

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2013-4127
Nonresident Pharmacy License of)	
BAXTER HEALTHCARE)	NOTICE OF HEARING AND
CORPORATION)	STATEMENT OF CHARGES
)	
License No. 4127)	
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (“Board”) and files this Notice of Hearing and Statement of Charges against Baxter Healthcare Corporation (“Respondent”), 4225 S. 57th Street, Omaha, Nebraska 68117, pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent’s Iowa nonresident pharmacy license number 4127 is currently active and expires on December 31, 2014.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on August 26, 2014, before the Board. The hearing shall be held during the morning session beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8th Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on pre-hearing matters, and be present to assist and advise the Board at the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. 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. If you need to request an alternative time or date for the hearing, you must comply with the requirements in 657 Iowa Administrative Code rule 35.16. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The Office of Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address:

Sara Scott
Assistant Attorney General
Iowa Attorney General’s Office
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Ms. Scott can also be reached by phone at (515) 242-0104 or by e-mail at sara.scott@iowa.gov.

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. 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 with the Board office 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 147, 155A, and 272C (2013).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 147, 155A, and 272C (2013) and under 657 Iowa Administrative Code chapter 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 Iowa Administrative Code rule 35.21.

C. CHARGES

Count I

IMPROPER DELEGATION OF FUNCTIONS

Respondent is charged with improper delegation of functions by permitting an unlicensed or unqualified person to dispense or distribute prescription drugs, in violation of Iowa Code section 155A.4 and 657 Iowa Administrative Code rules 3.21, 6.7, and 36.1(4)(j), pursuant to Iowa Code section 155A.13A(3) and 657 Iowa Administrative Code rule 19.10.

Count II

FAILURE TO ENSURE PHARMACIST DOCUMENTED VERIFICATION

Respondent is charged with failing to ensure that a pharmacist provide and document the final verification of prescriptions, in violation of 657 Iowa Administrative Code rule 8.3, pursuant to Iowa Code section 155A.13A(3) and 657 Iowa Administrative Code rule 19.10.

D. FACTUAL CIRCUMSTANCES

1. Respondent holds Iowa nonresident pharmacy license number 4127, which is currently active and expires on December 31, 2014.
2. Respondent dispenses prescription dialysis solutions to patients in Iowa. Respondent permits unlicensed or unqualified individuals to enter, fill and dispense the prescriptions.

3. The pharmacist is only present in the pharmacy one day per week although the pharmacy operates multiple days per week.

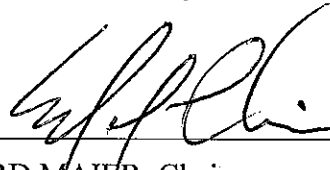
4. The prescription dialysis products are dispensed to Iowa patients without a pharmacist verifying the accuracy, validity, completeness and appropriateness of the medication.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Sara Scott at (515) 242-0104.

F. FINDING OF PROBABLE CAUSE

On this 30th day of April, 2014, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eight Street, Suite E
Des Moines, Iowa 50309-4688

cc: Sara Scott
Assistant Attorney General
Hoover Building, 2nd Floor
Des Moines, IA 50319

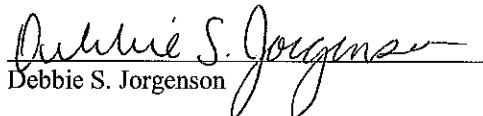
PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

- | | |
|--|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input checked="" type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number <u>9171999991703239255103</u> | <input type="checkbox"/> other _____ |

on the 1st day of May, 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.



Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2013-4127
Nonresident Pharmacy License of)	
BAXTER HEALTHCARE)	SETTLEMENT AGREEMENT AND
CORPORATION)	FINAL ORDER
)	
License No. 4127)	
Respondent.)	

Pursuant to Iowa Code sections 17A.10 and 272C.3(4) (2013), the Iowa Board of Pharmacy ("Board") and Baxter Healthcare Corporation ("Respondent") enter into the following Settlement Agreement and Final Order ("Order") to settle a disciplinary proceeding currently pending before the Board.

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

1. Respondent was issued Iowa nonresident pharmacy license number 4127, which is currently active and expires on December 31, 2014.
2. Respondent's address is 4225 S. 57th Street, Omaha, Nebraska 68117.
3. The Board has jurisdiction over the parties and the subject matter of these proceedings.
4. A Notice of Hearing and Statement of Charges was filed against Respondent on April 30, 2014. A contested case hearing in this matter is scheduled for August 26, 2014.
5. Respondent admits the factual circumstances described in the Statement of Charges, with the following clarification to item 4: Respondent dispensed peritoneal dialysis products pursuant to a Delegated Dispensing Permit per the requirements of its home state license, utilizing quality checks and retrospective pharmacist verification to ensure the accuracy, validity, completeness and appropriateness of the products. Respondent acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for discipline.
6. Execution of this Order constitutes the resolution of a contested case. Respondent has a right to a hearing on the charges, but waives its right to hearing and all attendant rights, including the right to appeal, by freely and voluntarily agreeing to this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
7. Respondent is freely and voluntarily entering into this Order.
8. Respondent acknowledges that it has a right to be represented by counsel on this matter.

9. The State's legal counsel may present this Order to the Board *ex parte*.
10. This Order is subject to approval by a majority of the full Board. If the Board fails to approve this Order, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Order, it shall be the full and final resolution of this matter.
11. This Order shall be part of the permanent record of Respondent 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.
12. 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.
13. The Board's approval of this Order shall constitute a **FINAL ORDER** of the Board.

IT IS THEREFORE ORDERED:

14. Upon the Board's approval of this Settlement Agreement and Final Order, Respondent is hereby **CITED** for permitting an unlicensed person to dispense prescription drugs and failing to ensure that a pharmacist provide and document verification of prescriptions and **WARNED** that Respondent's failure to comply with the laws governing the practice of pharmacy in the future could result in further discipline.
15. Respondent agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2500). This civil penalty shall be made payable to "Treasurer of Iowa" and mailed to the executive director of the Board within sixty (60) days of the Board's approval of this Settlement Agreement and Final Order. All civil penalty payments shall be deposited into the State of Iowa general fund.
16. Respondent certifies that it now has a pharmacist providing and documenting the final verification of every prescription for Iowa patients and has provided a written policy addressing this requirement.
17. Should Respondent violate the terms of this Settlement Agreement, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2013) and 657 Iowa Administrative Code chapter 36.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 21 day of July, 2014.



BAXTER HEALTHCARE CORPORATION
Respondent

By this signature, PATRICK FINERTY acknowledges s/he is the USCAN SUPPLY CHAIN LEAD for Baxter Healthcare Corporation and is authorized to sign this Settlement Agreement and Final Order on behalf of Baxter Healthcare Corporation.

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 26th day of August, 2014.



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Sara Scott
Assistant Attorney General
Hoover Building, 2nd Floor
Des Moines, IA 50319