

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2006-25
Pharmacist License of)	
JOHN E. GUCK,	)	STATEMENT OF CHARGES
License No. 18556,)	
Respondent.)	

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

1. He is the Executive Director for the Iowa Board of Pharmacy (hereinafter referred to as the "Board") 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 (2007).
3. On December 12, 1995, the Board issued John E. Guck (hereinafter, "Respondent"), by reciprocity, a license to engage in the practice of pharmacy in Iowa, as evidenced by license number 18556, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license is current and active through June 30, 2009.
5. Respondent's current address is 2241 Ivory Drive, Libertyville, IA 52567.
6. At all material times, Respondent was employed as the pharmacist in charge at the Jefferson County Hospital, 400 Highland Avenue, Fairfield, Iowa 52556.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged with a lack of professional competency, in violation of Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(b), 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 – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 155A.12(1) (2007), 155A.21 (2007) and 657 Iowa Administrative Code § 36.1(4)(j).

COUNT III – ILLEGAL DISTRIBUTION OF DRUGS

Respondent is charged with distribution of drugs for other than lawful purposes in violation of Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(h), specifically, diversion and distribution of drugs to himself in the absence of a prescription.

COUNT IV – INABILITY TO PRACTICE PHARMACY DUE TO CHEMICAL ABUSE

The Respondent is charged with the inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse in violation of Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code §§ 36.1(4)(d) and 36.1(4)(m).

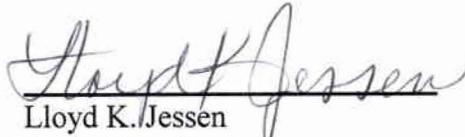
COUNT V – INADEQUATE RECORD KEEPING

Respondent is charged with inadequate record keeping, including inadequate record keeping relating to controlled substances, and the making of false statements in pharmacy records, in violation of Iowa Code §§ 124.308(3), 155A.12(4), 155A.12(5), 155A.23(2) (2007) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4)(ac) and 21 CFR 1304.11 & 1306.22(b)(3), due to Respondent's failure to maintain accurate records of prescription medications dispensed.

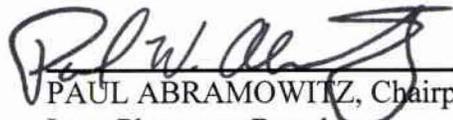
B. CIRCUMSTANCES

Circumstances supporting the above charges are set forth in Attachment A.

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 Director

On this 25 day of October 2007, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



PAUL ABRAMOWITZ, Chairperson
Iowa Pharmacy Board
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 PHARMACY BOARD OF

THE STATE OF IOWA

Re:

Pharmacist License of

JOHN E. GUCK

License No. 18556

Respondent

) Case No. 2006-25

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**STIPULATION
AND
CONSENT ORDER**

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

Allegations specified in a Statement of Charges filed 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 December 12, 1995, by reciprocity, as evidenced by Pharmacist License Number 18556, 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, 2011.
3. Respondent was, at all times material to the Statement of Charges, employed as a pharmacist in the Jefferson County Hospital.
4. A Statement of Charges was filed against Respondent by the Board on October 25, 2007.

5. The Board has jurisdiction over the parties and jurisdiction over the subject matter of these proceedings.
6. Respondent does not contest the allegations set forth in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.
7. On the date of the Board's approval of this Stipulation and Consent Order, Respondent's license shall be suspended indefinitely. Suspension of Respondent's license may be terminated only at such time as Respondent:
 - a. Obtains a complete, current physical and mental health evaluation – including a substance abuse evaluation – from a physician/treatment provider approved in advance by the Board.
 - b. Delivers to the Board a fully documented, written summary of the current physical and mental health evaluation -- including a substance abuse evaluation -- of Respondent which concludes that Respondent is mentally and physically fit to practice pharmacy.
 - c. Permits the Board complete access to his medical records and records of evaluation and treatment.
8. At such time as Respondent is able to deliver to the Board a fully documented, written summary of a current physical and mental health evaluation, including a substance abuse evaluation, which concludes that Respondent is mentally and physically fit to practice pharmacy, Respondent may petition the Board for (a) termination of the suspension of his license and (b) commencement of a period of probation.
9. In the event the Board determines that Respondent's license suspension should be

terminated, Respondent's license to practice pharmacy shall be placed on probation on terms which shall include, but not be limited to, the following:

- a. Respondent must agree to comply with the terms of probation.
- b. The period of probation shall be a minimum of five (5) years provided, however, that only those time periods during which Respondent is employed as a pharmacist shall count toward exhaustion of the probationary term. After five (5) years of probation have been completed, Respondent may petition the Board for termination of his probationary license period.
- c. For the first year of Respondent's probationary license period, Respondent shall practice pharmacy only on Monday through Saturday, between the hours of 7:00 am and 6:00 pm, and in the presence of another licensed pharmacist or a certified pharmacy technician.
- e. 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.
- f. During probation, Respondent shall report to the Board or its designee quarterly, in writing. The report shall include Respondent's place of employment, current address, *Respondent's most recent efforts to implement the provisions of this Stipulation and Consent Order, by date*, and any further information deemed necessary by the Board from time to time.
- g. Respondent shall notify all present employers and prospective employers (no later than at the time of an employment interview), including any pharmacist-

in-charge, of the resolution of this case and the terms, conditions and restrictions imposed on Respondent by this Stipulation and Consent Order.

- h. 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.
- i. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing his performance as a pharmacist during his probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.
- j. Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.
- k. Respondent shall not possess or use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider. Respondent shall inform any treating physician or other treating health care provider of his medical history, including any history of chemical dependency.
- l. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug

screening, and to verify Respondent's compliance with this Stipulation and Consent Order and with any drug therapy ordered by Respondent's physician. All costs related to the analysis of such specimens shall be paid by Respondent.

- m. To facilitate performance of the provisions of paragraph l above, Respondent shall report to and provide a specimen to any healthcare provider specified by the Board – said healthcare provider to be located in reasonable proximity to Respondent – within 24 hours after notice from the Board requesting that Respondent provide a specimen. Respondent agrees to cooperate with the Board in establishing a specimen testing program through FirstLab, and hereby consents to disclosure by FirstLab, or any other testing facility, of all medical information, including test results, generated by Respondent's contact with the facility.
- n. Respondent shall provide, upon request of an agent of the Board, copies of or access to all his medical records.
- o. If, as a result of the physical and mental health examinations of Respondent, Respondent's physician/treatment provider recommends a substance abuse treatment program, Respondent shall comply with such recommendations. In the event Respondent is participating in a substance abuse treatment program, Respondent's physician/treatment provider shall submit quarterly reports to the Board documenting Respondent's compliance with the treatment program.
- p. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- q. Respondent shall not serve as the pharmacist in charge of a pharmacy.

