

**BEFORE THE IOWA BOARD OF PHARMACY**

RE: Pharmacy License and CSA Registration of  <b>WALGREENS 05941</b> License No. 1128 Registration No. 1107653 Respondent	CASE NOS. 2021-0190 & 2022-0010  <b>SETTLEMENT AGREEMENT AND FINAL ORDER</b>
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Pursuant to Iowa Code sections 17A.12(5) and 272C.3(4), and 657 Iowa Administrative Code (IAC) 35.24, the Iowa Board of Pharmacy (“Board”) and Walgreens 05941 (“Respondent”) enter into the following Settlement Agreement and Final Order (“Order”) to settle a contested case currently pending before the Board.

The allegations contained in the Notice of Hearing and Statement of Charges shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. The Board issued a Notice of Hearing and Statement of Charges on May 3, 2022.
2. The Board has jurisdiction over Respondent and the subject matter of this proceeding.
3. The Factual Circumstances contained in the Notice of Hearing and Statement of Charges are hereby incorporated into this Order. Respondent denies the allegations contained in the Factual Circumstances and denies the allegations contained in the Statement of Charges, however, for purposes of settlement, Respondent acknowledges that the allegations contained in the Factual Circumstances in the Notice of Hearing and Statement of Charges, if proven in a contested case proceeding, may constitute grounds for the discipline agreed to in this Order. Respondent further acknowledges that the Factual Circumstances, by virtue of their incorporation into this Order, are now public and are available for inspection and copying in accordance with Iowa Code chapters 22 and 272C.
4. Execution of this Order constitutes the resolution of a contested case. Respondent has a right to a hearing before the Board on the charges, but Respondent waives the right to a hearing and all attendant rights, including the right to appeal or seek judicial review of the Board’s actions, by freely and voluntarily entering into this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
5. Respondent acknowledges that it has the right to be represented by counsel on this matter.
6. Respondent agrees that the State’s counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.

7. This Order is subject to approval by a majority of the full Board. If the Board does not approve this Order, it shall be of no force or effect to either party, and shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Order, it shall be the full and final resolution of this matter.

8. This Order constitutes disciplinary action. This Order shall be part of Respondent's permanent record and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

9. This Order shall not be binding as to any new complaints received by the Board.

10. Respondent understands the Board is required by federal law to report any adverse action to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank.

11. This Order, when fully executed, is a public record and is available for inspection and copying in accordance with the requirements of Iowa Code chapters 22 and 272C.

12. The Board's approval of this Order shall constitute a **FINAL ORDER** of the Board.

**IT IS THEREFORE ORDERED:**

13. Respondent's pharmacy license and CSA registration are hereby placed on **PROBATION** for a period of eighteen (18) months, subject to the following terms:

- a. Respondent shall establish in writing the staffing needs of the pharmacy and a plan to ensure staffing needs are met. The pharmacist in charge must agree to the staffing needs and the plan to ensure staffing needs are met and shall sign the written document and maintain it in the pharmacy, updating it as needed to address changes in the scope of services provided by the pharmacy.
- b. If Respondent is unable to be open during normal business hours due to lack of adequate staffing, Respondent must timely and appropriately notify patients and prescribers of the closure through signage and recorded message. The signage and recorded message must provide a telephone number that patients can provide to another pharmacy of their choice, to allow the other pharmacy to directly call to request transfer of prescriptions. Respondent must reverse any insurance claims for prescriptions that are awaiting pick-up when a transfer is requested.
- c. Any requests for transfer of prescriptions must be completed within one (1) business day after receipt of the request. Any pharmacists working at the pharmacy must be permitted to transfer prescriptions upon request.

- d. Within ten (10) days of this Order, Respondent must share this Order with all permanent employees of the pharmacy. For the duration of the probationary period, any newly hired permanent pharmacy employees must be given a copy of this Order prior to working in the pharmacy.
- e. Respondent shall be assessed a civil penalty in the amount of twenty thousand dollars (\$20,000), with payment of ten thousand dollars (\$10,000) stayed as set forth in this Order. Respondent shall submit payment in the amount of ten thousand dollars (\$10,000) within thirty (30) days of this Order. The check shall be made payable to the "Treasurer of Iowa" and shall be deposited in the general fund. The civil penalty should be mailed to the Iowa Board of Pharmacy, Attn: Amanda Woltz, 400 SW 8<sup>th</sup> St, Ste E, Des Moines IA 50309.
- f. Within sixty (60) days of this Order, all permanent pharmacists and technicians must complete two (2) hours of additional education on inventory management. During the period of probation, any new permanent pharmacists and technicians working at the pharmacy after sixty (60) days, must also have completed two (2) hours of additional education on inventory management. Respondent must maintain documentation verifying compliance with this requirement.
- g. Respondent commits to implementing its new inventory management system by September 30, 2022. If the new inventory management system is not operational by October 1, 2022, Respondent must submit one thousand five hundred dollars (\$1,500) of the stayed civil penalty for each month that implementation is delayed by the end of the month. To illustrate, if the inventory management system is not operational by October 1, 2022, Respondent must submit a civil penalty of \$1,500 by October 31, 2022; if the inventory management system is still not operational by November 1, 2022, Respondent must submit an additional civil penalty of \$1,500 by November 30, 2022; if the inventory management system is still not operational by December 1, 2022, Respondent must submit an additional civil penalty of \$1,500 by December 31, 2022; and if the inventory management system is still not operational by January 1, 2023, Respondent must submit an additional civil penalty of \$1,500 by January 31, 2023. Respondent agrees to provide training to pharmacy employees to ensure they understand how to use the inventory management system. Prior to transitioning to the new inventory management system, Respondent must perform a complete physical inventory of all controlled substances and must utilize these counts for the starting inventory in the new system.

