

**BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA**

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Re:	)	Case No. 2000-173
Pharmacy License of	)	
<b>DRUGTOWN PHARMACY #7065</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 173	)	
Respondent	)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (1999).
3. Effective January 1, 2000, the Board renewed Respondent general pharmacy license number 173 with Verle Dean Johnson, R.Ph., as pharmacist in charge, allowing Respondent to engage in the operation of pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. General pharmacy license number 173 is current until December 31, 2000.
5. Respondent is currently operating a general pharmacy at 1140 North Jefferson Street, Ottumwa, Iowa 52501 without a pharmacist in charge currently identified.

**COUNT I**

The Respondent is charged under Iowa Code § 155A.15(2) (1999) and 657 Iowa Administrative Code §§ 6.2(2) & 36.1(4) with failure to employ sufficient number of personnel, including licensed pharmacists, as required to operate the pharmacy competently, safely, legally, and adequately to meet the needs of the patients of the pharmacy.

**COUNT II**

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1999) and 657 Iowa Administrative Code §§ 6.2(1)(a) & (b), 8.20, 36.1(4)(b)(4) with failure to ensure that its pharmacists provide adequate patient counseling as specified in rule 657 Iowa Administrative Code § 8.20.

COUNT III

The Respondent is charged under Iowa Code § 155A.15(2)(i) (1999) and 657 Iowa Administrative Code §§ 6.6 & 10.10 with failing to provide and maintain effective security, controls, and procedures to guard against the theft and diversion of prescription drugs and controlled substances.

THE CIRCUMSTANCES

1. During the Board's investigation of the circumstances surrounding the arrest of one of the pharmacists working at the Respondent's pharmacy, current and former pharmacists at the Respondent's pharmacy admitted that the Respondent was not adequately staffed to operate the pharmacy competently, safely and legally. Pharmacists employed by the Respondent admitted that multiple errors were occurring in the pharmacy as a result of inadequate staffing.
2. During the Board's investigation pharmacists employed by the Respondent also admitted that the pharmacy was often not able to satisfy its patient counseling obligations because of inadequate staffing.
3. An audit of the controlled substances at the Respondent's pharmacy revealed substantial shortages of several controlled substances.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.

  
Lloyd K. Jessen  
Executive Secretary/Director

On this 10 day of October, 2000, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.

  
Matthew C. Osterhaus, Chairperson  
Iowa Board of Pharmacy Examiners  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319

**BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA**

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Re:	)	Case No. 2000-173
Pharmacy License of	)	
<b>DRUGTOWN PHARMACY #7065</b>	)	<b>STIPULATION</b>
License No. 173	)	<b>AND</b>
Respondent	)	<b>CONSENT ORDER</b>

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COME NOW the Iowa Board of Pharmacy Examiners (“the Board”) and DrugTown Pharmacy #7065 (“Respondent”) and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2001), enter into the following Stipulation and Consent Order settling the contested case currently on file.

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on October 10, 2000, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. The Respondent’s license to operate a pharmacy was renewed effective January 1, 2001, as evidenced by Pharmacist License Number 173, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. The General Pharmacy License Number 173 issued to and currently held by Respondent is current and in force until December 31, 2001.
3. The Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

4. A Statement of Charges was filed against Respondent on October 10, 2000.
5. This Stipulation and Consent Order is entered into in order to resolve disputed claims and constitutes no admission on the part of the Respondent.
6. Respondent shall pay a civil penalty of \$7,500.00 within 30 days of the date of approval of this Stipulation and Consent Order by the Board. Respondent shall deliver a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund of the State of Iowa.
7. Respondent's license shall be placed on probation for three (3) years, with the following conditions, beginning on the date this Stipulation and Consent Order is accepted by the Board:
  - a. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide its *typewritten* policies and procedures for detecting, documenting, resolving, and preventing medication dispensing errors. The policies and procedures shall also require that all records of dispensing errors be consistently and periodically evaluated by the pharmacist in charge or her designee as part of a cycle of continuous quality improvement. Records of dispensing errors shall be maintained in the pharmacy for a minimum of one year. Following review and approval by the Board, the Respondent agrees to adopt, implement and adhere to these policies and procedures when operating its pharmacy.