- r. Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate, or a comparable program for physicians.
 - s. Such other reasonable terms as the Board may wish to impose as a result of (i) findings that Respondent is chemically dependant, (ii) the length of time Respondent's license is suspended pursuant to paragraph 8 above or (iii) the amount or nature of chemical dependency treatment Respondent must participate in as directed by her physician/treatment provider.
10. Should the 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 to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2009) and 657 IAC 36.
 11. 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.
 12. The State's legal counsel may present this Stipulation and Consent Order to the Board.
 13. 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 the Board or Respondent. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.
 14. 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 Respondent to the Board for its consideration on the 25 day of November 2009.



JOHN E. GUCK, R.Ph.
Respondent

Subscribed and sworn to before me by John E. Guck on this 25th day of November 2009.





NOTARY PUBLIC IN AND FOR
THE STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Pharmacy Board on the 18th day of NOVEMBER 2009.



VERNON H. BENJAMIN, Chairperson
Iowa Pharmacy Board
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

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2006-25
Pharmacist License)	
JOHN E. GUCK	)	STATEMENT OF CHARGES
License No. 18556,	)	& 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 pharmacist license number 18556. Respondent's license is currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 23, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the afternoon session, beginning at 1:00 p.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 rule 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.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@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 Meghan Gavin at (515)281-6736.

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

VIOLATION OF A BOARD ORDER

Respondent is charged with violating the terms of a previous Board order in violation of Iowa Code sections 155A.12(1) and 272C.2(a) and 657 Iowa Administrative Code rule 36.1(4)(i).

D. FACTUAL CIRCUMSTANCES

1. On October 25, 2007, the Board filed a Statement of Charges against the Respondent. The Respondent was charged with committing several ethical violations, including unlawful possession of prescription drugs and an inability to practice pharmacy due to chemical abuse.

2. Respondent and the Board entered into a Stipulation and Consent Agreement on November 25, 2009. The Agreement provided that Respondent's license shall be indefinitely suspended pending a physical and mental health evaluation. If Respondent's license was reinstated, Respondent's license would be placed on probation for a period of five years. One of the conditions of probation prohibited the Respondent from possessing or using any controlled substance or prescription drug without a prescription from a licensed, treating physician. The

Respondent was further required to provide the treating physician of his medical history, including any history of chemical dependency.

3. Respondent tested positive for hydromorphone on September 11, 2012.

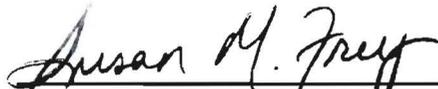
4. The Respondent admitted using Hydrocodone. Respondent claims he has tablets left from a 1/5/11 prescription. A physician prescribed Hydrocodone after a hernia operation on 1/4/11. The Respondent claims he uses tablets for the original prescription for chronic ankle pain.

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

F. PROBABLE CAUSE FINDING

On this 13th day of March, 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

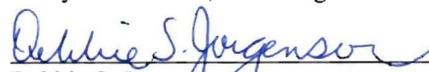
cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

PROOF OF SERVICE

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

personal service first class mail
 certified mail, return receipt requested facsimile
Article Number 9171999991703106849732 other _____
on the 14th day of March, 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

IN THE MATTER OF THE
STATEMENT OF CHARGES AGAINST:

CASE NO. 2006-25
DIA NO. 13PHB028

JOHN E. GUCK
License No. 18556

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On March 13, 2013, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against John E. Guck (Respondent), alleging that he violated Iowa Code sections 155A.12(1), 272C.3(2)(a) and 657 IAC 36.1(4)(i) by violating the terms of a previous Board order. The hearing was held on April 23, 2013. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; Edward McKenna; James Miller; and LaDonna Gratias. Respondent appeared and was self-represented. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1). Assistant Attorney General Meghan Gavin represented the state. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the testimony of Curt Gearhold, R.Ph., Respondent, State Exhibits 1-7 (See Exhibit List for description), and Respondent Exhibits A-D.

FINDINGS OF FACT

1. The Board issued Respondent John E. Guck license number 18556 to engage in the practice of pharmacy in the state of Iowa, subject to the statutes and rules of the Board. (State Exhibits 1, 4)
2. On October 25, 2007, the Board filed a Statement of Charges charging Respondent with lack of professional competency, unlawful possession and distribution of prescription drugs, inability to practice pharmacy with reasonable skill and safety by reason of chemical abuse, and inadequate recordkeeping. The charges were based on

allegations that Respondent diverted hydrocodone APAP from the hospital where he was employed as a pharmacist. Respondent acknowledged diverting about 60 tablets a month for personal use and also admitted drinking 6-10 beers a day. (State Exhibit 2; Respondent testimony)

3. On November 25, 2009, Respondent and the Board entered into a Stipulation and Consent Order to resolve the pending Statement of Charges. Respondent did not dispute the charges and agreed to an indefinite suspension of his license. The Stipulation and Consent Order established conditions for the termination of the indefinite suspension order. In addition, the Stipulation and Consent Order provided that if Respondent's license suspension was terminated, his license would be placed on probation for a minimum period of five years, subject to the terms established in the Stipulation and Consent Order. The terms of probation included, in relevant part:

...

k. Respondent shall not possess or use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified treating health care provider. Respondent shall inform any treating physician or other treating health care provider of his medical history, including any history of chemical dependency.

l. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug screening, and to verify Respondent's compliance with this Stipulation and Consent Order and with any drug therapy ordered by Respondent's physician. All costs related to the analysis of such specimens shall be paid by Respondent.

...

(State Exhibit 3)

4. The suspension of Respondent's license was later terminated by the Board, and his license was placed on probation, consistent with the terms established in the November 25, 2009 Stipulation and Consent Order. Respondent is currently employed as a staff pharmacist at Nucara Pharmacy in Ottumwa, Iowa. Respondent has provided urine samples for testing when requested to do so by FirstLab. (Respondent testimony; Respondent Exhibit D; State Exhibit 4)

5. On September 11, 2012, Respondent provided a random urine sample as requested by FirstLab. On September 21, 2012, FirstLab reported that Respondent's urine sample was positive for hydromorphone at 308 ng/mL, which was slightly above the confirmation test level (300 ng/mL) for hydromorphone.¹ (State Exhibit 7; Testimony of Curt Gearhold, R.Ph.)

