

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2012-182
Pharmacist License of)	
ROBERT L. HOEHLE III)	STATEMENT OF CHARGES
License No. 18222,)	& NOTICE OF HEARING
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) on January 8, 2013, 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 18222. Respondent's pharmacist license is active and will expire on June 30, 2014.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on March 12, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the morning hearing session, beginning at 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 may also be reached by phone at (515)281-6736 or by 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 Theresa O'Connell Weeg at (515)281-5328 or at Theresa.Weeg@iowa.gov.

B. LEGAL AUTHORITY AND JURISDICTION

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

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148C, and 272C (2011) and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

C. CHARGES

COUNT I ADULTERATION OF A DRUG

Respondent is charged under Iowa Code section 155A.23(1)(g) (2011) and 657 Iowa Administrative Code rule 36.1(4)(j) with adulteration of any drug.

COUNT II UNLAWFUL POSSESSION OF A DRUG

Respondent is charged under Iowa Code section 155A.21 and 657 Iowa Administrative Code rule 36.1(4)(j) with unlawful possession of a drug.

**COUNT III
ENGAGING IN PRACTICE HARMFUL OR
DETRIMENTAL TO THE PUBLIC**

Respondent is charged under Iowa Code section 155A.12(2) and 657 Iowa Administrative Code rule 36.1(4)(c) with engaging in practice harmful or detrimental to the public.

**COUNT IV
VIOLATION OF LAWS RELATED TO
CONTROLLED SUBSTANCE LAWS**

Respondent is charged under Iowa Code section 155A.12(1) and the rules of the Board for failing to comply with the laws related to controlled substances, including Iowa Code section 124.401(5) (possession of a controlled substance) and section 126.9(3) (adulteration).

D. FACTUAL CIRCUMSTANCES

1. On July 26, 1994, the Board issued Respondent pharmacy license number 18222.
2. Respondent's pharmacy license is currently active and will next expire on June 30, 2014.
3. At all times relevant to this Order, Respondent was employed as a pharmacist at Kmart Pharmacy in Urbandale, IA.
4. On November 12, 2012, the Board received notification from Kmart District Manager Dave McBride of the pharmacy's internal investigation of the Respondent. Kmart's investigation revealed:
 - a. The Respondent was opening dextroamphetamine salt extended release (DSER) capsules, emptying out a portion or all of the contents, and re-encapsulating the removed portions into a different empty capsule.
 - b. The tampered capsules were returned to stock for distribution to patients.
 - c. Respondent would take the consolidated capsule or capsules, presumably for his own use.
5. Kmart Loss Prevention searched the Respondent upon his departure from the pharmacy on November 9, 2012. Loss Prevention discovered the contents of DSER capsules that had been re-encapsulated into an emptied gabapentin capsule and three Viagra tablets in the Respondent's pocket.

6. Urbandale Police were called and the Respondent was arrested and charged with Possession of a Controlled Substance and Second Degree Theft.
7. The Respondent admits to altering and diverting amphetamines.
8. Some of the tampered medication was dispensed to patients. At least one patient reports adverse consequences due to receiving a sub-prescription dose.
9. Although no longer employed by Kmart, Respondent informed the Board's investigator of his intention to return to practicing pharmacy pending the Board's investigation.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Meghan Gavin.

F. PROBABLE CAUSE FINDING

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



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

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

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2012-182
Pharmacist License of)	
ROBERT L. HOEHLE III)	EMERGENCY
License No. 18222,)	ADJUDICATIVE ORDER
Respondent.)	

I. JURISDICTION

The Iowa Board of Pharmacy has jurisdiction over pharmacy licensees pursuant to Iowa Code Chapters 155A and 272C (2011). Respondent Robert Hoehle possesses pharmacist license number 18222 issued by the Board. A Statement of Charges was filed against Respondent on January 8, 2013. After conducting a full investigation of this matter, and after review of the Statement of Charges filed concurrently with this Order, the Board adopts the following Findings of Fact and Conclusions of Law and issues this Emergency Adjudicative Order.

II. FINDINGS OF FACT

1. On July 26, 1994, the Board issued Respondent pharmacy license number 18222.
2. Respondent's pharmacy license is currently active and will next expire on June 30, 2014.
3. At all times relevant to this Order, Respondent was employed as a pharmacist at Kmart Pharmacy in Urbandale, IA.
4. On November 12, 2012, the Board received notification from Kmart District Manager Dave McBride of the pharmacy's internal investigation of the Respondent. Kmart's investigation revealed:

- a. The Respondent was opening dextroamphetamine salt extended release (DSER) capsules, emptying out a portion or all of the contents, and re-encapsulating the removed portions into a different empty capsule.
 - b. The tampered capsules were returned to stock for distribution to patients.
 - c. Respondent would take the consolidated capsule or capsules, presumably for his own use.
5. Kmart Loss Prevention searched the Respondent upon his departure from the pharmacy on November 9, 2012. Loss Prevention discovered the contents of DSER capsules that had been re-encapsulated into an emptied gabapentin capsule and three Viagra tablets in the Respondent's pocket.
 6. Urbandale Police were called and the Respondent was arrested and charged with Possession of a Controlled Substance and Second Degree Theft.
 7. The Respondent admits to altering and diverting amphetamines.
 8. Some of the tampered medication was dispensed to patients. At least one patient reports adverse consequences due to receiving a sub-prescription dose.
 9. Although no longer employed by Kmart, Respondent informed the Board's investigator of his intention to return to practicing pharmacy pending the Board's investigation.