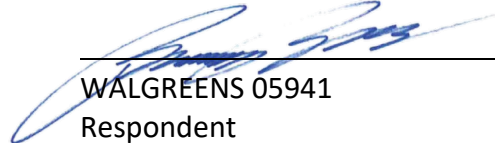
- h. During the probationary period, any required inventories or counts must be exact counts (no estimates).
- i. During the period of probation, Respondent agrees to immediately provide the expected quantity of specified controlled substances listed in the inventory management system and the actual on-hand quantity after a physical count to a Board compliance officer upon request. If there is a discrepancy between the expected quantity and the actual quantity of any controlled substance in Schedules III-V, Respondent has three (3) business days from the date the count was requested to reconcile the discrepancy and report back to the Board compliance officer. Respondent shall be assessed one thousand dollars (\$1,000) of the stayed civil penalty each time there is a discrepancy between the expected quantity and actual quantity of any controlled substance in Schedule II and each time there is an irreconcilable discrepancy between the expected quantity and the actual quantity of any controlled substance in Schedules III-V when discovered by a Board compliance officer or upon a count done at the request of a Board compliance officer.
- j. During the period of probation, Respondent shall reconcile its inventory management system inventory counts with the on-hand physical inventory count for all controlled substances on a quarterly basis (on or before November 30, February 28, May 31, and August 31 of each year) and document the reconciliation. This may be achieved through a documented audit and reconciliation of all controlled substances once every three months, or by routine documented cycle counts, so long as all controlled substances are counted every 90 days. Respondent must submit the written reconciliation to the Board on or before the identified dates above. Any discrepancies must be investigated and documented. The results of any investigations must be submitted to the Board upon completion of the investigation of the discrepancy, which in no case shall exceed thirty (30) days from the date of the on-hand physical inventory count.
- k. Respondent shall appear before the Board upon request for purposes of evaluating performance of the probationary period. Respondent shall be given reasonable notice of the date, time, and place for such appearances.
- l. Respondent shall abide by all state and federal laws and regulations governing the practice of pharmacy. Respondent shall operate in accordance with its policies and procedures.
- m. Any documentation required to be submitted to the Board pursuant to this Order should be emailed to [Amanda.Woltz@iowa.gov](mailto:Amanda.Woltz@iowa.gov) by the specified deadline unless otherwise directed.

14. Should Respondent violate the terms of this Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 124, 155A, and 272C and 657 IAC chapters 10 and 36.


By the signature below, signatory acknowledges they are authorized to sign this Settlement Agreement and Final Order on behalf of Respondent.

8/09/2022 \_\_\_\_\_

Date

  
\_\_\_\_\_  
WALGREENS 05941  
Respondent

This Settlement Agreement and Final Order is approved by the Iowa Board of Pharmacy on  
\_\_\_\_\_  
August 24, 2022.

  
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Chairperson  
Iowa Board of Pharmacy

**BEFORE THE IOWA BOARD OF PHARMACY**

RE: Pharmacy License and CSA Registration of  <b>WALGREENS 05941</b> License No. 1128 CSA Registration No. 1107653 Respondent	CASE NOS. 2021-0190 & 2022-0010  <b>NOTICE OF HEARING AND STATEMENT OF CHARGES</b>
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**COMES NOW** the Iowa Board of Pharmacy (“Board”) and files this Notice of Hearing and Statement of Charges against Walgreens 05941 (“Respondent”), 1251 Fourth St SW, Mason City IA 50401, pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 272C.3(1)(e), and 657 Iowa Administrative Code (IAC) 35.6 and 35.7.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on June 28, 2022, before the Board. The hearing shall begin at 9:00 a.m. and will be held in the Board conference room located at the Iowa Board of Pharmacy Office, 400 SW 8<sup>th</sup> St, Ste E, Des Moines, IA 50309. You may choose to attend the hearing in-person at the Board office or may attend electronically through the Zoom platform. Contact the Board office to obtain participation instructions if you wish to attend electronically.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to 657 IAC 35.16. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Filing of Pleadings. Pleadings shall be filed with the Board either by e-mail, if done in compliance with 657 IAC 35.17(2), to [Sharon.Smith@iowa.gov](mailto:Sharon.Smith@iowa.gov), or by mail/delivery to the following address: Iowa Board of Pharmacy, 400 SW 8<sup>th</sup> St, Ste E, Des Moines IA 50309.

