

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2011-183 and 2012-27
Pharmacy License of)	
DOWS PHARMACY)	STATEMENT OF CHARGES
License No. 860,)	& NOTICE OF HEARING
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent was issued Iowa pharmacy license number 860. Respondent's pharmacy license was cancelled by letter on October 1, 2012.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on March 12, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the morning hearing 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 prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Theresa O'Connell Weeg
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Weeg may also be reached by phone at (515)281-5328 or by e-mail at Theresa.Weeg@iowa.gov.

Communications. You may contact the Board office (515)281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. However, you may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an 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. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Theresa O'Connell Weeg at (515)281-5328 or at Theresa.Weeg@iowa.gov.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2011).

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 17A, 147, 148C, and 272C (2011) and 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 PROFESSIONAL INCOMPETENCY

Respondent is charged under Iowa Code Section 147.55(2) and 272C.10(2) (2011); and 657 Iowa Administrative Code 36.1(4)(b), with professional incompetence.

COUNT II FAILURE TO MAINTAIN REQUIRED RECORDS FOR CONTROLLED SUBSTANCES

Respondent is charged under Iowa Code Sections 124.306, 124.402(1)(c), 155A.15(2)(h), 155A.23(1)(l) (2011) and 657 Iowa Administrative Code 10.33 (Schedule II perpetual inventory, including reconciliation); 10.34(4) (receipt and disbursement records); 10.34(5) (dispensing records); and 10.35(1)-(3) (physical count and record of inventory, including annual inventory).

COUNT III
VIOLATION OF LAWS RELATED TO
CONTROLLED SUBSTANCES

Respondent is charged under Iowa Code Section 155A.15(2)(c) (2011) and the rules of the Board for failing to comply with the laws related to controlled substances, including 657 Iowa Administrative Code 10.15 (security requirements), 10.16 (report of theft or loss), 10.17 (accountability of stock supply), 10.18 (disposal), 10.21 (prescription requirements), 10.28 (Schedule III, IV, or V refills).

COUNT IV
VIOLATING LAWS RELATED TO REQUIREMENTS
FOR REFILL OF PRESCRIPTIONS

Respondent is charged under Iowa Code Section 155A.15(2)(c) and 155A.23(1)(q) (2011); and 657 Iowa Administrative Code 6.16, 8.19(6), 10.28, 10.34, 21.5, and 36.1(4)(i) and (j) with violating the rules of the Board related to refills of prescription drugs.

COUNT V
VIOLATING LAWS RELATED TO OPERATION OF PHARMACY

Respondent is charged under Iowa Code Section 155A.15(2)(c) and (d) (2011) and 657 Iowa Administrative Code 8.3(1) with failing to ensure the operations of the pharmacy are in compliance with the law.

COUNT VI
VIOLATING LAWS RELATED TO ORAL MEDICATION ORDERS

Respondent is charged with violating Iowa Code Section 155A.15(2)(c) (2011) and 657 Iowa Administrative Code 8.19 for failing to comply with the rules of the Board related to the documentation of oral medication orders.

COUNT VII
VIOLATING LAWS RELATED TO PHARMACY PRACTICE

Respondent is charged with violating Iowa Code Section 155A.15(2)(c) (2011) for failing to comply with the rules of the Board related to pharmacy practice, including 657 Iowa Administrative Code 6.2 (responsibilities of pharmacist in charge); 6.8 (prescription processing documentation; and 8.8 (out-of-date drugs).

COUNT VIII
VIOLATING LAWS RELATED TO
SECURITY AND ORDERLINESS OF PHARMACY

Respondent is charged under Iowa Code Section 155A.15(2)(c) and 657 Iowa Administrative Code 8.5(4) and 10.15(2) with violating the rules of the Board related to the security and the orderliness of a pharmacy.

D. FACTUAL CIRCUMSTANCES

1. Respondent is a licensed pharmacy in the State of Iowa. Respondent's pharmacy license was cancelled on October 1, 2012.
2. At all times material to this Statement of Charges, Respondent was operating a general pharmacy in Dows, IA, with Mark Odland as the pharmacist in charge.