- b. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide its *typewritten* policies and procedures for the following: (a) dispensing accuracy, (b) patient counseling, and (c) prospective drug use review. Following review and approval by the Board, the Respondent agrees to adopt, implement and adhere to these policies and procedures when operating its pharmacy. The Respondent also agrees to require all pharmacists, supportive personnel, and all local management personnel to read the written policies and procedures and to sign written statements certifying that they have read them and agree to comply with the policies and procedures. Copies of these signed statements shall be maintained by the Respondent.
- c. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide its *typewritten* policies and procedures for (a) maintaining accountability for controlled substances, and (b) providing and maintaining effective security, controls, and procedures to guard against the theft and diversion of prescription drugs and controlled substances. The policies and procedures shall also require the Respondent to keep a perpetual inventory of all schedule II and schedule III controlled substances. Following review and approval by the Board, the Respondent agrees to adopt, implement and adhere to these policies and procedures when operating its pharmacy.
- d. During probation, Respondent shall report to the Board or its designee

quarterly. Said report shall be in writing. The report shall include information regarding the Respondent's staffing levels (including both pharmacists and supportive personnel); any dispensing errors that the Respondent identifies or otherwise becomes aware of through information received from consumers, health care professionals, or others; any judgment or settlement of a malpractice claim or action; any losses or thefts of controlled substances; and any further information deemed necessary by the Board from time to time.

- e. The Respondent shall address the issues of adequate staffing of the prescription department in a manner that will allow the prescription department to comply with all of the requirements contained in 657 Iowa Administrative Code chapter 6, "General Pharmacy Licenses."
- f. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the operation of a pharmacy and the distribution of controlled substances.
- g. The Respondent shall submit to random unannounced visits or inspections by the Board or agents of the Board to verify compliance with this Stipulation and Consent Order.
- h. The Respondent shall notify all pharmacist employees of its prescription department of the resolution of this case and the probationary terms, conditions, and restrictions imposed on the Respondent by this Stipulation and Consent Order. Within ten (10) days after the approval of this

Stipulation and Consent Order or within ten (10) days of when a new pharmacist employee begins working in the Respondent's prescription department, the Respondent shall cause each of its pharmacist employees to report to the Board in writing acknowledging that the employee has read this Stipulation and Consent Order and understands it.

- i. The Respondent shall appear informally before a committee of the Board or the full Board upon the request of the Board, for the purpose of reviewing its performance during the probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances. Any such appearance shall be subject to the waiver provisions of 657 Iowa Administrative Code § 35.9.
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 action to revoke or suspend the Respondent's Iowa license to operate a pharmacy or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A 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 Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

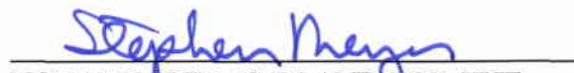
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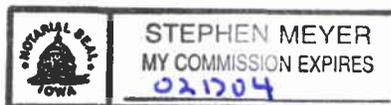
12. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 5<sup>th</sup> day of July, 2001.

  
Drugtown  
Respondent  
By Richard N. Jurgens  
Executive Vice President of Hy-Vee  
d/b/a Drug Town

  
DrugTown Pharmacy #7065  
Martha Mellecker, R.Ph.  
Pharmacist in charge,  
Respondent

Subscribed and sworn to before me by Richard N. Jurgens, who has stated to me that he is the Executive Vice President of Hy-Vee, Inc. d/b/a Drug Town and that he is authorized to sign this Stipulation and Consent Order on behalf of said DrugTown Pharmacy #7065 on this 21 day of June, 2001.

  
NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA



Subscribed and sworn to before me by Martha Mellecker, who has stated to me that she is the pharmacist in charge of DrugTown Pharmacy #7065 and that she is authorized to sign this Stipulation and Consent Order on behalf of said DrugTown Pharmacy #7065 on this 2 day of July, 2001.

Janet C. Gould  
NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA

13. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 12 day of July, 2001.

Matthew C. Osterhaus  
MATTHEW C. OSTERHAUS, Chairperson  
Iowa Board of Pharmacy Examiners  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

APPROVED AS TO FORM:

Edwin N. McIntosh  
Edwin N. McIntosh – Attorney for Respondent

Shauna Russell Shields  
Shauna Russell Shields – Attorney for State

cc: Edwin N. McIntosh  
Dorsey & Whitney L.L.P.  
801 Grand, Suite 3900  
Des Moines, Iowa 50309

**ATTORNEY FOR RESPONDENT**

Shauna Russell Shields  
Assistant Attorney General  
Office of the Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319

**ATTORNEY FOR STATE**