

BEFORE THE IOWA BOARD OF PHARMACY

Re:)
Pharmacy License of)
HY-VEE PHARMACY #1850)
License No. 1104,)
Respondent.)

Case No. 2012-3

STATEMENT OF CHARGES

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 1104 for Hy-Vee Pharmacy #1850 (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 528 S. Highway #1, Washington, Iowa 52353, with Kim Malichky 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.

COUNT II -- FAILURE TO IMPLEMENT CQI

Respondent is charged under Iowa Code § 155A.15(2)(c) (2011), and 657 Iowa Administrative Code §§ 8.26 and 36.1(4)(u), with failing to implement and properly utilize a continuous quality improvement program.

B. CIRCUMSTANCES

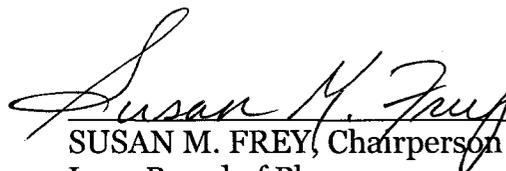
An investigation was commenced on January 12, 2012, which revealed the following:

1. At all times material to this Statement of Charges, Respondent operated a general pharmacy at 528 S. Highway #1, Washington, Iowa 52353, with Kim Malichky as the pharmacist in charge.
2. Respondent mis-filled a Chlorpromazine 10mg prescription for a patient.
3. The patient was given Chlorpromazine 100mg tablets instead of Chlorpromazine 10 mg tablets.
4. Subsequent to discovery of the error, Respondent made no entry regarding the error in its continuous quality improvement log.

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 27th day of June 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: Theresa Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

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BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF THE)
STATEMENT OF CHARGES AGAINST)
HY-VEE PHARMACY,)
Pharmacy No. 1104)
RESPONDENT.)

Case No. 2012-3

SETTLEMENT AGREEMENT
AND
FINAL ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy and Hy-Vee Pharmacy 1850 (Respondent) enter into the following Settlement Agreement and Final Order 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 agree:

1. Respondent was issued Pharmacy License No. 1104.
2. General pharmacy license number 1104 is currently active. At all times material hereto, Respondent was operating a general pharmacy at 528 S. Hwy. #1, Washington, Iowa 52353, with Kim Malichky as the pharmacist in charge.
3. The Board has jurisdiction over the parties and subject matter in this case.
4. A Statement of Charges was filed against the Respondent on June 27, 2012.
5. Respondent denies the allegations in the Statement of Charges, but wishes to settle this matter without hearing. Respondent acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds

for the discipline agreed to in this Order.

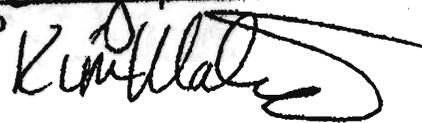
6. Count I of the Statement of Charges—Lack of Professional Competency—is hereby **DISMISSED**.
7. Respondent is **CITED** for failing to implement and properly utilize a continuous quality improvement program. Respondent is **WARNED** that its failure to comply with the laws governing the practice of pharmacy in Iowa could result in further discipline against his license.
8. Respondent agrees to provide the Board typewritten Policies and Procedures for (1) pharmacist and technician training, (2) preventing medication dispensing errors, and (3) utilization of a continuous quality improvement (CQI) program within thirty (30) days of the Board's approval of this Settlement Agreement and Final Order. If Respondent fails to implement or abide by these policies, the Board may initiate action to revoke or suspend Respondent's pharmacy license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2011) and 657 Iowa Administrative Code chapter 36.
9. Respondent agrees to pay a civil penalty in the amount of \$500. This civil penalty shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board within ten (10) 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.
10. If Respondent violates or fail to comply with any of the terms of this Settlement Agreement and Final Order, the Board may initiate action to revoke or suspend Respondent's pharmacy license or to impose other licensee discipline as

authorized by Iowa Code chapters 272C and 155A (2011) and 657 Iowa Administrative Code 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 in the Statement of Charges, and waives any objections to this 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 in a disciplinary action.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 12 day of November 2012.

HyVee Pharmacy
HY-VEE PHARMACY #1850
Respondent



This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 14th day of December 2012.

Susan M. Frey
SUSAN M. FREY, Chairperson

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