Bjornson that he does not have a prescription for hydrocodone. (State Exhibit 13)

4. Wal-Mart had security video footage from September 25, 2014, which is the date that the forged prescription was transcribed and filled. The video footage shows Respondent transcribing the prescription for JH between 7:30 and 7:50 p.m. and then stapling shut the bag containing the hydrocodone/apap prescription. Respondent should have left the bag open and unsecured to allow counseling by the pharmacist because JH would have been a new customer at the Wal-Mart. Prescription bags are normally hung from a rack behind the register, but the video footage shows Respondent placing the bag with JH's prescription under the counter at the checkout register. The video footage later shows Respondent selling the bag with JH's prescription to a young male, later identified as Respondent's nephew, KL. During the transaction, Respondent reached over the counter and signed the electronic signature capture device for JH's prescription. Additional video footage showed KL leaving the pharmacy and getting into a white SUV that was registered to Adam Patrick, who was reported to be Respondent's boyfriend. (Tiffany testimony; State Exhibits 2, 8, 9)

5. Wal-Mart's security staff showed the video footage from the September 25th transaction to JH and his wife. JH's wife identified the young male who picked up the prescription as KL, who she used to babysit for. JH's wife reported that she knew KL through Respondent, who was a former friend of hers. Officer Bjornson then met with KL, who was then 15 years old, and his mother. KL told Officer Bjornson that he was paid \$50 by Adam Patrick to pick up a prescription for "J" on September 25, 2014. KL further stated that Patrick told him that Respondent (his aunt) would be working. KL told Bjornson that Respondent did not ask him any questions when he picked up the prescription and that Respondent signed for the prescription. KL further reported that he repeated the procedure about one week later, but he could not remember the name on the second prescription that he picked up. When KL's mother mentioned the name of JM, KL replied that he thought that was the name on the second prescription. KL's mother reported that JM is a friend of Adam Patrick's who is currently incarcerated. (State Exhibits 2, 13; Tiffany testimony)

6. Two additional hydrocodone prescriptions that were transcribed by Respondent and filled at the SE 14th Street Wal-Mart pharmacy were also identified as fraudulent.

- One prescription, dated September 26, 2014, had purportedly been phoned in by the same nurse practitioner as the September 25th prescription for JH. This prescription was also for 240 tablets of hydrocodone/apap 10/325 and was written for patient EM. The same nurse practitioner was again contacted, and she signed a statement attesting that this prescription was not authorized by her and that it was forged or altered. (Tiffany testimony; State Exhibits 2, 10);
- The other prescription was dated October 1, 2014, was for 300 tablets of hydrocodone/apap 10/325, and was written for patient JM, who was the same person previously identified as a friend of Adam Patrick. Officer Bjornson called the practitioner listed as the authorizing prescriber on this prescription, and the clinic told Bjornson that JM was not one of their patients. Security video footage from October 2, 2014 shows KL picking up the fraudulent prescription for JM from Respondent while she was working. (State Exhibits 2, 11, 12)

7. On October 23, 2014, Officer Bjornson spoke to Respondent by phone and recorded their conversation. Respondent admitted having her nephew KL pick up the prescription for JH. Respondent told Bjornson that she paid KL \$20 or \$30 and that she planned to kill herself with the pills. Respondent admitted that she knew JM but did not admit involvement with that prescription. (State Exhibits 2, 13)

8. On December 8, 2014, Compliance Officer Jennifer Tiffany sent Respondent a certified letter informing her of the allegations against her related to forgery of prescriptions and theft of controlled substances from the Wal-Mart Pharmacy. Respondent replied by email on December 18, 2014. Respondent wrote that the allegations that she was stealing hydrocodone and forging prescriptions were false. Criminal charges were filed against Respondent and were still pending as of the date of the hearing. (Tiffany testimony; State Exhibits 2, 14, 15)

9. Respondent was personally served with the Notice of Hearing and Statement of Charges by Jennifer Tiffany on May 12, 2015. Respondent failed to appear for hearing. (State Exhibit 17; Tiffany testimony)

CONCLUSIONS OF LAW

Iowa Code section 147.55(2013) provides, in relevant part, that the Board may revoke, suspend, or otherwise discipline a license for any of the following offenses:

...

