

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	Docket No. 2017-25
)	DIA No. 18PHB0010
Technician Trainee Registration of)	
JUSTIN GARDNER)	FINDINGS OF FACT,
Registration No. 24407,)	CONCLUSIONS OF LAW,
)	DECISION, AND ORDER
Respondent.)	

STATEMENT OF THE CASE

On November 1, 2017, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Respondent Justin Gardner. The Statement of Charges alleges that Respondent: 1) diverted prescription drugs from a pharmacy for personal use or distribution; and 2) was convicted of a felony related to his profession or occupation or that would affect his ability to practice within the profession.

The hearing was held on January 16, 2018. The following members of the Board presided at the hearing: Sharon Meyer, chairperson; LaDonna Gratiias; Gayle Mayer; Edward McKenna; Brett Barker; and Jason Hansel. Assistant attorney general Laura Steffensmeier represented the State. Respondent Gardner did not appear.¹ The hearing was open to the public pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Laura Lockard assisted the Board in conducting the hearing and was instructed to prepare the Board's written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges. The record also includes hearing testimony of Sue Mears. The State introduced Exhibits 1 through 6, which were admitted as evidence.

FINDINGS OF FACT

At the time of the events in question, Respondent Justin Gardner held Iowa technician trainee registration number 24407. At all times relevant to this action, Gardner was employed at Walgreens in Council Bluffs, Iowa in the pharmacy department. (Exh. 5).

On or about March 14, 2017, Board staff became aware of a news article that reported Gardner had been arrested for stealing controlled substances from the pharmacy where

¹ Gardner was served the Statement of Charges & Notice of Hearing by publication after other methods were unsuccessful. (Exh. 2).

he worked. At around the same time, Walgreens Pharmacy in Council Bluffs, Iowa submitted a DEA Form 106 to the Board reporting the loss of controlled substances. The Board initiated an investigation regarding Gardner, based on the assumption that Gardner was responsible for the loss of controlled substances. (Exh. 3, pp. 9, 11, 12-13; Mears testimony)

Walgreens clarified during the Board's investigation that the DEA Form 106 related to two separate loss incidents at different stores; Gardner was responsible for only one. Gardner admitted to Walgreens and the Council Bluffs Police Department that he diverted hydrocodone 10-325, hydrocodone 5-325, and alprazolam 2 mg from the Walgreens store where he worked. Gardner wrote and signed a statement for Walgreens admitting to diverting hydrocodone 10-325 and alprazolam 2 mg. In his verbal and written statements, Gardner indicated that he was providing the pills to another individual for distribution. Walgreens discovered the theft on or about February 15, 2017. Walgreens' audit showed that from the incident attributable to Gardner, the following items were diverted: 1) 2,780 tablets of alprazolam 2 mg; 2) 1,217 tables of hydrocodone 10-325; and 3) 538 tablets of hydrocodone 5-325. (Exh. 3, pp. 14-20).

As a result of these actions, Gardner was arrested and charged with two counts of controlled substances violations and one count of second degree theft. Gardner ultimately pleaded guilty to one count of possession with intent to deliver hydrocodone in violation of Iowa Code section 124.401(1)(c)(8), a class C felony. (Exh. 3, pp. 9-10, 21-28).

CONCLUSIONS OF LAW

Count I: Diversion of Drugs

Pursuant to Iowa Code section 155A.6A(5), the Board is authorized to deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of any rule of the Board.² The Board's rules provide that discipline may be imposed when a registrant diverts prescription drugs from a pharmacy for personal use or distribution.³ The evidence establishes that Gardner was diverting drugs from Walgreens for distribution. As such, the violation alleged in Count I has been established.

Count II: Felony Conviction Related to Profession

Iowa Code section 147.55 provides, in relevant part, that the Board may revoke, suspend, or otherwise discipline a license for:

² At the time that these events occurred, Iowa law provided for a person in training to acquire national certification as a pharmacy technician to register with the Board as a pharmacy technician. Gardner was registered as a pharmacy technician under this trainee status.

³ 657 Iowa Administrative Code (IAC) 36.6(37).

5. Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

In addition, pursuant to Iowa Code section 155A.6A(5), the Board is authorized to deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of the laws of this state relating to prescription drugs or controlled substances. The Board's rules provide for the imposition of discipline where the licensee has been convicted of a felony related to the profession or occupation of the licensee, or a conviction of a felony that would affect the licensee's ability to practice within the licensee's profession.⁴

Gardner was convicted of a class C felony controlled substance violation that arose out of his employment at Walgreens as a registered pharmacy technician. The violation alleged in Count II has been established.

Sanction

The Board may consider a number of factors in determining the nature and severity of the disciplinary sanction to be imposed when a violation is established, including the relative seriousness of the violation as it relates to assuring a high standard of professional care; the facts of the violation; any extenuating circumstances; whether remedial action has been taken; and any other factors that reflect upon the competency, ethical standards, and professional conduct of the registrant.⁵

The violations committed by Gardner demonstrate that he is unfit to hold a registration as a pharmacy technician and presents a danger to the public health, safety, and welfare. Gardner did not appear at hearing to respond to these charges. The violations justify revocation of Gardner's trainee registration.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician trainee registration issued to Justin Gardner is hereby REVOKED. If Respondent seeks reinstatement of his registration the burden will be placed on him to show that the basis for the revocation no longer exists and that it is in the public interest for his registration to be reinstated.

IT IS FURTHER ORDERED pursuant to Iowa Code section 272C.6 and 657 Iowa Administrative Code 36.10, that Respondent Justin Gardner shall pay a \$75 fee to the Board for 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 30 days of receipt of the bill.

⁴ 657 IAC 36.6(5).

⁵ 657 IAC 36.7(2).

Dated this 14th day of March, 2018



Sharon Meyer
Chairperson, Iowa Board of Pharmacy

cc: Laura Steffensmeier, Assistant Attorney General

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 on the merits is timely initiated within the time provided by rule 35.30. 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 35.27. 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 35.27(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.