**BEFORE THE INDIANA BOARD OF PHARMACY**
**2013 IBP 0101**

**IN THE MATTER OF THE INDIANA PHARMACY TECHNICIAN CERTIFICATION OF:**

**DENNIS R. FLEMING, C. PH. T., CERTIFICATION NO. 67018261A**

FILED
JAN 16 2014
Indiana Professional Licensing Agency

## FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Indiana Board of Pharmacy ("Board") held an administrative hearing on January 13, 2014, in Room W064 of the Indiana State Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, concerning a complaint ("Complaint") filed against Dennis R. Fleming, C. Ph. T. ("Respondent") on November 15, 2013.

The State of Indiana ("Petitioner") was represented by Timothy M. Weber, Attorney. Respondent did not appear in person or by counsel.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 5-0-0, finds Respondent to be in default. The Board, by another vote of 5-0-0, issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order:

## FINDINGS OF FACT

1. Respondent's address on file with the Indiana Professional Licensing Agency is 1503 Barrington Drive, Auburn, Indiana 46706.

2. Respondent is a certified pharmacy technician in the State of Indiana having been issued certification number 67018261A on August 26, 2010.

3. At all times relevant herein, Respondent was employed as a certified pharmacy technician with CVS 06495 in Auburn, Indiana ("CVS").

4. On July 15, 2013, the Regional Loss Prevention Manager for CVS ("RLPM") received a call from a floater pharmacist working at CVS indicating the pharmacist had found drugs, including hydrocodone 5/500, in the trash can in the pharmacy area at closing.

5. On or about June 17, 2013, RLPM began conducting an investigation at CVS that included several audits, and the Respondent admitted orally and in writing to drug diversion the same day.

6. Respondent admitted to discarding the drugs in the trash on July 15, 2013 because Respondent believed another technician saw him consuming a tablet. Respondent stated that he would steal the drugs by "scooping" extra tablets during a fill, admitted that he occasionally would consume the tablets at work, and admitted to taking 300 Vicodin ES, 15 Sulfa Ds, and 30 Tamsulosin over the course of five months. Respondent's employment was suspended after these admissions.

7. On November 19, 2013, the Indiana Professional Licensing Agency ("IPLA") sent a hearing notice to Respondent at his listed address informing him of the date, time, and place of the administrative hearing on the Complaint scheduled for December 9, 2013.

8. Pursuant to Ind. Code § 4-21.5-3-20, Respondent was provided adequate notice of the hearing, and Respondent failed to appear for the scheduled hearing in person or by counsel on December 9, 2013.

9. On December 9, 2013, the Board voted 5-0-0 to issue a Notice of Proposed Default Order. On December 17, 2013, the Notice of Proposed Default Order was mailed to Respondent's address of record.

10. Respondent failed to submit a written response within seven (7) days as required by Ind. Code § 4-21.5-3-24.

11. On January 13, 2014, the Board voted, 5-0-0, to hold Respondent in default.

## ULTIMATE FINDINGS OF FACT

Respondent's conduct constitutes a violation of Ind. Code § 25-1-9-4(a)(8)(A), in that Respondent diverted 300 Vicodin ES, 15 Sulfa Ds, and 30 Tamsulosin from CVS.

## CONCLUSIONS OF LAW

Respondent's violations are cause for disciplinary sanctions which may be imposed singly or in combination such as censure, a letter of reprimand, probation, suspension, or revocation and a fine up to the amount of $1,000 per violation as detailed in Ind. Code § 25-1-9-9.

## ORDER

Based upon the above Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law, the Board issues the following Order:

Respondent's pharmacy technician certification is **REVOKED.**

**ORDERED** this 16th day of Janurary, 2014.

INDIANA BOARD OF PHARMACY

By: for
Nicholas W. Rhoad
Executive Director
Indiana Professional Licensing Agency

## CERTIFICATE OF SERVICE

I certify that a copy of the "Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order" has been duly served upon:

Dennis R. Fleming
1503 Barrington Drive
Auburn, IN 46706
**Service by U.S. Mail**

Timothy M. Weber, Attorney
Office of the Indiana Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, IN 46204
**Service by Email**

1/16/14
Date

Jessi N. Rager, Litigation Specialist

Indiana Board of Pharmacy
Indiana Government Center South
402 West Washington St., Room W072
Indianapolis, IN 46204
Phone: 317-234-2067
Fax: 317-233-4236
Email: pla4@pla.in.gov

**Explanation of Service Methods**
Personal Service: by delivering a true copy of the aforesaid document(s) personally.
Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.
Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.