6. The Board assigned Compliance Officer Curt Gearhold, R.Ph. to investigate Respondent's positive test result. Mr. Gearhold interviewed Respondent on September 25, 2012. Respondent told Mr. Gearhold that he has ankle pain as a result of an accident. Respondent further reported that he had a hernia operation on January 4, 2011, and his physician prescribed 20 hydrocodone for pain. Respondent reported that he had some hydrocodone tablets left over from this prescription, which he would take if his ankle was bothering him. Respondent admitted taking hydrocodone for ankle pain prior to providing the urine sample on September 11, 2012. (Testimony of Curt Gearhold, R.Ph.; State Exhibit 4)

7. Dr. Ferguson from FirstLab has confirmed that hydrocodone metabolizes into hydromorphone. Respondent has also submitted a research article stating that hydromorphone is a metabolite of hydrocodone. (Testimony of Curt Gearhold; Respondent; State Exhibits 4, 6; Respondent Exhibit C)

8. The Board was provided a copy of Respondent's January 5, 2011 prescription for hydrocodone. The prescription was for 20 tablets of hydrocodone 5/500, with directions to take 1-2 tablets every 4-6 hours as needed for pain. No refills were authorized. (State Exhibit 5). Respondent does not have any more recent prescriptions for hydrocodone. (Respondent testimony; State Exhibit 4)

9. Respondent has provided some records concerning the medical treatment he has received for foot pain. On February 1, 2012, Respondent was seen at the Rose Foot Clinic for ongoing left foot pain. Respondent reported to the podiatrist that he suffered severe left leg trauma in a motor vehicle accident more than thirty years ago, which eventually led to a left knee replacement. He further reported that he had turned his ankle several months earlier and that the ankle injury resolved but the top of his foot still hurt. Respondent reported that 600 mg of ibuprofen helped the pain. The podiatrist recommended orthotics to take pressure off the TMT joints but advised Respondent that the only other recourse was surgical intervention, including

¹ Respondent's urine sample was also positive for alcohol, however the terms of his probation do not prohibit alcohol consumption.

arthrodesis and reconstruction, which would likely be difficult. (Respondent Exhibit A; Respondent testimony)

Respondent was evaluated at Iowa Ortho for left foot pain on November 30, 2012, which was two months after his positive test result. Respondent was diagnosed with acute midfoot arthritis and Lisfranc's dislocation, and treatment options were discussed. (Respondent Exhibit B)

10. At hearing, Respondent testified that foot pain sometimes interferes with his rest, and he occasionally took the hydrocodone left over from the January 5, 2011 prescription to help his sleep. Respondent testified that he does not have any hydrocodone left from that prescription and is currently taking only ibuprofen for foot pain. He also wears special shoes that were recommended by his podiatrist. Respondent works approximately 34 hours a week and sits on a stool whenever possible at work. The surgery to correct his foot problem will be very painful and involve a long recovery. He has postponed having the surgery until he can no longer stand the pain. (Respondent testimony)

CONCLUSIONS OF LAW

Iowa Code §272C.3(2)(a)(2013) authorizes the Board to discipline a license for failure to comply with a Board decision imposing license discipline. The issue presented is whether Respondent violated the terms of his probation by testing positive for hydromorphone. Based on the evidence in the record, the Board was satisfied that the positive test result was likely the result of Respondent's use of hydrocodone. Respondent maintains that he took hydrocodone that was left over from a valid prescription he received following a January 2011 hernia surgery. He asserts that this did not violate the terms of his probation because the hydrocodone was properly prescribed for him by a physician for pain.

The state contends that Respondent has violated probation even if the positive test was the result of taking hydrocodone left over from a January 2011 prescription. The state asserted that the hydrocodone was prescribed to treat pain from a hernia surgery, not foot pain, and it was improper for Respondent to take the hydrocodone for other than its intended purpose.

The Board believed Respondent's testimony that he took hydrocodone that was left over from the January 2011 prescription to treat his foot pain. Respondent provided a copy of the prescription as well as the medical records that document his foot pain. The

prescription was for pain and did not specifically refer to pain from the hernia operation. Nevertheless, in light of Respondent's prior diversion of hydrocodone, the Board was troubled by Respondent's decision to take the hydrocodone for foot pain when his treating physician apparently felt that the foot pain was adequately treated by ibuprofen. The Board was unable to conclude, however, that taking the prescribed hydrocodone violated the express terms of Respondent's probation. If Respondent takes prescribed controlled substances for a medical condition in the future, he should do so only pursuant to a current prescription from a treating health care provider. Respondent should also notify First Lab if he is taking prescribed controlled substances when he provides a urine sample.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Statement of Charges filed against Respondent John E. Guck on March 13, 2013 is hereby DISMISSED.

Dated this 9th day of May, 2013.



Susan Frey, Chairperson
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2006-25
Pharmacist License)	
JOHN E. GUCK	)	STATEMENT OF CHARGES
License No. 18556,	)	& 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 pharmacist license number 18556. Respondent's license is currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on November 5, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the afternoon session, beginning at 1:00 p.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 rule 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.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@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 Meghan Gavin at (515)281-6736.

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

VIOLATION OF A BOARD ORDER

Respondent is charged with violating the terms of a previous Board order in violation of Iowa Code sections 155A.12(1) and 272C.2(a) and 657 Iowa Administrative Code rule 36.1(4)(i).

D. FACTUAL CIRCUMSTANCES

1. On October 25, 2007, the Board filed a Statement of Charges against the Respondent. The Respondent was charged with committing several ethical violations, including unlawful possession of prescription drugs and an inability to practice pharmacy due to chemical abuse.

2. Respondent and the Board entered into a Stipulation and Consent Agreement on November 25, 2009. The Agreement provided that Respondent's license shall be indefinitely suspended pending a physical and mental health evaluation. If Respondent's license was reinstated, Respondent's license would be placed on probation for a period of five years. One of

the conditions of probation required the Respondent to comply with a chemical monitoring program at FirstLabs.