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

8. Willful or repeated violations of the provisions of this chapter, chapter 272C, or a board's enabling statute.

9. Other acts or offenses as specified by board rule.

See also 657 IAC 36.1(4)"c" and "u."

Iowa Code section 155A.6A(5)(2013) and 657 IAC 3.30 authorize the board to suspend or revoke the registration of a registered pharmacy technician for any violation of the laws of this state, ... relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, 205, or 272C or any rule of the board.

Count I-Forging Prescriptions

Iowa Code section 155A.23(1)(a)(2013) provides, in relevant part, that a person shall not obtain or attempt to obtain a prescription drug or device by: (1) engaging in fraud, deceit, misrepresentation, or subterfuge; (2) Forging or altering a written, electronic or facsimile prescription or any written, electronic or facsimile order.

In addition, 657 IAC 36.1(4) provides, in relevant part:

36.1(4) *Grounds for discipline.* The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

j. Violating a statute or law of this state,...without regard to its designation as either a felony or misdemeanor, which statute or law

relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

...

The preponderance of the evidence in this record established that Respondent forged prescriptions for hydrocodone, a controlled substance, and engaged in additional acts of deception and misrepresentation that facilitated the prescriptions to be filled and picked up by persons for whom they were not legitimately prescribed. Respondent engaged in these acts while employed as a pharmacy technician. The evidence collected in the investigations, including but not limited to the security video footage, the statements made by KL and his mother, and Respondent's admissions to the Board's investigator, constitute overwhelming evidence of Respondent's active participation in creating and filling fraudulent prescriptions at the pharmacy where she was employed. Respondent has violated Iowa Code sections 147.55(8), 155A.6A(5), 155A.23 and 657 IAC 3.30 and 36.1(4)(j).

Count II-Misrepresentative Deeds

657 IAC 3.28(1) provides that it is unethical conduct for a pharmacy technician to make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

The preponderance of the evidence in this record established that Respondent engaged in unethical conduct through misrepresentative deeds when she participated in forging and filling forged hydrocodone prescriptions. Respondent has violated Iowa Code sections 147.55(3), (9), 155A.6A(5) and 657 IAC 3.30 and 36.1(4)"c" and "u."

Count III-Engaging in Unethical Behavior

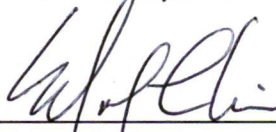
657 IAC 3.28(4) prohibits pharmacy technicians from exhibiting unethical behavior in connection with the technician's pharmacy employment. Unethical behavior includes but is not limited to theft. The preponderance of the evidence in this record established that Respondent engaged in unethical conduct, i.e. theft, when she participated in forging and filling forged hydrocodone prescriptions at the pharmacy where she was employed. Respondent has violated Iowa Code sections 147.55(3), (9), 155A.6A(5) and 657 IAC 3.28(4), 3.30 and 36.1(4)"c" and "u."

DECISION AND ORDER

The very serious nature of Respondent's violations and her failure to appear for hearing justifies the revocation of her registration as a pharmacy technician. IT IS THEREFORE ORDERED that pharmacy technician registration number 18129, issued to Sherri Marshall, is hereby REVOKED. If Respondent seeks reinstatement of her pharmacy technician registration in the future, the burden will be placed on her to show that the basis for the revocation no longer exists and that is in the public interest for her registration to be reinstated. 657 IAC 36.13(4).

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 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 1st day of September, 2015.



Edward Maier, Chairperson
Iowa Board of Pharmacy

cc: Laura Steffensmeier, Assistant Attorney General
Hoover State Office Building (LOCAL)

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.