

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	Case No. 2012-184
Nonresident Pharmacy License of	)	
<b>EXCELLE RX</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 3435,	)	<b>&amp; NOTICE OF HEARING</b>
Respondent.	)	

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**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 nonresident pharmacy license number 3435. Respondent's license is currently active and will expire on December 31, 2013.

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

Hearing. A disciplinary contested case hearing shall be held on August 27, 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. 8<sup>th</sup> 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  
2<sup>nd</sup> 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 VIOLATING LAWS OF ANOTHER STATE**

Respondent is charged pursuant to Iowa Code § 155A.15(2)(c) (2013), and 657 Iowa Administrative Code §§ 36.1(4)(j) and 36.1(4)(ad), with violating the laws of Maine, which laws relate to the practice of pharmacy.

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent is a licensed nonresident pharmacy in the State of Iowa. Respondent's nonresident pharmacy license is active and will expire on December 31, 2013.
2. At all times relevant to this Statement of Charges, Respondent operated a pharmacy at 2525 Horizon Lake Drive Suite 101, Memphis, Tennessee 38133.

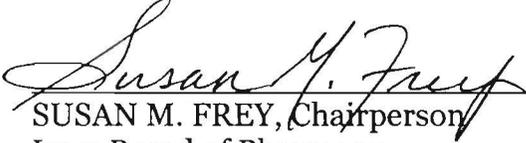
3. In November of 2012, Respondent self-reported discipline in Maine. The disciplinary charges arose from Respondent's failure to disclose a settlement agreement with the DEA.
  - a. In the October 2, 2007, settlement agreement with the DEA, Respondent agreed to pay the United States \$540,000. The agreement stated the DEA alleged that Respondent had on numerous occasions sent controlled substance prescriptions to hospice patients prior to or without receiving the physician's signature.
  - b. On October 23, 2012, Respondent entered into a Consent Agreement with the Maine Board of Pharmacy for failure to disclose the 2007 settlement with the DEA on its license renewal application in Maine. Respondent accepted a warning from the board and agreed to pay a \$2000 fine.

#### **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 23<sup>rd</sup> day of April, 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

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>9171999991703106849985</u>                                 | <input type="checkbox"/> other _____      |
- on the 26<sup>th</sup> day of April, 2013.

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

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Re:	)	Case Nos. 2012-184
Nonresident Pharmacy License of	)	
<b>EXCELLERX</b>	)	<b>SETTLEMENT AGREEMENT</b>
License Nos. 3435, 3631 and 3638	)	<b>AND FINAL ORDER</b>
	)	

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Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy and excelleRx, 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 Nonresident Pharmacy License No. 3435 for its Memphis, TN facility. That license is active and current until December 31, 2014.
2. Respondent was issued Nonresident Pharmacy License No. 3631 for its Sharon Hill, PA facility. That license is active and current until December 31, 2014.
3. Respondent was issued Nonresident Pharmacy License No. 3838 for its Philadelphia, PA facility. That license is active and current until December 31, 2014.
4. Respondent at all times relevant to the Statement of Charges operated a pharmacies at 2525 Horizon Lake Drive, Suite 101, Memphis, Tennessee 38133; 512 Elmwood Avenue, Sharon Hill, PA 19079, and 1601 Cherry Street, Suite 1700, Philadelphia, PA 19102
5. The Board has jurisdiction over the parties and the subject matter of these proceedings.

6. Respondent has chosen not to contest the allegations in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.

On the date of the Board's approval of this Settlement Agreement and Final Order, Respondent is hereby cited and warned that Respondent's failure to comply with the laws governing the practice of pharmacy in the future could result in further discipline. Respondent shall submit a \$5000.00 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.

Respondent has submitted to the Board for its approval policies and procedures for the dispensing of controlled substances, including verification of the completeness of controlled drug prescriptions.

- a. Respondent shall comply with all applicable Iowa pharmacy law and rules and related federal requirements for controlled substances while operating its pharmacies.
- b. Additionally, at this time Respondent is in settlement discussions with several other states related to the same underlying matters contained in the Statement of Charges. Respondent will self-report to the Iowa Board of Pharmacy upon final approval of any other settlement agreements resulting in disciplinary action in connection with such underlying matters upon final resolution with the individual state Boards.

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 nonresident 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 27 day of October, 2014.

  
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For excelleRx, Respondent

By this signature, Scott Beach acknowledges, s/he is the Secretary for Respondent excelleRx and is authorized to sign this Settlement Agreement and Final Order on

behalf of Respondent.

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 19<sup>th</sup> day of November 2014.



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

cc: Meghan Gavin  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319  
Phone (515) 281-6736

Kate Woods, Esquire  
Senior Director, Corporate Compliance  
excelleRx, Inc.  
1601 Cherry Street  
Suite 1700  
Philadelphia, PA 19102