

**BEFORE THE IOWA BOARD OF
PHARMACY**

<p>RE: Certified PhT Registration</p> <p>Wendy Atcher Registration No. 12587</p> <p>Respondent</p>	<p>CASE NOS. 2023-0150</p> <p style="text-align: center;">COMBINED NOTICE OF HEARING, STATEMENT OF CHARGES, AND EMERGENCY ADJUDICATIVE ORDER</p>
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Pursuant to Iowa Code sections 17A.18A and 272C.3(4), and 657 Iowa Administrative Code (IAC) 35.24, the Iowa Board of Pharmacy (“Board”) files this Combined Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order (“Combined Proceedings”) against Wendy Atcher (“Respondent”).

A. TIME, PLACE, AND NATURE OF HEARING

1. **Hearing.** A contested hearing shall be held in these Combined Proceedings before the Iowa Board of Pharmacy. The hearing shall be held at the Iowa Board of Pharmacy at 6200 Park Avenue, Des Moines, Iowa 50321, on Tuesday, January 9, 2024, at 9:00 a.m. central standard time (“CST”).
2. **Prehearing Conference.** Any party may request a prehearing conference to discuss evidentiary issues before an Administrative Law Judge (“ALJ”) with the Iowa Department of Inspections, Appeals, and Licensing (“Department”). This scheduling conference is governed by the Board rules located at 657 IAC 35.22.
3. **Answer.** Within twenty (20) days of the date Respondent is served Notice of these Combined Proceedings, Respondent is required by 657 IAC 35.16 to file an Answer. If Respondent fails to file an Answer in this case, Respondent may be found in Default. For more information on Default, please review paragraph 11 below.

4. **Continuances.** A request for continuance of Hearing must be made in writing and parties must be noticed pursuant to the procedures outlined in 657 IAC 35.23. The Board hereby delegates authority to the ALJ to determine whether a continuance is warranted based upon the factors as outlined in 657 IAC 35.23(4).

5. **Presiding Officer.** The Board shall serve as the presiding officer, but the Board hereby delegates its authority to an ALJ from the Department to make initial rulings on prehearing matters and requests the ALJ be present to assist and advise the Board at the hearing.

6. **Hearing Procedures.** The procedural rules governing the conduct of the hearing are found at 657 IAC 35.25. At the hearing, the Respondent will be permitted to respond to the charges against him, produce evidence on his behalf, cross-examine witnesses, and examine any documents introduced at the hearing. Respondent may appear personally with counsel, or have counsel appear at Respondent's own expense. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

7. **Prosecution.** The Office of the Iowa Attorney General is responsible for representing the public interest (hereinafter "the State") in these Combined Proceedings. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Lindsey L. Browning, Assistant Attorney General, Hoover State Office Building, 2nd Floor, Iowa Attorney General's Office, 1305 E. Walnut Street, Des Moines, Iowa 50319; or via e-mail to lindsey.browning@ag.iowa.gov.

8. **Communications.** The Respondent may not contact board members by any means about these Combined Proceedings. Board members may only receive information about the Combined Proceedings when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings the State or the Respondent file with the Board and serve upon all parties in this case.

B. LEGAL AUTHORITY AND JURISDICTION

9. **Jurisdiction.** The Board has jurisdiction in this matter pursuant to Iowa Code §§ 17A, 147,155A, and 272C.
10. **Legal Authority.** If any of the allegations against the Respondent are founded, the Board has the authority to take disciplinary action against the Respondent pursuant to Iowa Code §§ 17A, 147, 155A, and 272C, as well as 657 IAC 36.7.
11. **Default.** If Respondent fails to appear at the hearing, the Board may enter a default decision or proceed with the hearing on the Combined proceedings and render a decision in Respondent's absence in accordance with Iowa Code § 17A.12(3) and 657 IAC chapter 35.

C. FINDINGS OF FACT

12. **Practice Setting:** Respondent is a certified pharmacy technician registered in the state of Iowa.
13. **Allegations:** A short and plain Statement of Matters Asserted ("Statement") was reviewed and approved by the Board at the time this Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order was filed. This Statement shall be furnished to Respondent as an attachment to this Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order. However, the Statement is not a public record.
14. **Incorporation for Purposes of Ruling:** The Statement was reviewed by the Board in order to make its finding that an Emergency Adjudicative Order was warranted in this matter and is incorporated herein.

D. STATUTES AND RULES INVOLVED

COUNT I

15. **Diversion.** Respondent is charged under 657 IAC 36.6(36) with diverting prescription drugs from a pharmacy for personal use or distribution.

E. CONCLUSIONS OF LAW AND PUBLIC POLICY CONCERNS

16. Iowa Code § 155A.2 states in pertinent part,

(i)t is the purpose of this chapter [in establishing the Iowa Board of Pharmacy] to promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacists...engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized.

Iowa Code § 155A.2(1).

17. In furtherance of its purpose as cited above, the Board

may...revoke, restrict, cancel or *suspend* a license...if the (B)oard finds that the...licensee has done any of the following:

(1) violated any provision of this chapter or any rules of the board adopted under this chapter.

Iowa Code § 155A.12(1)(emphasis added).

18. Additionally, pursuant to statute, the Board may take emergency action “as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare...”. Iowa Code § 17A.18A(2).

19. Based upon the facts alleged in the Statement, the Board recognizes the Respondent as an imminent threat to public safety and should not be permitted to practice pharmacy during the pendency of this action.

F. SETTLEMENT

20. **Settlement.** This matter may be resolved by settlement agreement. The procedural rules governing the Board’s settlement process are found at 657 IAC 35.24. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Lindsey L. Browning at lindsey.browning@ag.iowa.gov.

G. PROBABLE CAUSE FINDING

21. On November 7, 2023, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.

ORDER

IT IS THEREFORE ORDERED: that Respondent's certified pharmacy technician registration shall be **INDEFINITELY SUSPENDED** effective November 7, 2023.

A handwritten signature in cursive script that reads "Kathryn Stone". The signature is written in black ink and is positioned above a horizontal line.

Chairperson
Iowa Board of Pharmacy