3. Over the course of his probation, the Respondent has missed a number of the daily-required calls to FirstLab. In addition, on at least four occasions when the Respondent has been selected to provide a test, he has not done so.

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

F. PROBABLE CAUSE FINDING

On this 28th day of August 2013, 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 Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Meghan Gavin
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>9171999991703104136742</u> | <input type="checkbox"/> other _____ |

on the 29th day of August, 2013.

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

Debbie S. Jorgenson
Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2006-25
Pharmacist license of)	
JOHN E. GUCK	)	SETTLEMENT AGREEMENT
License No. 18556,	)	AND FINAL ORDER
Respondent.)	

Pursuant to Iowa Code " 17A.10 and 272C.3(4) (2013), the Iowa Board of Pharmacy ("Board") and John Guck ("Respondent") enter into the following Settlement Agreement to settle a 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. The Board has jurisdiction over the parties and the subject matter of these proceedings.
2. Respondent was issued Iowa pharmacist license #18556.
3. Iowa pharmacist license #18556 is currently active.
4. A Statement of Charges was filed against Respondent on August 28, 2013.
5. 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 discipline.
6. Upon the Board's approval of this Settlement Agreement and Final Order, Respondent is hereby CITED for violating a Board order, and WARNED that Respondent's failure to comply with the laws governing the practice of pharmacy in the future could result in further discipline.
7. Respondent agrees to pay a civil penalty in the amount of one-thousand dollars (\$1,000). This civil penalty shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board within thirty (30) 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.
8. Respondent further agrees not to request early release from his current term of probation.
9. This Settlement Agreement is the resolution of a contested case. By entering into this Settlement Agreement, 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.
10. Respondent is freely and voluntarily entering into this Settlement Agreement.
11. Respondent acknowledges that he has a right to be represented by counsel on this matter.

12. The State's legal counsel may present this Settlement Agreement to the Board *ex parte*.

13. This Settlement Agreement is subject to approval by a majority of the full Board. If the Board fails to approve this Settlement Agreement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Settlement Agreement, it shall be the full and final resolution of this matter.

14. This Settlement Agreement, 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.

15. The Board's approval of this Settlement Agreement 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 28 day of October, 2013.



JOHN E. GUCK, Pharmacist

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 5th day of November, 2013.



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

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case No. 2006-25
Pharmacist License)	
JOHN E. GUCK	)	STATEMENT OF CHARGES
License No. 18556,	)	& 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 pharmacist license number 18556. Respondent's license is currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on November 18 2014, before the Iowa Board of Pharmacy. 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 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 rule 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.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@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 Meghan Gavin at (515)281-6736.

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

VIOLATION OF A BOARD ORDER

Respondent is charged with violating the terms of a previous Board order in violation of Iowa Code sections 155A.12(1) and 272C.2(a) and 657 Iowa Administrative Code rule 36.1(4)(i).

D. FACTUAL CIRCUMSTANCES

1. On October 25, 2007, the Board filed a Statement of Charges against the Respondent. The Respondent was charged with committing several ethical violations, including unlawful possession of prescription drugs and an inability to practice pharmacy due to chemical abuse.

2. Respondent and the Board entered into a Stipulation and Consent Agreement on November 25, 2009. The Agreement provided that Respondent's license shall be indefinitely suspended pending a physical and mental health evaluation. If Respondent's license was reinstated, Respondent's license would be placed on probation for a period of five years. Respondent's license was reinstated subject to the terms of the 2009 Agreement. One of the

conditions of probation required the Respondent to comply with a chemical monitoring program, which includes periodic urine, blood, or hair screening. The program further requires the Respondent to call in daily to determine if he is required to test.

3. At all times material, Respondent's license was on probation and he was required to perform chemical screening.

4. Respondent has been twice previously charged with violating the Board's 2009 Agreement. The first statement of charges was dismissed following hearing. The second Statement of Charges ended in a settlement agreement, which required the Respondent to pay an additional \$1000 civil penalty and an agreement not to seek early release from probation.

5. Since the execution of the settlement agreement in November 2013, Respondent has missed numerous calls to NTS, the Board's chemical screening service. Those dates include, but are not limited to, 3/19/14, 3/28/14, 5/15/14, 7/3/14, 7/4/14, 7/5/14, 7/24-7/26/14. Respondent further failed to provide tests when required on 3/18/14, 5/6/14, 6/6/14, 6/13/14, and 7/17/14.

6. Following an irregular test in May 2014, Board staff requested a hair sample. Respondent disagreed and requested consideration by the full Board. On May 28, 2014 the Board found sufficient grounds to require the Respondent to immediately submit a hair sample as required by the 2009 Stipulation and Consent Order.

7. The Respondent has not provided a hair sample in the three months following the Board's order.

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

F. PROBABLE CAUSE FINDING

On this 26th day of August 2014, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



JAMES MILLER, Vice Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

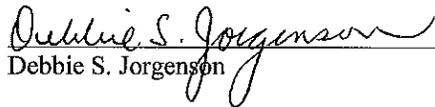
PROOF OF SERVICE

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

- | | |
|--|--|
| <input type="checkbox"/> personal service | <input checked="" type="checkbox"/> first class mail |
| <input checked="" type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number <u>9171999991703239255387</u> | <input type="checkbox"/> other _____ |

on the 27th day of August, 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. 2006-25 & 2014-150
Pharmacist License)	
JOHN E. GUCK	)	MOTION TO ADOPT
License No. 18556,	)	EMERGENCY ADJUDICATIVE
Respondent.	)	ORDER
)	

COMES NOW the State of Iowa and moves the Iowa Board of Pharmacy to adopt an Emergency Adjudicative Order to immediately suspend the pharmacist licence of the Respondent John E. Guck. In support thereof, the State respectfully states :

1. The Board issued a Notice of Hearing and Statement of Charges concerning the Respondent on August 27, 2014. The Board alleged the Respondent violated the terms of his 2009 probation order by failing to submit to a hair test and failing to comply with Board's chemical screening company.

2. In the three weeks following issuance of the Statement of Charges, new information has come to the State's attention warranting immediate action. On September 3, 2014, Respondent tested positive for hydrocodone Respondent does not have a lawful prescription for hydrocodone. Subsequent investigation revealed that Respondent diverted large amounts of hydrocodone and forged a prescription for hydrocodone.

3. These matters have been fully investigated and the State believes that adequate grounds in law and fact existent to take emergency action against the Respondent's pharmacist license.