Presiding Officer. The Board shall serve as presiding officer at the contested case hearing, but the Board hereby delegates to an Administrative Law Judge from the Department of Inspections and Appeals the authority to make initial rulings on prehearing matters and requests the administrative law judge be present to assist and advise the Board at the contested case hearing.

Hearing Procedures. The procedural rules governing the conduct of the contested case hearing, including prehearing matters, are found at 657 IAC chapter 35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues

of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. The hearing may be open to the public or closed to the public at your discretion, pursuant to Iowa Code section 272C.6(1) and 657 IAC 35.25(10).

Prosecution. The Office of Attorney General of Iowa is responsible for representing the public interest (the State) in this proceeding. Counsel for the State in this matter is Assistant Attorney General Laura Steffensmeier. Ms. Steffensmeier can be reached by phone at (515) 281-6690. Copies of pleadings should be provided to counsel for the State either by email to [Laura.Steffensmeier@ag.iowa.gov](mailto:Laura.Steffensmeier@ag.iowa.gov), or by mail/delivery to the following address:

Laura Steffensmeier  
Assistant Attorney General  
Hoover State Office Building—2<sup>nd</sup> Floor  
1305 E Walnut St  
Des Moines IA 50319

Communications. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the opportunity to participate, such as at the hearing or in pleadings you file and serve upon all parties in the case.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 124, 155A, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you pursuant to Iowa Code sections 155A.15(2) and 272C.3, and 657 IAC 8.3, 10.44, and 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 IAC 35.27.

## **C. STATEMENT OF CHARGES**

### **COUNT I**

Respondent is charged under 657 IAC 36.6(3) with practice harmful or detrimental to the public.

### **COUNT II**

Respondent is charged under 657 IAC 36.6(21) with violating a board rule, specifically 657 IAC 8.3(3)“a”, which requires the pharmacy to employ an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.

### **COUNT III**

Respondent is charged under 657 IAC 36.6(21) with violating a board rule, specifically 657 IAC 10.18, which makes the registrant responsible for ensuring that the perpetual inventory record for schedule II controlled substances is accurate and matches the actual on-hand inventory at all times.

### **COUNT IV**

Respondent is charged under 657 IAC 36.6(21) with violating a board rule, specifically 657 IAC 6.9, which requires a pharmacy to transfer prescriptions to another pharmacy upon request of a patient.

### **COUNT V**

Respondent is charged under 657 IAC 36.6(21) with violating a board rule, specifically 657 IAC 8.35(6)“d”, which imposes requirements when there is a change of pharmacist in charge.

### **COUNT VI**

Respondent is charged under 657 IAC 36.6(28) with failing to create and maintain complete and accurate records as required by state or federal law or regulation or rule of the board.

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent’s pharmacy license number 1128 is currently active through December 31, 2022.
2. Respondent’s CSA registration number 1107653 is currently active through May 31, 2024.
3. In response to a complaint, Respondent underwent an inspection in December 2021.
4. During the inspection, the Board compliance officer observed inadequate staffing. Respondent has experienced high staff turnover.
5. During the inspection, three different schedule II controlled substances were counted, and all three showed discrepancies between the perpetual inventory and the actual on-hand inventory.
6. Respondent had a permanent pharmacist in charge vacate the position on or around March 9, 2021. The Board did not receive notification of the temporary PIC who was appointed on or around March 10, 2021, and did not receive an application naming a new permanent pharmacist in charge until on or around December 27, 2021. Respondent was unable to readily retrieve a record showing that the required controlled substances inventory was completed on March 9, 2021.



7. During the week of January 17, 2022, Respondent was intermittently closed during regular business hours due to the lack of pharmacist coverage. When the pharmacy was able to find coverage and be open, the pharmacists were unable to transfer prescriptions when requested by patients. As a result, some patients were unable to access their medications.

**E. 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. To cancel a scheduled hearing, an executed settlement agreement must be received by the Board at least three (3) business days prior to the scheduled hearing. If you are interested in pursuing settlement in this matter, please contact the Assistant Attorney General identified above.

**F. FINDING OF PROBABLE CAUSE**

On May 3, 2022, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



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Chairperson  
Iowa Board of Pharmacy

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).