

BEFORE THE IOWA BOARD OF PHARMACY

Re:) Pharmacy License of) HY-VEE PHARMACY #1124) License No. 1241,) Respondent.)	Case No. 2011-187 STATEMENT OF CHARGES
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COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Director for the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2011).
3. On November 21, 2011, the Board renewed general pharmacy license number 1241 for Hy-Vee Pharmacy #1124 (hereinafter, "Respondent"), allowing Respondent to engage in the operation of a pharmacy, subject to the laws of the State of Iowa and the rules of the Board.
4. At all times material to this statement of charges, Respondent was operating a general pharmacy at 1426 Broadway, Denison, Iowa 51442 with Heather Zeimen as the pharmacist in charge.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.15(2)(c) (2011) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by Respondent's (a) substantial deviation from the standards of learning and skill ordinarily possessed and applied by other Iowa pharmacies, (b) failure to exercise in a substantial respect that degree of care which is ordinarily exercised by an Iowa pharmacy and (c) willful and repeated departure from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa, as evidenced by Respondent's failure to provide patient counseling.

COUNT II -- FAILURE TO PROVIDE COUNSELING

Respondent is charged under Iowa Code § 155A.15(2)(c) (2011), and 657 Iowa Administrative Code §§ 6.14(1) and 36.1(4)(w), with failing to provide counseling to patients and engaging in business practices intended to circumvent requirements for patient counseling.

COUNT III – IMPROPER DELEGATION OF PHARMACIST FUNCTIONS

Respondent is charged under Iowa Code § 155A.15(5)(e) (2011), and 657 Iowa Administrative Code §§ 6.7(3) and 36.1(4)(l), with improper delegation to support personnel of pharmacist functions; specifically, dispensing prescriptions with pharmacist not present.

B. CIRCUMSTANCES

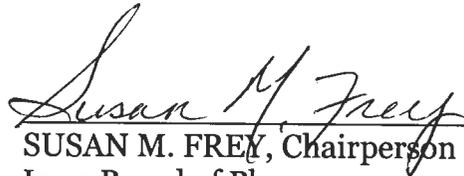
An investigation was commenced on June 1, 2011, which revealed the following:

1. At all times material to this Statement of Charges, Respondent operated a general pharmacy at 1426 Broadway, Denison, Iowa 51442 with Heather Zeimen as the pharmacist in charge.
2. During a “shopper survey” conducted by the Board, the pharmacy was presented with three new prescriptions for drugs. The shopper also purchased an over-the-counter medication.
3. At the time of purchase, the shopper was helped by a technician who asked if the shopper had any questions. Only when the shopper stated that he had not previously taken one of the medications was a pharmacist summoned.
4. The counseling provided was appropriate, but incomplete. No mention was made of the fact the pharmacy substituted a lower dose pseudoephedrine tablet (while doubling the number of tablets to be taken) for the prescribed medication.
5. The pharmacy also substituted a 40 mg, unscored Quinapril tablet for the prescribed 20 mg tablet, with instructions that the patient was to halve the unscored tablet. No counseling was provided regarding the substitution or how to halve the tablets.
6. No counseling was provided regarding a possible interaction between the over-the-counter medication and the prescription medication.
7. Medications were dispensed to other customers while no pharmacist was present in the pharmacy.
8. Counseling of other customers was easily overheard by the shopper.

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 R. JESSEN
Executive Director

On this 7th day of March 2012, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



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

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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BEFORE THE IOWA BOARD OF PHARMACY

Re:)
Pharmacy License of)
HY-VEE PHARMACY #1124,)
License No. 1241)
Respondent)

Case No. 2011-187

**STIPULATION
AND
CONSENT ORDER**

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy (hereinafter, the "Board") and Hy-Vee Pharmacy #1124 (hereinafter, "Respondent") have agreed to settle a contested case currently on file with the Board. The Statement of Charges filed against Respondent on March 7, 2012 shall be resolved without a hearing, as the Board and Respondent stipulate to the following:

1. Respondent's license to operate a general pharmacy in Iowa is evidenced by Pharmacy License Number 1241, which is recorded in the permanent records of the Board.
2. Pharmacy License Number 1241 is current and active until December 31, 2012.
3. The Board has jurisdiction over the parties and the subject matter herein.
4. A Statement of Charges was filed against Respondent on March 7, 2012.
5. Respondent denies the allegations contained in the Statement of Charges, but in the interest of settlement has chosen not to contest the allegations. Respondent acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

6. On the date of the Board's approval of this Stipulation and Consent Order, Respondent's license shall be placed on probation for two (2) years, upon the following conditions:

- (a) Respondent shall obey all federal and state laws, rules, and regulations substantially related to the operation of an Iowa pharmacy.
- (b) Consistent with subparagraph (a) above, Respondent shall assure that all customers receive counseling in accordance with Board rules.
- (c) Respondent shall file sworn quarterly reports with the Board attesting to Respondent's compliance with the terms and conditions of this Stipulation and Consent Order. The reports shall be filed not later than December 5, March 5, June 5 and September 5 of each calendar year and shall include a description of Respondent's most recent efforts to comply with this Stipulation and Consent Order, including paragraph (b) above. Respondent's quarterly reports shall also provide any other information deemed to be necessary, from time to time, by the Board.

7. Upon the Board's approval of this Stipulation and Consent Order, Respondent shall be assessed a civil penalty in the amount of \$1,000. The civil penalty payment shall be made by check, payable to the Treasurer of Iowa and mailed to the executive director of the Board within 10 days after Respondent's receipt of notice of the Board's approval of this Stipulation and Consent Order. All civil penalty payments shall be deposited into the State of Iowa general fund. Upon the Board's receipt of the civil penalty, this disciplinary proceeding shall be concluded without further order of the Board.

8. Should Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate further action to impose licensee discipline as authorized by Iowa Code chapters 272C and 155A (2011), and 657 Iowa Administrative Code § 36.1.

9. 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.

10. 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 party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

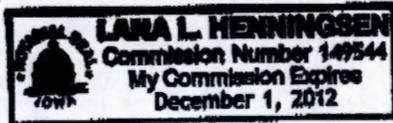
11. The State's counsel may present this Stipulation and Consent Order to the Board.

12. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER of the Board in a disciplinary proceeding.

This Stipulation and Consent Order is voluntarily submitted by Hy-Vee Pharmacy #1124 to the Iowa Board of Pharmacy for its consideration on this 21st day of JUN 2012.

HY-VEE PHARMACY #1124
Respondent
By [Signature], R.Ph.
Pharmacist In Charge

Subscribed and sworn to before me by Heather Zeimen who has stated to me that he/she is the pharmacist in charge of Hy-Vee Pharmacy #1124 and is authorized to sign this Stipulation and Consent Order on behalf of Hy-Vee Pharmacy #1124 on this 27 day of June 2012.



Lana L. Henningsen
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on this 10th day of July 2012.

Susan M. Frey
SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
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revised