4. The State further asserts that considering the Respondent's lengthy disciplinary history and the numerous measures currently in place to ensure Respondent's compliance with

Board orders and rules, which have proven unsuccessful, the Board's only recourse to prevent an immediate danger to the public is the suspension of Respondent's license.

5. Because of the pending Statement of Charges, the State will not be able to provide the Board counsel in concerning this motion. Should the Board need legal advice, the Board is urged to consult with the assigned administrative law judge or conflicts counsel.

6. The State's proposed Emergency Adjudicative Order has been attached to this Motion.

WHEREFORE, the State of Iowa respectfully requests the Board grant this Motion and adopt the attached Emergency Adjudicative Order.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

/s/ Meghan Gavin

MEGHAN GAVIN
Assistant Attorney General
Hoover State Office Building, 2nd Fl.
1305 East Walnut Street
Des Moines, Iowa 50319
Phone: (515) 281-6736
Fax: (515) 281-4209
Email: [Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)
ATTORNEYS FOR THE STATE

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case Nos. 2006-25 & 2014-150
Pharmacist License)	
JOHN E. GUCK	)	EMERGENCY
License No. 18556,	)	ADJUDICATIVE ORDER
Respondent.)	

COMES NOW the Iowa Board of Pharmacy and files this Emergency Adjudicative Order.

I. JURISDICTION

The Iowa Board of Pharmacy has jurisdiction over pharmacist licensees pursuant to Iowa Code chapters 155A and 272C (2013). Respondent John E. Guck possesses pharmacist license number 18556 issued by the Board. The Respondent's license is currently on probation. The Board issued a Statement of Charges against the Respondent on August 27, 2014. Since that time new information has come to the Board demanding immediate action. After conducting a full investigation of this matter, and after review of the State's Motion to Amend the Statement of Charges, the Board adopts the following Findings of Fact and Conclusions of Law and issues this Emergency Adjudicative Order.

II. FINDINGS OF FACT

1. The Board issued Respondent pharmacist license number 18556.
2. Respondent's pharmacist license is currently active though it is currently on probation. Respondent's license has been on probation since November 2009. His probationary period and all requirements thereof will end in November 2014.
3. At all times relevant to this Order, Respondent was employed as a pharmacist at Nucara Pharmacy in Ottumwa, Iowa. Respondent also works periodically at Nucara Pharmacy

in Fairfield, Iowa. Respondent has also filled in as a relief pharmacist at Nucara Pharmacy in Washington, Iowa three times in the last two years.

4. As a term of Respondent's probation, he is required to submit to random urine, hair, and chemical testing and comply with the requirements of a chemical screening company selected by the Board. Additionally, as a term of his probation, Respondent is required to abstain from the use of all prescription drugs unless he has a valid prescription.

5. The Board has previously found Respondent violated the terms of the 2009 order by failing to make the required daily phone calls to the chemical screening company and submit to testing as required.

6. The Statement of Charges issued August 27, 2014 charged Respondent for again violating the terms of the 2009 order by (1) refusing to submit to a hair screening as ordered by the Board, (2) failing to make the required daily phone call to the chemical screening company, and (3) refusing to submit to testing as required.

7. Following issuance of the most recent Statement of Charges on September 3, 2014, the Board was informed that Respondent tested positive for hydrocodone on his last urine analysis.

8. At that time, it was determined that an audit of the controlled substances was warranted at the pharmacies where Respondent worked.

9. On September 8, 2014, two Board compliance officers conducted an audit of the hydrocodone at Nucara Pharmacy in Ottumwa. The audit period ran from July 25, 2014, the date of the last actual count of hydrocodone, to September 8, 2014. The audit revealed a shortage of two strengths of hydrocodone. Hydrocodone/APAP 7.5/325 had a shortage of 341 tablets and hydrocodone/APAP 10/325 had a shortage of 527 tablets.

10. Upon a more extensive audit, covering the last two years, it was determined that from July 30, 2012 to July 25, 2014, the Nucara Pharmacy in Ottumwa had a shortage of 3883 tablets of hydrocodone/APAP 7.5/325 and a shortage of 9320 tablets of hydrocodone/APAP 10/325.

11. Further investigation revealed that Respondent had made numerous computer edits to the hydrocodone inventory during this two-year time period.

12. An audit conducted at the Nucara Pharmacy in Fairfield revealed a shortage of approximately 800 tablets of hydrocodone/APAP 7.5/325 and approximately 2755 tablets of hydrocodone/APAP 10/325. This pharmacy has only been open for one year.

13. Further investigation revealed that Respondent made 77 computer edits to the hydrocodone inventory at Fairfield during the prior year. The majority of these edits occurred before the store was open or when the technician was on her lunch break.

14. An audit at the Nucara Pharmacy in Washington did not reveal any large discrepancies. However, a computer edit of the inventory for hydrocodone/APAP 10/325 was made by the Respondent on one of the days he filled in. The edit reduced the on hand count of hydrocodone/APAP 10/325 by 30 tablets.

15. Pharmacist Ron Hartman put all hydrocodone products on the perpetual inventory at the Ottumwa pharmacy on September 11, 2014. On September 12, 2014, Respondent and Hartman were the pharmacists on duty for the day. Pharmacist Hartman performed an audit after Respondent had left for the day. Hydrocodone/APAP 10/325 was 15 tablets short for the day.

16. On September 15, 2014, Hartman conducted another audit. The pharmacy was short an additional 35 tablets from September 13, 2014. Respondent was the only pharmacist on duty on September 13, 2014.

17. On September 13, 2014, Respondent entered a prescription for 50 tablets of hydrocodone/APAP 10/325 was created for a patient. The prescriber was an emergency room physician, Dr. Gravett.

18. No hardcopy of the prescription was located at the pharmacy. The computer entry for the patient's prescription had also been deleted by the Respondent. The prescription, however, was still in the log and the daily counts were consistent with the prescription.

19. Dr. Gravett confirmed that he worked on September 13, 2014, but he has no record of said patient being seen in the emergency room.

III. CONCLUSIONS OF LAW

1. Iowa Code section 155A.12(1) (2013) and 657 Iowa Administrative Code rule 36.1(4)(i); (u) allow the Board to discipline a pharmacist who violates a rule promulgated by the Board or a lawful order of the Board in a disciplinary hearing.

