

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

Re:)	Case No. 2004-81
Pharmacy License of)	
K-MART PHARMACY #4465)	STATEMENT OF CHARGES
License No. 554)	
Respondent)	

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 (2005).
3. Effective December 7, 2004, the Board renewed Respondent general pharmacy license number 554 with Paul A. Jensen 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 554 is current until December 31, 2005.
5. Respondent is currently operating a general pharmacy at 5700 Gordon Drive, Sioux City, Iowa 51106, with Paul A. Jensen as the pharmacist in charge.

A. CHARGES

COUNT I – INADEQUATE SECURITY

Respondent is charged under Iowa Code §§ 124.308, 124.402, 124.403, 155A.15(2)(i) (2003) and 657 Iowa Administrative Code §§ 6.2, 6.7, 10.15 and 36.1(4)(u) with a failure to establish adequate security and effective controls against diversion of prescription drugs, including controlled substances.

COUNT II – LACK OF PROFESSIONAL COMPETENCY

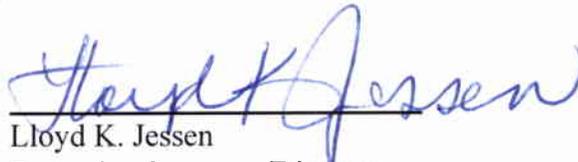
Respondent is charged under Iowa Code § 155A.15(2) (2005) and 657 Iowa Administrative Code § 36.1(4) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

B. CIRCUMSTANCES

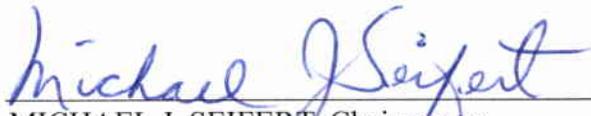
On or about October 21, 2004 an investigation of Respondent was commenced, revealing the following:

1. Respondent employed Matt Kleinhesselink as its pharmacist-in-charge. Kleinhesselink had displayed angry and abusive behavior during the two years preceeding October 21, 2004, which behavior was reported to Respondent. Respondent took no action in response to complaints about Matt Kleinhesselink's behavior.
2. Respondent employed Matt Kleinhesselink as its pharmacist-in-charge. Kleinhesselink had displayed angry and abusive behavior during the two years preceeding October 21, 2004, which behavior was reported to Respondent. Respondent took no action in response to complaints about Matt Kleinhesselink's behavior.
3. After technicians reported to Respondent that Matt Kleinhesselink was diverting drugs, Respondent installed security cameras.
4. The security cameras provided evidence of Matt Kleinhesselink placing drugs in his socks and coat, in his briefcase and in small bottles which he concealed in the pharmacy.
5. Matt Kleinhesselink was leaving Respondent's store on October 21, 2004, when he was approached by Respondent's loss-prevention staff. Kleinhesselink admitted diversion of drugs, and a variety of controlled substances – including hydrocodone, Ambien, diazepam, and tossionex – were found on his person.
6. Matt Kleinhesselink was discharged from employment on October 21, 2004 and shortly thereafter committed suicide.
7. An audit of Respondent's controlled substances inventory revealed shortages in excess of 17,000 tablets and 23,000 ml of liquids during the 18 months prior to October 21, 2004.

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 19th day of April, 2005, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



MICHAEL J. SEIFERT, Chairperson
Iowa Board of Pharmacy Examiners
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 50319

K-Mart #4465-SOC.doc

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2004-81
Pharmacy License of)	
KMART PHARMACY #4465)	STIPULATION
License No. 554)	AND
Respondent)	CONSENT ORDER

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2009), The Iowa Board of Pharmacy (hereinafter, the “Board”) and Kmart Pharmacy #4465 (hereinafter, “Respondent”) enter into the following Stipulation and Consent Order settling a licensee disciplinary proceeding currently pending before the Board.

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

1. Respondent’s license to operate a pharmacy was renewed December 4, 2009 as evidenced by Pharmacy License Number 554, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. General Pharmacy License Number 554 issued to and held by Respondent is current and in force until December 31, 2011.
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 April 19, 2005.
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 set forth in the Statement of Charges, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

6. Within sixty (60) days after the date of the Board's approval of this Stipulation and Consent Order – Respondent shall propose to the Board written pharmacy practices and procedures which shall include, but not be limited to the following;

- a. Utilization of Random Testing Program. A proposal that establishes frequencies of utilization for Respondent's existing random drug testing program. The program shall include pre-employment testing of both pharmacists and pharmacy technicians.
- b. Response to Discovery of Drug Diversion. A proposal regarding the manner in which Respondent will react to the discovery of internal drug diversion, including measures for investigation, evaluation of evidence, assessment of security measures and the potential for additional security measures, and evaluation of employee conduct or misconduct. Respondent's proposal shall include utilization of Respondent's Employee Assistance Program (EAP), as well as utilization of the Iowa Pharmacy Recovery Network.
- c. Procedures for Discharge of Pharmacy Employees. A proposal regarding the manner in which Respondent will counsel, discipline or discharge employees involved in drug use or diversion, including specific procedures for safely handling the discipline or discharge of long-term employees. Respondent's proposal shall include immediate referral of ongoing employees to treatment and counseling programs, but does not require any such referral for employees

who, based on the pharmacy's policies and procedures, are or will be terminated for drug use or diversion.

- d. Perpetual Inventory of Controlled Substances. A description of Respondent's "automatic replenishment system" – which constitutes a perpetual inventory of all Schedule-2 and Schedule-3 controlled substances – including a description of how and when Respondent utilizes the system to detect drug diversion.

Once Respondent's proposals are approved by the Board, Respondent agrees to abide by the specific terms of its proposals.

7. Upon the Board's approval of this Stipulation and Consent Order, Respondent shall be assessed a civil penalty in the amount of \$5,000. This civil penalty payment shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board. All civil penalty payments shall be deposited into the State of Iowa general fund.

8. Respondent agrees to obey all federal and state laws, rules, and regulations substantially related to the operation of pharmacy.

9. 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 Respondent's Iowa license to operate a pharmacy or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2009) and 657 Iowa Administrative Code § 36.1.

10. 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.

11. 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.

12. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER.

This Stipulation and Consent Order is voluntarily submitted by Kmart Pharmacy #4465 to the Iowa Board of Pharmacy for its consideration on this 2nd day of March 2011.

Kmart Pharmacy #4465, Respondent
By MARY Tortorice
Mary Tortorice
VP, Deputy General Counsel

Subscribed and sworn to before me by Mary Tortorice, who has stated to me that he/she is authorized to sign this Stipulation and Consent Order on behalf of Kmart Pharmacy #4465 on this 2nd day of March 2011.



Carrie R Rhoades
NOTARY PUBLIC IN AND FOR THE
STATE OF ILLINOIS

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on this 8th day of March 2011.

Vernon H Benjamin
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
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Edward D. Richert
Krieg DeVault LLP
30 N. LaSalle St.
Suite 3516
Chicago IL 60602

Kmart 4465-Settlement.doc