

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	
Pharmacy License of)	Case No. 2010-3
HY-VEE FOOD & DRUG 2)	
License No. 126,)	STATEMENT OF CHARGES
Respondent.)	

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 (2009).
3. On December 20, 2010, the Board renewed general pharmacy license number 126 for Hy-Vee Food & Drug 2 (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 2540 East Euclid Avenue, Des Moines, Iowa 50317, with Bruce Babcock as the pharmacist in charge.

A. CHARGE

COUNT I – LACK OF COMPETENCY

Respondent is charged under Iowa Code § 155A.15(2)(c) (2009) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

COUNT II – FAILURE TO MAINTAIN ADEQUATE RECORDS

Respondent is charged under Iowa Code § 155A.15(2)(h) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(ac) and 36.1(4)(u), with failing to maintain complete and adequate records of prescriptions and drug sales.

COUNT III – DELIVERING MISLABELED PRESCRIPTION

Respondent is charged under Iowa Code § 155A.15(2)(f) (2009), and 657 Iowa Administrative Code § 36.1(4)(u), with delivering a mislabeled prescription drug.

B. CIRCUMSTANCES

An investigation was commenced on January 8, 2010, which revealed the following:

1. Respondent operates a general pharmacy at 2540 East Euclid Avenue, Des Moines, Iowa 50317, with Bruce Babcock as the pharmacist in charge.
2. A patient phoned Respondent seeking to refill her warfarin 5mg prescription. When the patient received up her refill, she was dispensed a bottle of warfarin 5mg tablets with a label attributing the prescription to a doctor the patient had not seen.
3. After the patient realized the prescription label contained incorrect information, she called Respondent and requested that it deliver a correctly labeled prescription fill. Instead of providing the corrected bottle, Bruce Babcock directed the patient to pour the contents of the new prescription into a bottle used in a prior fill of warfarin, since the old bottle contained the directions and prescriber information the patient felt were accurate.
4. Then, without contacting the patient's prescriber, Babcock altered the patient's records (the patient's prescription profile) so that the information relating to the most recently dispensed prescription conformed to prescriber information and medication directions told to Babcock by the patient and the patient's daughter.
5. Babcock acknowledges that he did not follow appropriate procedures.
6. Respondent was unable to locate the patient's original prescription.
7. An inspection of Respondent revealed record-keeping deficiencies and out-dated prescription medications in stock.

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 8 day of March 2011, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



VERNON H. BENJAMIN, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

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

Edwin N. McIntosh
Dorsey & Whitney
801 Grand Avenue,
Des Moines, IA 50309

Hy-Vee Food & Drug 2 2-11.doc

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2010-3
Pharmacy License of)	
HY-VEE FOOD AND DRUG 2,)	STIPULATION
License No. 126,)	AND
Respondent.)	CONSENT ORDER
)	

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy (hereinafter, "Board") and Hy-Vee Food and Drug 2 (hereinafter, "Respondent") have agreed to settle a contested case currently on file with the Board. The Statement of Charges filed against Respondent on March 8, 2011 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 126, which is recorded in the permanent records of the Board.
2. Pharmacy License Number 126 is current and active until December 31, 2011.
3. The Board has jurisdiction over the parties and the subject matter herein.
4. A Statement of Charges was filed against Respondent on March 8, 2011.
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 three (3) years, upon the following conditions:

- (a) Respondent agrees to abide by the terms of this agreement.
- (b) Respondent shall obey all federal and state laws, rules, and regulations substantially related to the operation of an Iowa pharmacy.
- (c) Within three (3) months after the date of the Board's approval of this Stipulation and Consent Order, Respondent will submit to the Board *typewritten*¹ pharmacy policies and procedures regarding (1) appropriate handling of medication dispensing errors and (2) removal of out dated medications from stock. Following review and approval by the Board, Respondent agrees to adopt, implement, and adhere to these policies and procedures
- (d) Following review and approval by the Board, Respondent agrees to adopt, implement, and adhere to these policies and procedures
- (e) 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 paragraphs (b) and (c) above.* Respondent's quarterly reports shall

¹ For the purposes of this order, "*typewritten*" policies may be generated on computer word-processing equipment.

identify the current person responsible for compliance with Iowa law, and 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 \$2500. 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.

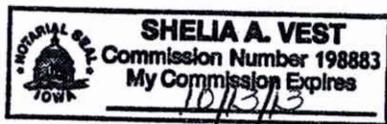
11. The State's counsel may present this Stipulation and Consent Order to the Board.

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 Food and Drug 2 to the Iowa Board of Pharmacy for its consideration on this 9 day of August 2011.

HY-VEE FOOD AND DRUG 2
Respondent
By Bruce A. Babcock, R.Ph.
Pharmacist In Charge

Subscribed and sworn to before me by Bruce A. Babcock, who has stated to me that he/she is the pharmacist in charge of Hy-Vee Food and Drug 2 and is authorized to sign this Stipulation and Consent Order on behalf of Hy-Vee Food and Drug 2 on this 9th day of August 2011.



Shelia A. Vest
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on this 10 day of August 2011.

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

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

**Edwin N. McIntosh
Dorsey & Whitney
801 Grand Avenue,
Des Moines, IA 50309**

Hy-Vee (Euclid) settle 5-11.doc

BEFORE THE BOARD OF PHARMACY STATE OF IOWA

**IN THE MATTER OF THE STIPULATION AND CONSENT ORDER AGAINST
HY-VEE FOOD & DRUG 2, RESPONDENT**

2010-3

TERMINATION ORDER

DATE: August 10, 2014

1. On August 10, 2011, a Stipulation and Consent Order was accepted by the Iowa Board of Pharmacy placing the license to practice pharmacy, number 126 issued to Hy-Vee Food & Drug 2, on probation for a period of three years under certain terms and conditions.

2. Respondent has successfully completed the probation as directed.

3. The Board directed that the probation placed upon the Respondent's license to practice pharmacy should be terminated.

IT IS HEREBY ORDERED:

That the probation placed upon the Respondent's license to practice pharmacy is terminated, and the license is returned to its full privileges free and clear of all restrictions.

IOWA BOARD OF PHARMACY



Edward L. Maier, Board Chairperson
400 SW 8th Street, Suite E
Des Moines, Iowa 50309-4688