2. Iowa Code section 17A.18A (2013) and 657 Iowa Administrative Code rule 35.30 authorize the Board to take immediate emergency action if necessary to protect the health, safety and welfare of the public.

3. The Board concludes this matter has been fully investigated and that the investigation has been sufficient to ensure the Board is proceeding on the basis of reliable information.

4. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:

- a. Respondent has demonstrated a continued inability or unwillingness to abide by the rules and regulations related to the practice of pharmacy.
- b. Respondent has demonstrated a continued inability or unwillingness to abide by lawful orders of the Board.

c. The Board has intervened at numerous times since Respondent's initial disciplinary order in 2009. The Board's intervention and imposition of numerous restrictions on Respondent's license have not ensured Respondent's compliance with the laws and rules governing the practice of pharmacy. Nor has the Board's most recent Statement of Charges curbed Respondent's behavior.

5. Respondent's behavior constitutes a serious and immediate threat to patient health, safety and welfare if Respondent is allowed to continue to practice pharmacy before the Board's pending Statement of Charges is resolved—especially as Respondent's probation will lapse prior to the currently scheduled hearing.

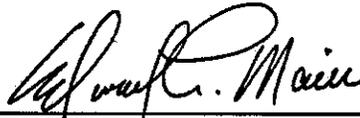
6. The Board finds that there are no aspects of pharmacy practice that Respondent may perform without posing an immediate danger to the public. The Board finds there are no monitoring requirements or other interim safeguards that could be imposed that would be sufficient to ensure public safety.

IV. EMERGENCY ORDER

The Board ORDERS as follows:

- a. Pursuant to Iowa Code § 17A.18A, the pharmacist license of John E. Guck is suspended indefinitely. This suspension is effective immediately upon issuance of this order.
- b. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).
- c. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on October 28, 2014. The hearing will commence at 9:00 a.m. and be held at the office of the Iowa Board of Pharmacy, 400 Southwest 8th Street, Suite E, Des Moines, Iowa 50309.

DATED this 18th day of September 2014.



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

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 5031

BEFORE THE IOWA BOARD OF PHARMACY

Re:) Case Nos. 2006-25 & 2014-150
Pharmacist License of)
JOHN E. GUCK)
License No.18556) **MOTION TO AMEND**
RESPONDENT.) **STATEMENT OF CHARGES**
)

COMES NOW the State of Iowa and moves to amend the pending Statement of Charges in this matter, as set forth below, and in support thereof states as follows:

1. The State seeks to amend the pending statement of charges.

2. The original Statement of Charges in this case was filed on August 27, 2014.

3. The Respondent was charged one count—violation of a board order based on his failure to comply with the terms of his probation as set forth in a 2009 board order. Specifically, it is alleged that Respondent failed to submit to hair testing and failed to comply with the Board’s chemical screening company.

4. The State seeks to amend the charges to add additional factual allegations and additional charges. Both the additional factual allegations and violations are based on events which occurred after the issuance of the original statement of charges but are related thereto. The Board seeks to amended sections C and D to read as follows (amendments in italics)

C. CHARGES

Count I

VIOLATION OF A BOARD ORDER

Respondent is charged with violating the terms of a previous Board order in violation of Iowa Code sections 155A.12(1) and 272C.2(a) and 657 Iowa Administrative Code rule 36.1(4)(i).

Count II

**UNETHICAL CONDUCT OR
PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC**

Respondent is charged with engaging in unethical conduct or practice harmful or detrimental to the public in violation of Iowa Code sections 147.55(9) and 155A.12(1); (2) and 657 Iowa Administrative Code rules 8.11 and 36.1(4)(c).

Count III

UNLAWFUL POSSESSION AND/OR DISTRIBUTION OF DRUGS

Respondent is charged with the unlawful possession and distribution of drugs—specifically, controlled substances—for other than lawful purposes in violation of Iowa Code sections 124.403(c), 147.55(9), 155A.12(1), (5), 155A.21, and 155A.23(1) and 657 Iowa Administrative Code rule 36.1(4)(h); (i), (j).

D. FACTUAL CIRCUMSTANCES

1. On October 25, 2007, the Board filed a Statement of Charges against the Respondent. The Respondent was charged with committing several ethical violations, including unlawful possession of prescription drugs and an inability to practice pharmacy due to chemical abuse.

2. Respondent and the Board entered into a Stipulation and Consent Agreement on November 25, 2009. The Agreement provided that Respondent's license shall be indefinitely suspended pending a physical and mental health evaluation. If Respondent's license was reinstated, Respondent's license would be placed on probation for a period of five years. Respondent's license was reinstated subject to the terms of the 2009 Agreement. One of the conditions of probation required the Respondent to comply with a chemical monitoring program, which includes periodic urine, blood, or hair screening. The program further requires the Respondent to call in daily to determine if he is required to test.

3. At all times material, Respondent's license was on probation and he was required to perform chemical screening.

4. Respondent has been twice previously charged with violating the Board's 2009 Agreement. The first statement of charges was dismissed following hearing. The second Statement of Charges ended in a settlement agreement, which required the Respondent to pay an additional \$1000 civil penalty and an agreement not to seek early release from probation.

5. Since the execution of the settlement agreement in November 2013, Respondent has missed numerous calls to NTS, the Board's chemical screening service. Those dates include, but are not limited to, 3/19/14, 3/28/14, 5/15/14, 7/3/14, 7/4/14, 7/5/14, 7/24-7/26/14. Respondent further failed to provide tests when required on 3/18/14, 5/6/14, 6/6/14, 6/13/14, and 7/17/14.

6. Following an irregular test in May 2014, Board staff requested a hair sample. Respondent disagreed and requested consideration by the full Board. On May 28, 2014 the Board found sufficient grounds to require the Respondent to immediately submit a hair sample as required by the 2009 Stipulation and Consent Order.

