

BEFORE THE IOWA BOARD OF PHARMACY

Re:

Pharmacy Licenses of:)

K MART PHARMACY 3971)

License No. 780;

CASE NO. 2011-130

KMART PHARMACY 3097)

License No. 328;

KMART PHARMACY 3585)

License No.953;

KMART PHARMACY 9220)

License No. 335;

KMART PHARMACY 7767)

License No. 532;

KMART PHARMACY 4018)

License No. 53;

KMART PHARMACY 9359)

License No. 1054;

KMART PHARMACY 7002)

License No. 568;

**NOTICE OF HEARING
AND STATEMENT OF CHARGES**

KMART PHARMACY 4465)

License No. 554;

KMART PHARMACY 4315)

License No. 515;

KMART PHARMACY 4160)

License No. 174;

KMART PHARMACY 7161)

License No. 212;

KMART PHARMACY 4314)

License No. 493;

KMART PHARMACY 4485)

License No. 430;

KMART PHARMACY 4289)

License No. 437;

KMART PHARMACY 3441)

License No. 309;

KMART PHARMACY 4158)

License No. 172;

KMART PHARMACY 3447)

License No. 1016;

KMART PHARMACY 7583)

License No. 847;

KMART PHARMACY 4156)

License No. 549;

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). The pharmacy licenses held by Respondents are currently active.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 23, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the morning hearing 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 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:

Theresa O'Connell Weeg
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover State Office Building
Des Moines, Iowa 50319.

Ms. Weeg may also be reached by phone at (515)281-5328 or by e-mail at Theresa.Weeg@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 Theresa O'Connell Weeg at (515)281-5328 or at Theresa.Weeg@iowa.gov.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2011).

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 (2011) 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 PROFESSIONAL INCOMPETENCY

Respondent is charged under Iowa Code Section 155A.15(2)(c) and 657 Iowa Administrative Code 8(12), with violating the rules of the Board which prohibit advertising of controlled substances.

D. FACTUAL CIRCUMSTANCES

1. Respondents are licensed pharmacies in the State of Iowa. Respondents' pharmacy licenses are active.
2. Respondents self-reported to the Board in September 2011 that they had published an advertisement for free Phenobarbital, a controlled substance, with a prescription from a veterinarian. Respondents stated this advertisement had been published without proper review.

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 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Theresa Weeg.

F. PROBABLE CAUSE FINDING

On this 30th day of January, 2013, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



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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**SETTLEMENT AGREEMENT AND
FINAL ORDER**

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2013), the Iowa Board of Pharmacy and the K Mart Pharmacies (Respondents) listed above enter into the following Settlement Agreement and Final Order to settle a licensee disciplinary proceeding currently pending before the Board.

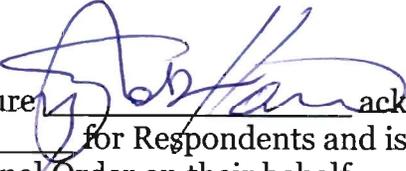
The allegations contained in a Statement of Charges against Respondents shall be resolved without proceeding to hearing, as the Board and Respondents stipulate as follows:

1. A Statement of Charges was filed against Respondents on January 30, 2013.
2. At all times relevant to the Statement of Charges, Respondents operated the general pharmacies designated above at locations in Iowa.
3. The Board has jurisdiction over the parties and the subject matter of these proceedings.
4. Respondents have chosen not to contest the allegations in the Statement of Charges and acknowledge that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.
5. Respondents originally identified this matter internally, self-reported this matter to the Board, and took prompt corrective action.
6. Respondents are hereby CITED for publishing an advertisement for a free controlled substance with a prescription from a veterinarian, and are WARNED that future violations could result in further disciplinary action.

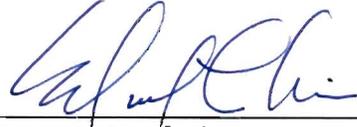
7. Respondents agree to pay a civil penalty in the amount of \$250 for each pharmacy listed in the caption of this agreement. This civil penalty shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board within twenty (20) days of the Board's approval of this Settlement Agreement and Final Order. All civil penalty payments shall be deposited into the State of Iowa general fund.
8. Respondents agree to fully comply with the laws governing the practice of pharmacy in Iowa.
9. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final Order, Respondents waive all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waive any objections to this Final Order.
10. The State's legal counsel may present this Settlement Agreement and Final Order to the Board.
11. This Settlement Agreement and Final Order is subject to the approval of 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 Respondents. If the Board approves this Settlement Agreement and Final Order, it shall be the full and final resolution of this matter.
12. The Board's approval of this Settlement Agreement and Final Order shall constitute a FINAL ORDER of the Board.

This Settlement Agreement and Final Order is voluntarily submitted by Respondents to the Board for its consideration on the ____ day of _____ 2013.

For Respondents

By his/her signature  acknowledges s/he is the _____ for Respondents and is authorized to sign this Settlement Agreement and Final Order on their behalf.

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 26 day of June 2013.



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

cc: Theresa O'Connell Weeg
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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Krieg DeVault LLP
30 N. LaSalle St., Suite 2800
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