

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2015-150
DIA NO. 16PHB001

JUSTIN ADAM
Registration No. 12376

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On January 12, 2016, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Justin Adam (Respondent), which charged him with engaging in unethical conduct, in violation of 657 IAC 3.28(1) and (2), 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 March 8, 2016 at 1:05 p.m. at the Iowa Memorial Union, 125 N. Madison Street, Iowa City, Iowa. The following members of the Board presided at the hearing: James Miller, Chairperson; Edward Maier; Edward McKenna; 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 Sue Mears, R.Ph., and State Exhibits 1-7.

FINDINGS OF FACT

1. The Board has issued pharmacy technician registration number 12376 to Respondent, which authorizes him 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 current through July 31, 2016. (State Exhibit 1)

2. On September 9, 2015, the Board received a complaint from Kendra Sieperda, who was the pharmacist-in-charge for the Siouxland Community Health Center Pharmacy in Sioux City, Iowa. According to the complaint, Respondent had been employed by Siouxland Community Health Center Pharmacy as a pharmacy technician. On August 24, 2015, Ms. Sieperda noticed that an increasing number of patients listed in their pharmacy system were covered by a prescription discount program called "RxBattle Prescription Savings Card." Ms. Sieperda questioned several employees who had not heard of this program and had not entered the program into the pharmacy's system. Ms. Sieperda then obtained reports from the pharmacy's software support company, which established that 366 of the pharmacy's patients had the RxBattle Prescription Savings program entered on their patient profiles. The earliest entry was made in April 2015, and 115 of the patients had the plan entered into their profiles in the previous week. All of the RxBattle plans contained the same unique group or "agent" number. (Mears testimony; State Exhibit 3)

Another pharmacy technician informed Ms. Sieperda that Respondent may have been entering the plans on the patients' profiles and was possibly receiving a monetary incentive for claims submissions through RxBattle. A further review of the individual claims that were processed through RxBattle established that Respondent's ScriptPro login was consistently associated with all of the claims submitted to RxBattle. (Mears testimony; State Exhibit 3)

Ms. Sieperda reported her findings to the pharmacy's compliance officer and human resources manager, and staff interviews were conducted on August 26, 2015. Ms. Sieperda expressed concerns that patients may not have been aware of their "enrollment" in the discount plan due to the sheer number of plan additions and claim submissions in the prior week. This would have been a breach of patient health information due to the information transferred during the submission of claims. Respondent's employment as a pharmacy technician was terminated following the pharmacy's compliance investigation and interviews. (Mears testimony; State Exhibit 3)

3. Sue Mears is one of the Board's Compliance Officers, and she was assigned to investigate the complaint against Respondent. Ms. Mears obtained information about the RxBattle Prescription Discount Card through the company's website. According to the website, patients may print out a discount card and take it to a pharmacy of their choice for processing. It was Mears' understanding that pharmacies are generally willing to accept this type of discount card, and it may result in the pharmacy charging a lower price for the drug. RxBattle specifically provides the opportunity for people to become "agents" for the company and to provide the free discount cards to others. In

exchange, the "agents" receive a commission for each prescription filled using the card. There was no cost to the patient for the discount card. (Mears testimony; State Exhibits 4, 5)

4. Sue Mears communicated with Kendra Sieperda on October 2, 2015 and again on October 15, 2015. Ms. Sieperda reported that Respondent had admitted that he was enrolled as an "agent" with RxBattle and had entered the RxBattle information into patients' accounts without their knowledge or consent. Respondent also admitted that he had received compensation from RxBattle. Respondent's employment was terminated on August 26, 2015, and Ms. Sieperda did not believe that he was currently working in a pharmacy. The pharmacy's initial report showed that approximately 977 prescriptions had been processed with the RxBattle discount plan. The pharmacy sent all of the patients a letter notifying them that the RxBattle plan had been added to their profile and that their prescription information had been provided to this discount program. (Mears testimony; State Exhibits 4, 6)