7. The Respondent has not provided a hair sample in the three months following the Board's order.

8. *On September 3, 2014, the Board was informed by its chemical screening company that Respondent tested positive for hydrocodone during his last urine analysis.*

9. *At all times relevant to this Order, Respondent was employed as a pharmacist at Nucara Pharmacy in Ottumwa, Iowa. Respondent also works periodically at Nucara Pharmacy in Fairfield, Iowa. Respondent has also filled in as a relief pharmacist at Nucara Pharmacy in Washington, Iowa three times in the last two years.*

10. *On September 8, 2014, two Board compliance officers conducted an audit of the hydrocodone at Nucara Pharmacy in Ottumwa. The audit period ran from July 25, 2014, the date of the last actual count of hydrocodone, to September 8, 2014. The audit revealed a shortage of two strengths of hydrocodone. Hydrocodone/APAP 7.5/325 had a shortage of 341 tablets and hydrocodone/APAP 10/325 had a shortage of 527 tablets.*

11. *Upon a more extensive audit, covering the last two years, it was determined that from July 30, 2012 to July 25, 2014, the Nucara Pharmacy in Ottumwa had a shortage of 3883 tablets of hydrocodone/APAP 7.5/325 and a shortage of 9320 tablets of hydrocodone/APAP 10/325.*

12. *Further investigation revealed that Respondent had made numerous computer edits to the hydrocodone inventory during this two-year time period.*

13. *An audit conducted at the Nucara Pharmacy in Fairfield revealed a shortage of approximately 800 tablets of hydrocodone/APAP 7.5/325 and approximately 2755 tablets of hydrocodone/APAP 10/325. This pharmacy has only been open for one year.*

14. *Further investigation revealed that Respondent made 77 computer edits to the hydrocodone inventory at Fairfield during the prior year. The majority of these edits occurred before the store was open or when the technician was on her lunch break.*

15. *An audit at the Nucara Pharmacy in Washington did not reveal any large discrepancies. However, a computer edit of the inventory for hydrocodone/APAP 10/325 was made by the Respondent on one of the days he filled in. The edit reduced the on hand count of hydrocodone/APAP 10/325 by 30 tablets.*

16. *Pharmacist Ron Hartman put all hydrocodone products on the perpetual inventory at the Ottumwa pharmacy on September 11, 2014. On September 12, 2014, Respondent and Hartman were the pharmacists on duty for the day. Pharmacist Hartman performed an audit after Respondent had left for the day. Hydrocodone/APAP 10/325 was 15 tablets short for the day.*

17. *On September 15, 2014, Hartman conducted another audit. The pharmacy was short an additional 35 tablets from September 13, 2014. Respondent was the only pharmacist on duty on September 13, 2014.*

18. *On September 13, 2014, Respondent entered a prescription for 50 tablets of hydrocodone/APAP 10/325 was created for a patient. The prescriber was an emergency room physician, Dr. Gravett.*

19. *No hardcopy of the prescription was located at the pharmacy. The computer entry for the patient's prescription had also been deleted by the Respondent. The prescription, however, was still in the log and the daily counts were consistent with the prescription.*

20. *Dr. Gravett confirmed that he worked on September 13, 2014, but he has no record of said patient being seen in the emergency room.*

5. To assist the Board, the State has attached an amended statement of charges incorporating the new factual allegations and counts.

6. While the Board does not have a rule specifically addressing motions to amend, other state licensing board so. For example, professional licensure permits amendments to the statement of charges in the discretion of the Board's presiding officer, who may impose terms or grant a continuance. Iowa Admin. Code r. 645—11.12(5).

7. It is in the interest of justice to allow this amendment. While the proposed amendments are comprehensive, both the original charges and the amended charges concern Respondent's inability to comply with his 2009 probation order as well as ongoing management of his hydrocodone addiction. Combining the charges promotes efficiency, for the Board, the State, and the Respondent. The State, moreover, does not believe the amendment prejudices the Respondent as there is sufficient time for him to prepare for hearing. If the Board deems there to be insufficient time, the remedy is not denial of the motion to amend but continuing the hearing to a later date.

8. The new allegations have been fully investigated. The State is prepared to proceed to hearing when directed by the Board.

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case Nos. 2006-25 & 2014-150
Pharmacist License)	
JOHN E. GUCK	)	AMENDED STATEMENT
License No. 18556,	)	OF CHARGES &
Respondent.	)	NOTICE OF HEARING

COMES NOW the Iowa Board of Pharmacy (Board) and files this Amended Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent was issued Iowa pharmacist license number 18556. Respondent's license is currently subject to an emergency suspension.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on October 28, 2014 before the Iowa Board of Pharmacy. 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 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 rule 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.

Meghan Gavin
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at Meghan.Gavin@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 Meghan Gavin at (515)281-6736.

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

VIOLATION OF A BOARD ORDER

Respondent is charged with violating the terms of a previous Board order in violation of Iowa Code sections 155A.12(1) and 272C.2(a) and 657 Iowa Administrative Code rule 36.1(4)(i).

Count II

UNETHICAL CONDUCT OR PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC

Respondent is charged with engaging in unethical conduct or practice harmful or detrimental to the public in violation of Iowa Code sections 147.55(9) and 155A.12(1); (2) and 657 Iowa Administrative Code rules 8.11 and 36.1(4)(c).

Count III

UNLAWFUL POSSESSION AND/OR DISTRIBUTION OF DRUGS

Respondent is charged with the unlawful possession and distribution of drugs—specifically, controlled substances—for other than lawful purposes in violation of Iowa Code sections 124.403(c), 147.55(9), 155A.12(1), (5), 155A.21, and 155A.23(1) and 657 Iowa Administrative Code rule 36.1(4)(h); (i), (j).

D. FACTUAL CIRCUMSTANCES

1. On October 25, 2007, the Board filed a Statement of Charges against the Respondent. The Respondent was charged with committing several ethical violations, including unlawful possession of prescription drugs and an inability to practice pharmacy due to chemical abuse.

2. Respondent and the Board entered into a Stipulation and Consent Agreement on November 25, 2009. The Agreement provided that Respondent's license shall be indefinitely suspended pending a physical and mental health evaluation. If Respondent's license was reinstated, Respondent's license would be placed on probation for a period of five years. Respondent's license was reinstated subject to the terms of the 2009 Agreement. One of the conditions of probation required the Respondent to comply with a chemical monitoring program, which includes periodic urine, blood, or hair screening. The program further requires the Respondent to call in daily to determine if he is required to test.

3. At all times material, Respondent's license was on probation and he was required to perform chemical screening.

4. Respondent has been twice previously charged with violating the Board's 2009 Agreement. The first statement of charges was dismissed following hearing. The second Statement of Charges ended in a settlement agreement, which required the Respondent to pay an additional \$1000 civil penalty and an agreement not to seek early release from probation.

