

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re:)	Case No. 2002-81
Pharmacist License of)	
APRIA HEALTHCARE, INC.)	STATEMENT OF CHARGES
License No. 988)	
Respondent)	

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2003).
3. Effective December 26, 2002, the Board renewed the general pharmacy license of Respondent, Apria Healthcare, Inc., allowing Respondent to engage in the operation of a pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. License number 988 is current until December 26, 2003.
5. Respondent is currently operating a general pharmacy at 11224 Aurora Avenue, Des Moines, Iowa 50322, with Matthew J. McNulty as pharmacist in charge

COUNT I

Respondent is charged under Iowa Code §§ 155A.12, 155A.27 (2003) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4) and 21 CFR 1304.11 & 1306.22(b)(3) with inadequate record keeping, including but not limited to failure to maintain controlled substances records in a readily retrievable manner.

COUNT II

Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a), 155A.15(2)(c), 155A.15(2)(d), and 155A.12 (2003) and 657 Iowa Administrative Code §§ 6.2, 6.7, 6.8, 36.1(4)(u) with failing to maintain accurate control over and accountability for drugs, including controlled substances.

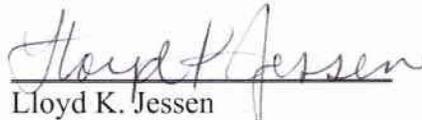
COUNT III

Respondent is charged under Iowa Code § 155A.12 (2003) and 657 Iowa Administrative Code § 36.1(4) with a lack of professional competency, including repeated departure from, or failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.

THE CIRCUMSTANCES

1. On or about September 10, 2002, the Board began an investigation regarding the diversion of controlled substances from the Respondent's pharmacy.
2. The Board's investigation revealed a pharmacist had been diverting drugs to her own use from Respondent's stock and tampering with drugs in Respondent's stock.
3. Additional investigation, including an audit of certain controlled substances, revealed that documentation regarding approximately 80 Schedule II prescriptions was missing.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 19 day of February 2002, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Katherine A. Linder, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re:)	Case No. 2001-81
Pharmacy License of)	
APRIA HEALTHCARE, INC.)	STIPULATION
License No. 988)	AND
Respondent)	CONSENT ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2003), The Iowa Board of Pharmacy Examiners (hereinafter, the "Board") and the Apria Healthcare, Inc. pharmacy located in Des Moines, Iowa (hereinafter, "Respondent") have agreed to settle a contested case currently on file with the Iowa Board of Pharmacy Examiners. The Statement of Charges filed against Respondent on February 19, 2003, and the licensee disciplinary proceeding shall be resolved without a hearing, as the Board and Respondent have agreed to the following Stipulation and Consent Order:

1. Respondent's license to operate a pharmacy was renewed December 26, 2002 as evidenced by Pharmacy License Number 988, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. General Pharmacy License Number 988 issued to and currently held by Respondent is current and in force until December 31, 2003.
3. The Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
4. A Statement of Charges was filed against Respondent on February 19, 2003.

5. Respondent denies the allegations set forth in the Statement of Charges, but enters into this Agreement voluntarily in order to resolve the Statement of Charges without the necessity of a hearing.

6. Respondent's license shall be placed on probation for two (2) years, upon the following conditions:

a. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, Respondent will provide to the Board typewritten policies and procedures of Respondent relating to (a) maintaining accountability for controlled substances and (b) maintaining effective security, controls and procedures to guard against the theft disappearance and diversion of prescription drugs and controlled substances. Following their review and approval by the Board, Respondent agrees to adopt, implement and adhere to these policies and procedures whenever operating as a pharmacy.

b. During probation, Respondent shall file sworn quarterly reports with the Board attesting to its compliance with the terms and conditions of this Stipulation and Consent Order. The reports shall be filed not later than December 5, March 5, June 5 and September 5 of each calendar year. Respondent's quarterly reports shall identify the current pharmacist in charge, all staff pharmacists and any further information requested by the Board in writing at least thirty (30) days in advance of the next reporting date.

c. Respondent's prescription department shall maintain perpetual inventories of all Schedule-2 controlled substances, with monthly reporting to the Board. Any

time a material discrepancy with Schedule-2 controlled substances is detected, Respondent shall notify the Board promptly and shall take appropriate steps to discover the cause of the discrepancy and take corrective action. Only a licensed pharmacist shall have a key to the controlled substance storage area and only a licensed pharmacist shall prepare and file Respondent's quarterly reports with the Board.

7. Respondent agrees to obey all federal and state laws, rules, and regulations substantially related to the operation of the Respondent's pharmacy located in Des Moines, Iowa.

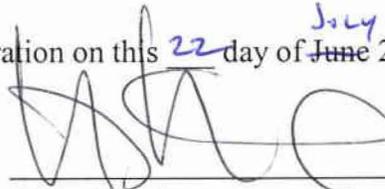
8. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend Respondent's Iowa license to operate a pharmacy or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 Iowa Administrative Code § 36.1.

9. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.

10. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

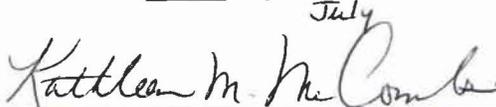
11. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

This Stipulation and Consent Order is voluntarily submitted by Apria Healthcare, Inc. to the Iowa Board of Pharmacy Examiners for its consideration on this 22 day of ~~June~~^{July} 2003.



Apria Healthcare, Inc.
By Matthew J. McNulty, R.Ph.
Pharmacist in charge,
Respondent

Subscribed and sworn to before me by Matthew J. McNulty, who has stated to me that he is the pharmacist in charge of the Apria Healthcare, Inc. pharmacy located in Des Moines, Iowa, and that he is authorized to sign this Stipulation and Consent Order on behalf of the Apria Healthcare, Inc. pharmacy located in Des Moines, Iowa on this 22 day of ~~June~~^{July} 2003.



NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on this 29 day of ~~June~~^{July} 2003.



KATHERINE A. LINDER, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Edwin McIntosh
Dorsey & Whitney