The pharmacy's staff interviewed all affected patients and identified patients that might have had third party insurance coverage to determine if the patients would have been better served using their insurance plan. Ms. Sieperda did not think that Respondent had deleted patients' insurance plans but rather believed that the patients might not have been providing the pharmacy their insurance information in a timely manner. For any patients identified as potentially having better prescription coverage through a third party plan, the pharmacy reversed the RxBattle claim and processed the prescriptions through the patients' insurance plan. The patients were issued a refund if their regular insurance provided a less expensive price. (Mears testimony; State Exhibit 4)

5. On October 5, 2015, Sue Mears sent Respondent a certified letter notifying him of the complaint that had been filed against him and providing an opportunity for him to respond. As of October 19, 2015, Respondent had not picked up this certified letter at the post office. The email address and phone number that the Board had on file for Respondent were no longer valid or in service. On October 19, 2015, Ms. Mears tried to call Respondent at a phone number provided by Kendra Sieperda and was able to leave a voice mail message for him. When Respondent returned Mears' call, he admitted that he had added the discount card information to patients' profiles. Respondent told Mears that he learned of the discount program while he was looking for a second job. Respondent also told Mears that he had been adding the discount program to patient profiles for a "few months" and that he did not ever adjudicate someone's prescription without filling and dispensing it. Respondent told Mears that he was not currently

working in a pharmacy and had no desire to work in a pharmacy again. Mears informed Respondent that he could surrender his pharmacy technician registration, but he had not done so as of the date of the hearing. (Mears testimony; State Exhibit 4)

6. On January 26, 2016, Sue Mears went to Respondent's home in Sioux City in an effort to personally serve him with the Notice of Hearing and Statement of Charges that the Board issued on January 12, 2016. No one answered, and Ms. Mears taped the Notice of Hearing and Statement of Charges and an Acceptance of Service form to Respondent's front door. Ms. Mears returned to Respondent's home on January 27, 2016 and these documents were no longer on the door. The Board later received the Acceptance of Service, which had been signed by Respondent on January 27, 2016. Respondent failed to appear for hearing. (State Exhibit 2; Mears testimony)

CONCLUSIONS OF LAW

Iowa Code section 147.55(2015) 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.

...

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)(2015) 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.

657 IAC 3.28 provides, in relevant part:

657-3.28(155A) *Unethical conduct or practice.* Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657-3.30(155A).

3.28(1). *Misrepresentative deeds.* A pharmacy technician shall not 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.

3.28(2). *Confidentiality.* In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657-8.16 (124,155A), any of the following:

- a.* A patient's name, address, social security number, or any other information that could be used to identify a patient;
- b.* The contents of any prescription drug order or medication order or the therapeutic effect thereof, or the nature of professional pharmaceutical services rendered to the patient;
- c.* The nature, extent, or degree of illness suffered by any patient; or
- d.* Any medical information furnished by the prescriber or the patient.

In fulfilling his duties as a registered pharmacy technician, Respondent is prohibited from acting in a manner that is deceitful, misrepresentative or misleading. Respondent is required to keep patient identification and prescription information confidential and is prohibited from disclosing patient information to third parties unless authorized to do so by the patient. The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(3), (9), 155A.6A(5) and 657 IAC 3.28(1) and (2), 3.30 and 36.1(4)"c" and "u" when he entered RxBattle Prescription Discount program information on pharmacy patient profiles without the patients' knowledge or consent and when he provided confidential patient information to RxBattle to process claims through this prescription discount plan. These violations were established by the pharmacy's records, by the information provided by Respondent's supervisor, and by Respondent's own admissions.

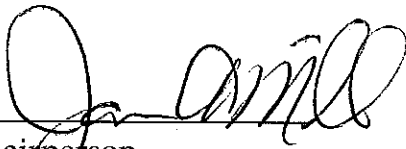
DECISION AND ORDER

The very serious nature of Respondent's ethical violations and his failure to appear for hearing justifies the revocation of his registration as a pharmacy technician. IT IS

THEREFORE ORDERED that pharmacy technician registration number 12376, issued to Justin Adam, is hereby REVOKED. If Respondent seeks reinstatement of his pharmacy technician registration in the future, the burden will be placed on him to show that the basis for the revocation no longer exists and that is in the public interest for his 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 4th day of May, 2016.



James Miller, 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.