5. Since the execution of the settlement agreement in November 2013, Respondent has missed numerous calls to NTS, the Board's chemical screening service. Those dates include, but are not limited to, 3/19/14, 3/28/14, 5/15/14, 7/3/14, 7/4/14, 7/5/14, 7/24-7/26/14. Respondent further failed to provide tests when required on 3/18/14, 5/6/14, 6/6/14, 6/13/14, and 7/17/14.

6. Following an irregular test in May 2014, Board staff requested a hair sample. Respondent disagreed and requested consideration by the full Board. On May 28, 2014 the Board found sufficient grounds to require the Respondent to immediately submit a hair sample as required by the 2009 Stipulation and Consent Order.

7. The Respondent has not provided a hair sample in the three months following the Board's order.

8. On September 3, 2014, the Board was informed by its chemical screening company that Respondent tested positive for hydrocodone during his last urine analysis.

9. At all times relevant to this Order, Respondent was employed as a pharmacist at Nucara Pharmacy in Ottumwa, Iowa. Respondent also works periodically at Nucara Pharmacy in Fairfield, Iowa. Respondent has also filled in as a relief pharmacist at Nucara Pharmacy in Washington, Iowa three times in the last two years.

10. On September 8, 2014, two Board compliance officers conducted an audit of the hydrocodone at Nucara Pharmacy in Ottumwa. The audit period ran from July 25, 2014, the date of the last actual count of hydrocodone, to September 8, 2014. The audit revealed a shortage of two strengths of hydrocodone. Hydrocodone/APAP 7.5/325 had a shortage of 341 tablets and hydrocodone/APAP 10/325 had a shortage of 527 tablets.

11. Upon a more extensive audit, covering the last two years, it was determined that from July 30, 2012 to July 25, 2014, the Nucara Pharmacy in Ottumwa had a shortage of 3883 tablets of hydrocodone/APAP 7.5/325 and a shortage of 9320 tablets of hydrocodone/APAP 10/325.

12. Further investigation revealed that Respondent had made numerous computer edits to the hydrocodone inventory during this two-year time period.

13. An audit conducted at the Nucara Pharmacy in Fairfield revealed a shortage of approximately 800 tablets of hydrocodone/APAP 7.5/325 and approximately 2755 tablets of hydrocodone/APAP 10/325. This pharmacy has only been open for one year.

14. Further investigation revealed that Respondent made 77 computer edits to the hydrocodone inventory at Fairfield during the prior year. The majority of these edits occurred before the store was open or when the technician was on her lunch break.

15. An audit at the Nucara Pharmacy in Washington did not reveal any large discrepancies. However, a computer edit of the inventory for hydrocodone/APAP 10/325 was made by the Respondent on one of the days he filled in. The edit reduced the on hand count of hydrocodone/APAP 10/325 by 30 tablets.

16. Pharmacist Ron Hartman put all hydrocodone products on the perpetual inventory at the Ottumwa pharmacy on September 11, 2014. On September 12, 2014, Respondent and Hartman were the pharmacists on duty for the day. Pharmacist Hartman performed an audit after Respondent had left for the day. Hydrocodone/APAP 10/325 was 15 tablets short for the day.

17. On September 15, 2014, Hartman conducted another audit. The pharmacy was short an additional 35 tablets from September 13, 2014. Respondent was the only pharmacist on duty on September 13, 2014.

18. On September 13, 2014, Respondent entered a prescription for 50 tablets of hydrocodone/APAP 10/325 was created for a patient. The prescriber was an emergency room physician, Dr. Gravett.

19. No hardcopy of the prescription was located at the pharmacy. The computer entry for the patient's prescription had also been deleted by the Respondent. The prescription, however, was still in the log and the daily counts were consistent with the prescription.

20. Dr. Gravett confirmed that he worked on September 13, 2014, but he has no record of said patient being seen in the emergency room.

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

F. PROBABLE CAUSE FINDING

On this 18th day of September, 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 Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Meghan Gavin
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

BEFORE THE IOWA BOARD OF PHARMACY

Re:	)	Case Nos. 2006-25 & 2014-150
Pharmacist License of)	
JOHN E. GUCK	)	SETTLEMENT AGREEMENT AND
License No. 18556	)	FINAL ORDER
Respondent.)	

Pursuant to Iowa Code sections 17A.10 and 272C.3(4) (2013), the Iowa Board of Pharmacy ("Board") and John E. Guck ("Respondent") enter into the following Settlement Agreement and Final Order ("Order") to settle a contested case currently pending before the Board.

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

1. Respondent holds Iowa pharmacist license number 18556, which is currently suspended and expires on June 30, 2015.
2. The Board has jurisdiction over the parties and the subject matter of these proceedings.
3. A Statement of Charges was filed against Respondent on August 26, 2014. An Emergency Adjudicative Order and an Amended Statement of Charges was filed against Respondent on September 18, 2014.
4. Respondent admits the allegations in the Amended 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.
5. Execution of this Order constitutes the resolution of a contested case. Respondent has a right to hearing before the Board on the charges, but Respondent waives the right to hearing and all attendant rights, including the right to appeal or seek judicial review of the Board's actions, by freely and voluntarily entering into this Settlement Agreement. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
6. Respondent is freely and voluntarily entering into this Order.
7. Respondent acknowledges that he has the right to be represented by counsel on this matter.
8. Respondent agrees that the State's counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.
9. 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.

10. 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.
11. Respondent acknowledges and understands that this Order will be reported to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank, as applicable.
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. Respondent agrees to **VOLUNTARILY SURRENDER** his pharmacist license to resolve this matter.
15. This voluntary surrender is considered a revocation under 657 IAC 36.15 for purposes of reinstatement. Respondent may not request reinstatement for at least three years from the date of this Order.
16. Respondent may request reinstatement of his Iowa pharmacist license by filing an application for reinstatement under 657 IAC 36.13. Respondent's license shall not be reinstated except upon a showing by Respondent that the basis for revocation of his license no longer exists, and that it is in the public interest for the license to be reinstated.
17. Respondent agrees not to work in a pharmacy in any capacity unless his pharmacist license is reinstated.
18. Respondent shall immediately surrender his pharmacist license to the Board.
19. Should Respondent violate the terms of this Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2013) and 657 IAC 36.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 26 day of January, 2015.



JOHN E. GUCK
Respondent

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 10th day of March, 2015.



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

cc: Laura Steffensmeier
Assistant Attorney General
Hoover Building, 2nd Floor
Des Moines, IA 50319