III. CONCLUSIONS OF LAW

10. Iowa Code section 155A.23(1)(g) (2011) and 657 Iowa Administrative Code rule 36.1(4)(j) allow the Board to discipline a pharmacist who adulterates any drug.
11. Iowa Code section 155A.21 and 657 Iowa Administrative Code rule 36.1(4)(j) allow the Board to discipline a pharmacist for the unlawful possession of a drug.

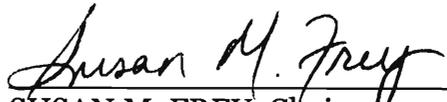
12. Iowa Code Section 17A.18A (2011) and 657 Iowa Administrative Code 35.30 authorize the Board to take immediate emergency action if necessary to protect the health, safety and welfare of the public.
13. The Board concludes this matter has been fully investigated and that the investigation has been sufficient to ensure the Board is proceeding on the basis of reliable information. Respondent was provided an opportunity to respond to the allegations against him.
14. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:
 - a. Respondent adulterated DSER capsules. Respondent returned the adulterated capsules, which contained less than the intended dose, to stock for distribution to patients. At least one patient was adversely affected as a result of the Respondent's actions. Numerous other patients were put at risk due to the Respondent's behavior.
 - b. Respondent diverted the contents of the adulterated medicine for his own use. His behavior calls into question his ability to practice safely with continued access to controlled substances.
15. Respondent's admitted behavior—adulterating and diverting Schedule II amphetamines— 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.
16. 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 Robert Hoehle 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 March 12, 2013. The hearing will commence at 1:00 P.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 8th day of January 2013.



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 5031

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2011-182
Pharmacist License of)	
ROBERT L. HOEHLE III)	SETTLEMENT AGREEMENT
License No. 18222,)	& FINAL ORDER
Respondent.)	

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

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

1. Respondent was issued pharmacy license number 18222, subject to the laws of the State of Iowa and the rules of the Board.
2. The Iowa Pharmacist License issued to and held by Respondent is active and will next expire on June 30, 2014.
3. Respondent was, at all times material to the Statements of Charges, employed as the pharmacist at the Kmart Pharmacy in Urbandale, Iowa.
4. A Statement of Charges was filed against Respondent by the Board on January 8, 2013. An emergency adjudicative order was filed that same day.
5. The Board has jurisdiction over the parties and jurisdiction over the subject matter of these proceedings.
6. Respondent has chosen not to contest the allegations set forth in the

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Statements 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 Settlement Agreement and Final Order, Respondent's license shall be suspended indefinitely. Suspension of Respondent's license may be terminated only as follows:

a. A minimum of two years has lapsed since the date of the Board's order.

b. Respondent has retaken and successfully completed the NAPLEX examination.

c. Respondent delivers to the Board a written, fully-documented, and current physical and mental health evaluation—including a substance abuse evaluation—which concludes that Respondent is mentally and physically fit to practice pharmacy. Any conclusion that the Respondent is fit to return to *the practice of pharmacy* will include an assessment of Respondent's ability to cope with the presence of controlled substances in the pharmacy setting. The evaluation shall only be performed by an evaluator pre-approved by the Board.

d. Respondent permits the Board complete access to his medical records, including records of substance abuse evaluation and treatment *as necessary* to determine that he is safe to return to the practice of pharmacy.

e. Respondent pays a civil penalty in the amount of \$5000. The civil penalty shall be made payable to the Treasurer of Iowa and mailed to the Board's Executive Director. All civil penalties shall be deposited into the State of Iowa general fund.

8. At such time as Respondent's is able complete the requirements in paragraph 7, 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. The terms of probation shall include, but not be limited to, the following:

a. Respondent shall agree to comply with the terms of probation.

b. The period of probation shall be 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.

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. Respondent shall report to the Board 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 Settlement Agreement and Final Order, by date*, and any further information deemed necessary by the Board from time to time.

e. Respondent shall notify all 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 Settlement Agreement and Final Order.

f. Within thirty (30) days after approval of this Settlement Agreement and Final 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.

g. 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.

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

i. 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.

j. 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 Settlement Agreement and Final Order and any drug therapy ordered by Respondent's physician or treatment provider. All costs related to the analysis of such

specimens shall be paid by Respondent.

k. To facilitate performance of the preceding paragraph, 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 to the Board, by FirstLab or any other testing facility, of all medical information, including test results, generated by Respondent's contact with the facility.

l. Respondent shall promptly provide, upon request of an agent of the Board, copies of or access to all his medical records.

m. 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.

n. Respondent shall not supervise any registered pharmacist-intern, shall not perform any of the duties of a pharmacy preceptor, and shall not serve as a pharmacy-in-charge.

o. 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 7 above or (iii) the amount or nature of chemical dependency treatment Respondent must participate in as directed by her physician/treatment provider. If Respondent is found to be chemically dependent, Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate.

10. Should Respondent violate or fail to comply with any of the terms and conditions of this Settlement Agreement and Final Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2011) and Iowa Administrative Code 657 chapter 36.

11. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Settlement Agreement and Final Order.

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

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

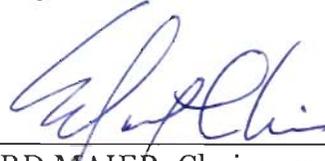
14. The Board's approval of this Settlement Agreement and Final Order shall constitute a FINAL ORDER of the Board.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 7 day of August 2013.



ROBERT HOEHLE III, R.Ph.
Respondent

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 28th day of August 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
Office of the Attorney General
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608 Locust Street
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ATTORNEY FOR RESPONDENT