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3. A routine Board inspection in December 2011 of Dows Pharmacy revealed numerous deficiencies:
 - a. At the time of the inspection, the most recent entries in the pharmacy's schedule II controlled substances perpetual inventory were from 2009. The annual controlled substance inventory was incomplete.
 - b. The pharmacy's stock, including controlled substances, was spread throughout the pharmacy in a random, disorganized fashion.
 - c. The pharmacy door was secured by a padlock. The door hinges were on the outside of the pharmacy, attached to the building with screws. The pharmacist in charge reported that there had been five break-ins between November of 2009 and May of 2011.
 - d. Complete records of controlled substance purchases and sales were not being maintained. Verification of controlled substance refills was not being done.
 - e. Expired medications were stored with in-date medications.
 - f. Deficiencies identified in a 2009 Board inspection had not been corrected, despite the fact that the pharmacist in charge stated in a report to the Board in March 2009 that they had been corrected.
 - g. The pharmacist in charge was knowingly re-filling prescriptions without prescriber authorization.

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4. From 2008 through 2012, and on numerous occasions for numerous patients, Respondent's pharmacist in charge knowingly refilled prescriptions for

controlled and non-controlled prescription drugs without the authorization of the prescriber.

- a. Respondent's pharmacist in charge admitted he documented these refills by creating a new prescription off the old medication order and using a portion of the original prescription label as the hard copy; or by altering pharmacy records by adding refills to the original prescription.
 - b. Many patients who received refills were taking drugs that required monitoring by the health care provider who authorized the original prescription. Respondent provided refills to these patients despite the fact that the patients had not been seen by their health care provider for months or even years.
5. Respondent's pharmacist in charge did not properly document medication orders received by telephone by recording them on a prescription blank. Instead, he entered those orders directly into the computer.

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 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Theresa Weeg.

F. PROBABLE CAUSE FINDING

On this 8th day of January, 2013, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Theresa Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2011-183 and 2012-27
Pharmacy License of)	
DOWS PHARMACY)	
License No. 860,)	SETTLEMENT AGREEMENT
Respondent.)	AND FINAL ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy and Dows Pharmacy, Respondent, enter into the following Settlement Agreement and Final Order to settle a licensee disciplinary proceeding currently pending before the Board.

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

1. Respondent was issued Pharmacy License No. 860. That license was cancelled by letter on October 1, 2012.
2. A Statement of Charges was filed against Respondent on January 8, 2013.
3. Respondent was at all times relevant to the Amended Statement of Charges operating a general pharmacy in Dows, Iowa, with Mark Odland as the pharmacist in charge.
4. The Board has jurisdiction over the parties and the subject matter of these proceedings.
5. Respondent has chosen not to contest the allegations in the Statement of Charges

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and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.

6. Dows Pharmacy no longer holds an Iowa pharmacy license. However, to resolve the pending charges, on the date of the Board's approval of this Settlement Agreement and Final Order, Respondent shall submit a \$2000.00 civil penalty to the Board. This civil penalty shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board within ten (10) days of the date this Settlement Agreement is approved by the Board. All civil penalty payments shall be deposited into the State of Iowa's general fund.
7. Should Respondent violate or fail to comply with any of the terms and conditions of this Settlement Agreement and Final Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacy license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2011) and 657 IAC 36.
8. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final 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 Final Order.
9. The State's legal counsel may present this Settlement Agreement and Final Order to the Board.
10. This Settlement Agreement and Final Order 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 the Board or Respondent. If the Board approves this

Settlement Agreement and Final Order, it shall be the full and final resolution of this matter.

11. The Board's approval of this Settlement Agreement and Final Order shall constitute a FINAL ORDER of the Board.

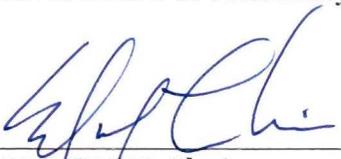
This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the ____ day of _____ 2012.



DOWS PHARMACY, Respondent
By Randy Moad, R.Ph.
Pharmacist in Charge

By his signature Randy Moad acknowledges he was the pharmacist in charge of Dows Pharmacy and is authorized to sign this Settlement Agreement and Final Order on behalf of Dows Pharmacy.

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 26 day of June 2013.



~~SUSAN M. FREY~~, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Theresa O'Connell Weeg
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319