

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2014-28
Pharmacist License)	
JAMES KAUFMAN)	NOTICE OF HEARING
License No. 18228,)	& STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) 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 18228. Respondent's license is currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on August 26, 2014, before the Iowa Board of Pharmacy. The hearing shall be held during the morning session, beginning at 9:00 a.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 can also be reached by phone at (515)281-6736 or 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 Meghan Gavin at (515)281-6736.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2013).

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 (2013) 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 UNETHICAL CONDUCT OR PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC

Respondent is charged with engaging in unethical conduct or practice harmful or detrimental to the public in violation of Iowa Code section 155A.12(1) and 657 Iowa Administrative Code rule 36.1(4)(c).

Count II UNLAWFUL POSSESSION OF A PRESCRIPTION DRUG

Respondent is charged with the unlawful possession of a prescription drug—including controlled substances—in violation of Iowa Code sections 124.403(3) and 155A.12(1)(5) and 657 Iowa Administrative Code rule 36.1(4)(j).

D. FACTUAL CIRCUMSTANCES

1. Respondent is an Iowa-licensed pharmacist previously employed at the Hy-Vee Pharmacy in Le Mars, Iowa.

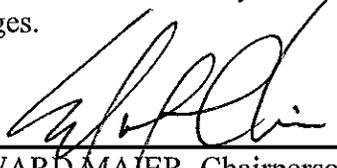
2. On February 13, 2014, Respondent self-reported diverting 36 tablets of Norco, a brand name for hydrocodone/acetaminophen.
3. On February 11, 2014, Respondent created a fictitious prescription for 36 tablets of Norco 10mg. The patient on the prescription was listed as "Robert Brown" and the prescriber was Dr. Wolff. No refills were assigned to the prescription.
4. Respondent entered the prescription into the Enterprise computer system, verified the prescription, and personally filled and labeled the prescription. This is not the standard filling process at the Le Mars Hy-Vee.
5. The Respondent was confronted by the Hy-Vee store director when he attempted to take the prescription out of the store. The authorities were contacted and Respondent was arrested and charged with Obtaining or Attempting to Obtain a Prescription Drug or Device by Forgery or Alteration of a Prescription, a Class C Felony. The criminal charges are still pending.
6. Respondent was terminated from Hy-Vee.

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 rule 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 the 2nd day of July, 2014, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



EDWARD MAJER, 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

Thomas J. Whorley
WOLFF WHORLEY DE HOOGH & SCHREURS PLLC
934 Third Avenue, Suite 200
P.O. Box 309
Sheldon, IA 51201-0309
ATTORNEY FOR RESPONDENT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

- | | |
|--|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input checked="" type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| Article Number <u>9171999991703239255295</u> | <input type="checkbox"/> other _____ |

on the 3rd day of July, 2014

I declare that the statements above are true to the best of my information, knowledge and belief.


Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2014-28
Pharmacist License of)	
)	
JAMES KAUFMAN,)	SETTLEMENT AGREEMENT
License No. 18228,)	AND FINAL ORDER
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (“Board”) and James Kaufman (“Respondent”), and enter into this Combined Statement of Charges, Settlement Agreement, and Final Order (“Agreement”) pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) (2013).

1. Respondent holds Iowa pharmacist license number 18228, which is currently active.
2. The Board has jurisdiction over the parties and the subject matter of these proceedings.
3. The Board issued a Notice of Hearing and Statement of Charges concerning the Respondent’s license on July 2, 2014.
4. Execution of this Settlement Agreement and Final Order constitutes the resolution of a contested case. Respondent has a right to hearing before the Board on the charges, but Respondent waives the right to hearing and all attendant rights, including the right to appeal or seek judicial review of the Board’s actions, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case and shall have the force and effect of a disciplinary order entered following a contested case hearing.
5. Respondent is freely and voluntarily entering into this Agreement. Respondent agrees that the State’s counsel may present this Agreement to the Board and may have *ex parte* communications with the Board while presenting it.
6. Respondent agrees to **VOLUNTARILY SURRENDER** his Iowa pharmacist license to resolve this matter.
7. Respondent shall surrender his Iowa pharmacist license to the Board within ten (10) days of the Board’s approval of this Agreement.
8. This voluntary surrender is considered a revocation under 657 Iowa Administrative Code rule 36.15 for purposes of reinstatement. Respondent may not request reinstatement for at least one year from the date of Board approval of this Settlement Agreement. Reinstatement requests are governed by 657 Iowa Administrative Code rule 36.13.
9. Prior to seeking reinstatement, Respondent must be found safe to practice pharmacy by a mental health evaluator, including a substance abuse evaluation which concludes that Respondent is safe to practice as a certified pharmacist technician. Respondent shall cause the records from the evaluation to be provided to the Board in conjunction with any request for

reinstatement. The Board shall not schedule a reinstatement hearing until the Board has received the appropriate mental health and substance abuse evaluation records.

10. Respondent agrees not to perform any activities that would require an Iowa pharmacist license until such time as his license is reinstated.

11. This Agreement shall be part of Respondent's permanent record and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

12. Should Respondent violate the terms of this Agreement, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2013) and 657 Iowa Administrative Code chapter 36.

13. This Agreement is subject to approval by the Board. If the Board does not approve this Agreement, it shall be of no force or effect on either party, and shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Agreement, it shall be the full and final resolution of this matter.

14. This Agreement, when fully executed, is a public record and is available for inspection and copying in accordance with the requirements of Iowa Code chapters 22 and 272C.

15. This Agreement shall not be binding as to any new complaints received by the Board.

16. The Board's approval of this Agreement 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 ___ day of _____, 2014.



JAMES KAUFMAN
Respondent

This Combined Statement of Charges, Settlement Agreement, and Final Order is accepted by the Iowa Board of Pharmacy on the 6th day of January, 2014.⁵



EDWARD MAIER, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

Copies to:

Meghan Gavin
Assistant Attorney General
Hoover Building, 2nd Floor
Des Moines, IA 50319