

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
)	Docket No. 2023-0068
Certified Technician Registration of)	DIA No. 23IDPHPB0003
SARAH TAYLOR)	
Registration No. 23874,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On May 2, 2023, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order against Respondent Sarah Taylor. The Statement of Charges alleges that Respondent diverted prescription drugs from her employer pharmacy in violation of 657 Iowa Administrative Code 3.28(4). The Board's emergency adjudicative order indefinitely suspended Respondent's certified technician registration effective immediately and set the matter to be heard in conjunction with the hearing regarding the Statement of Charges.

The hearing was held on January 9, 2024. The following members of the Board presided at the hearing: Kathryn Stone, chairperson; Robert Egeland; Erik Maki; James Mennen; Dane Nealson; Joan Skogstrom; and Connie Connolly. Assistant attorney general Lindsey Browning represented the State. Respondent Taylor 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 Emily Kimes-Schwiesow 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, Statement of Charges, and Emergency Adjudicative Order; State's Exhibits 1 through 4; and the testimony of Maggie Phelps.

FINDINGS OF FACT

Respondent Sarah Taylor holds Iowa certified technician registration number 23874. At all times relevant to this action, Respondent was employed at CVS Pharmacy in Council Bluffs, Iowa. (Exh. 1)

¹ Taylor was served the Notice of Hearing, Statement of Charges & Emergency Adjudicative Order by personal service. (Exh. 4).

On April 10, 2023, a representative of CVS Pharmacy faxed a DEA Form 106 to the Board reporting that their employee, Respondent Taylor, had taken tramadol from the pharmacy. The form indicated Respondent admitted to taking 600 doses of tramadol. A total of 700 tablets of tramadol were lost or stolen and the pharmacy believed Respondent was responsible for all of them. (Exh. 1)

The matter was assigned to Compliance Officer Maggie Phelps for investigation. Ms. Phelps visited the pharmacy and interviewed the pharmacist in charge. They explained that discrepancies were discovered through cycle counts of inventory by staff. CVS Pharmacy conducted an internal investigation. CVS representative Richard Yaws led the internal investigation. He initiated additional cycle counts, reviewed employee records, and interviewed staff. Ultimately, Respondent Taylor admitted to taking 600 50mg tablets of tramadol, and indicated she took the medication for personal use. Respondent Taylor signed a written statement admitting to the diversion as well as the average wholesale price of \$498. Respondent Taylor's employment was terminated and the theft was reported to law enforcement. (Exhs. 1 -3; Phelps testimony)

Ms. Phelps made multiple attempts to communicate with Respondent Taylor during the course of her investigation via email and telephone. Respondent Taylor did not respond. (Phelps testimony)

CONCLUSIONS OF LAW

Emergency Adjudicative Order

The Board has authority to use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The Board may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication. Under these circumstances, the Board is required to issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the Board's decision to take agency action.² The agency record consists of any documents regarding the matter that were considered or prepared by the agency.³

Before issuing an emergency adjudicative order, the Board shall consider factors including, but not limited to, the following:

- a.* Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b.* Whether the specific circumstances that pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

² Iowa Code § 17A.18A(1)-(3).

³ Iowa Code § 17A.18A(6).

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.⁴

The Findings of Fact made by the Board in its May 2, 2023 Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order included the following: “The Board finds sufficient evidence to support the factual circumstances identified in Section D, above.” The referenced section D included:

Respondent’s Iowa certified technician registration number 23874 is currently active through July 20, 2023.

On multiple occasions from November 2022 to April 2023, Respondent took Tramadol 50 mg tablets from her employer pharmacy. Over this time period, Respondent took between 600 to 700 total 50 mg tablets.

The Board concluded that Respondent had violated the laws cited in Count 1 of the Statement of Charges and indicated her behavior was an on-going concern. The Board suspended Respondent’s certified technician registration effective May 2, 2023, and set the matter for hearing.

At the time of the Board’s issuance of its Emergency Adjudicative Order, it had engaged in sufficient factual investigation to determine that it was proceeding on the basis of reliable information. The Board received a DEA Form 106 notice regarding Respondent’s drug diversion from her employer pharmacy. The pharmacy did its own internal investigation, and Compliance Officer Phelps engaged in an investigation on behalf of the Board. Respondent Taylor admitted the theft to her employer in writing. She was unresponsive to attempts at communication during the course of Ms. Phelps’ investigation. Under these circumstances, the Board believes it acted within its authority in issuing the May 2, 2023 Emergency Adjudicative Order.

Count I:

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 provide that discipline may be imposed when a registrant engages in unethical conduct or practice harmful or detrimental to the public.⁵ The Board’s rules provide that a pharmacy technician shall not exhibit unethical behavior in connection with their pharmacy employment.

⁴ 657 Iowa Administrative Code (IAC) 35.35(1).

⁵ 657 IAC 36.6(3).

Unethical behavior includes, but is not limited to, theft.⁶ The evidence establishes that Respondent Taylor took tramadol from her employer, CVS Pharmacy, for personal use. As such, the violation alleged in Count I 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.⁷

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

DECISION AND ORDER

IT IS THEREFORE ORDERED that the pharmacy technician registration issued to Sarah Taylor is hereby REVOKED. 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 36.10, that Respondent Sarah Taylor 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.

Dated this 5th day of March, 2024



Kathryn Stone
Chairperson, Iowa Board of Pharmacy

cc: Lindsey Browning, Assistant Attorney General

⁶ 657 IAC 3.28(4).

⁷ 657 IAC 36.7(2).

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.