

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No 2007-120
Pharmacist License of)	Case No. 2008-65
JEFFREY D. FABER)	Case No. 2008-96
License No. 15266,)	Case No. 2008-110
Respondent)	Case No. 2008-129
)	
)	
)	STATEMENT OF CHARGES
)	

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

1. He is the Executive Director of the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 155A and 272C (2009).
3. Jeffrey D. Faber (hereinafter, "Respondent") was originally licensed as a pharmacist in Iowa, following examination, on July 12, 1978, as evidenced by license number 15266.
4. Respondent's pharmacist license number 15266 is current and active until June 30, 2010 subject to the laws of the State of Iowa the rules of the Board.
5. Respondent's current address is 1025 Central Avenue, SW, LeMars, Iowa.
6. Respondent was, at all times material to this statement of charges, employed as the pharmacist in charge at Hy-Vee Pharmacy 1382, located at 1201 12th Avenue SW, LeMars, Iowa 51031.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

COUNT II – CIRCUMVENTING COUNSELING REQUIREMENTS

Respondent is charged under Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(w) with attempting to circumvent patient counseling requirements.

COUNT III – FAILURE TO ACT AS PHARMACIST IN CHARGE

The Respondent is charged under Iowa Code § 155A.12(1) (2005) and 657 Iowa Administrative Code § 6.2 with failing to perform the duties of a pharmacist in charge.

COUNT IV – FAILURE TO MAINTAIN ADEQUATE RECORDS

Respondent is charged under Iowa Code § 155A.12(4) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(ac) and 36.1(4)(u), with failing to maintain complete and adequate records of purchases, sales and disposal of drugs listed in the controlled substances act.

COUNT V – FAILURE TO MAINTAIN CONTROL OVER DRUGS

Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a) and 155A.12(1) (2009), and 657 Iowa Administrative Code §§ 6.7 and 36.1(4)(u), with failing to maintain control over and accountability for drugs, including controlled substances.

COUNT VI – EMPLOYING UNREGISTERED PERSONS AS TECHNICIANS

Respondent is charged under Iowa Code § 155A.12(1) (2009) and 657 Iowa Administrative Code § 36.1(4)(aa) with knowingly aiding, assisting and procuring and employing non-technicians to perform the functions of a pharmacy technician.

B. CIRCUMSTANCES

On November 14, 2007 an investigation (#2007-120) was commenced, revealing the following:

1. Hy-Vee operated two pharmacies in LeMars. A single Hy-Vee pharmacy (Respondent) was created by consolidating the two separate Hy-Vee locations. The pharmacies were merged on September 23, 2007, with Respondent as pharmacist in charge.
2. At the time of the physical consolidation, Hy-Vee attempted to consolidate the records of the two stores, which were maintained on different software. Record consolidation was not successfully performed. Respondent acknowledged that, after

the pharmacy consolidation, inventory records were incorrect and, specifically, records relating to schedule II controlled substances were incorrect.

3. Shortly after consolidation, dispensing errors occurred (e.g., a Z-Pak dispensed instead of cholestyramine powder). Nevertheless, errors were not logged into Hy-Vee's quality assurance program, as the program had not been implemented. Hy-Vee's customers had to wait extended periods to receive prescription fills.
4. An inspection of Hy-Vee's LeMars pharmacy on March 25, 2008 revealed 21 deficiencies, including the following:
 - a. Pharmacy cashiers were packaging prescriptions and were permitted, pursuant to the pharmacy policies and procedures, to perform prospective drug utilization review.
 - b. The Pharmacy's policy and procedure manual was outdated, incomplete and legally incorrect (e.g., permitting technicians to perform prospective drug utilization review; provisions for counseling were incorrect). Parts of the manual refer to K-Mart policies and procedures.
 - c. Expired drugs were in pharmacy stock.
 - d. Documentation of employee training was missing.
 - e. Continuous Quality Improvement (CQI) records were incomplete, and failed to include any record of errors involving long term care facilities.
 - f. Pharmacist licenses were not displayed.
 - g. Refrigeration practices were incorrect.
 - h. Bulk compounding records were incomplete, and labels on products did not list each ingredient or strength of ingredient.
 - i. The annual controlled substance inventory was not timely completed.
 - j. DEA 222 forms were not being correctly maintained.
 - k. Perpetual inventory records for controlled substances were being revised without preparation of an incident report.
 - l. The pharmacy's permanent log did not list unique codes or initials for 9 of the 12 technicians.
5. Counseling was not being provided to pharmacy patients who obtained fills of new prescriptions.

On July 9, 2008 a second investigation (#2008-65) was commenced, revealing the following:

6. At all times material to this investigation, and all other investigations described below, Respondent was employed as the pharmacist in charge at the Hy-Vee pharmacy in LeMars, Iowa.
7. On March 26, 2008, a patient was prescribed Toprol XL 200mg. On the same day, the patient was dispensed Topamax 200mg by the Hy-Vee pharmacy in LeMars. The medication was dispensed in a container labeled as Toprol XL 200mg.

8. The verifying pharmacist (not the Respondent) not only failed to notice the error, he failed to counsel the patient regarding Toprol, which was a new medication for the patient.

On September 24, 2008 a third investigation (#2008-96) was commenced, revealing the following:

9. On September 18, 2008 a patient who had been prescribed Vibramycin (Doxycycline) 100mg took the prescription to the Hy-Vee pharmacy in LeMars, where she was told by a pharmacist (other than Respondent) that he was having difficulty reading the script. Despite this difficulty, the prescriber was not contacted to verify the prescription or the prescriber's name.
10. The patient was dispensed Nitrofurantoin 100mg, instead of Vibramycin. The prescriber name was incorrect on the label of the medication dispensed. Respondent checked the prescription fill before it was dispensed.
11. Respondent claimed to be unaware of the dispensing error, however the patient reported the error to the pharmacy when she filled a subsequent prescription (a Z-pak) for treatment of the same illness.

On October 21, 2008 a fourth investigation (#2008-110) was commenced, revealing the following:

12. On October 15, 2008, a patient phoned the Hy-Vee pharmacy seeking an early refill of her prescription for hydrocodone APAP 500. The patient's prescriber had provided the pharmacy specific instructions with the prescription: "must last one month. Do not fill early."
13. Despite the prescriber instructions, 90 tablets were dispensed to the patient on October 15, 2008 – 13 days before the authorized refill date.
14. Respondent did not fill or check this prescription.

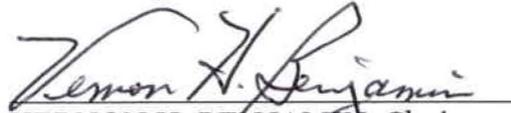
On December 17, 2008 a fifth investigation (#2008-129) was commenced, revealing the following:

15. A patient, who had received a prescription for 15 tablets of Tylenol 3, was dispensed 15 tablets of Furosemide 40 mg instead.
16. Respondent was not the dispensing or checking pharmacist.

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 1st day of June 2010, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.


VERNON H. BENJAMIN, Chairperson
Iowa Board of Pharmacy
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

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BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2007-120, 2008-65,
Pharmacist License of)	2008-96, 2008-110 and 2008-129
JEFFREY D. FABER)	
License No. 15266)	STIPULATION
Respondent)	AND
)	CONSENT ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2009), the Iowa Board of Pharmacy (hereinafter, "Board") and Jeffrey D. Faber (hereinafter, "Respondent"), enter into the following Stipulation and Consent Order settling a licensee disciplinary proceeding currently pending before the Board.

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 a license to practice pharmacy in Iowa on July 12, 1978, following examination, as evidenced by Pharmacist License Number 15266 which is recorded in the permanent records of the Board.
2. The Iowa pharmacist license issued to and held by Respondent is active and current until June 30, 2012.
3. The Board has jurisdiction over Respondent and jurisdiction over the subject matter of these proceedings.
4. A Statement of Charges was filed against Respondent by the Board on June 1, 2010.
5. Respondent was, at all times material to the Statement of Charges, employed as the pharmacist in charge at Hy-Vee Pharmacy 1382, 1201 12th Avenue SW, LeMars,

Iowa 51031.

6. Respondent denies the allegations contained in the Statement of Charges, but enters into this Stipulation voluntarily in order to resolve the Statement of Charges without the necessity of a hearing. Respondent acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

7. Upon the Board's approval of this Stipulation and Consent Order, Respondent's Iowa pharmacist license shall be placed on probation. Probation is granted under the following conditions, which Respondent agrees to follow:

- a. The period of probation shall be a minimum of three (3) years provided, however, that only those time periods during which Respondent is employed as a pharmacist shall count toward exhaustion of the probationary term.
- b. Within nine (9) months after the date of the Board's approval of this Stipulation and Consent Order, Respondent must take and pass the Multi-State Pharmacy Jurisprudence Exam (MPJE), Iowa edition.
- c. Respondent shall inform the Board, in writing, of any change of home address, place of employment, home telephone number, or work telephone number, within ten (10) days of such a change.
- d. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer, and any pharmacist-in-charge he works under, to report to the Board in writing

acknowledging that the employer and the pharmacist-in-charge have read this document and understand it. It shall be Respondent's responsibility to assure that these reports are provided to the Board.

e. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing his performance as a pharmacist during Respondent's probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.

f. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy.

g. Respondent shall comply with such other reasonable terms as the Board may wish to impose.

8. Upon the Board's approval of this Stipulation and Consent Order, Respondent shall be assessed a civil penalty in the amount of \$2,500. This civil penalty shall be paid promptly after the Board's approval of this Stipulation and Consent Order, by check made payable to the Treasurer of Iowa and mailed to the executive director of the Board. All civil penalty payments shall be deposited into the State of Iowa general fund.

9. Should Respondent violate or fail to comply with any of the terms and conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2009), and 657 IAC § 36.

10. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all right to a

contested case hearing on the allegations contained in the Statement of Charges, and waives any objection to this Stipulation and Consent Order.

11. The State's legal counsel may present this Stipulation and Consent Order to the Board.

12. This Stipulation and Consent 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 Stipulation and Consent Order, it shall be the full and final resolution of this matter.

13. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board.

This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 26 day of January 2011.


JEFFREY D. FABER, R.Ph.
Respondent

Subscribed and sworn to before me by Jeffrey D. Faber on this 26th day of January 2011.




NOTARY PUBLIC IN AND FOR
THE STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 8th day of March 2011.


VERNON H. BENJAMIN, Chairperson

Iowa Board of Pharmacy
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

Thomas Crabb, R.Ph., J.D.
418 6th Avenue, Suite 200
Des Moines, Iowa 50309-2408

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