

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NOS. 2011-183 and 2012-27
Pharmacist License of)	
)	SETTLEMENT AGREEMENT
MARK ODLAND)	AND FINAL ORDER
License No. 16408)	
Respondent.)	

Pursuant to Iowa Code sections 17A.12(5) and 272C.3(4) (2015), and 657 IAC 36.6, the Iowa Board of Pharmacy ("Board") and Mark Odland ("Respondent") enter into the following Settlement Agreement and Final Order ("Order") to settle a contested case currently pending before the Board.

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

1. The Board filed a Statement of Charges and Notice of Hearing and an Emergency Adjudicative Order on January 8, 2013. Respondent's license has been suspended pursuant to the Emergency Adjudicative Order since January 8, 2013.
2. The Board has jurisdiction over the parties and the subject matter of these proceedings.
3. Respondent admits the allegations in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.
4. Execution of this 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 Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
5. Respondent acknowledges that he has the right to be represented by counsel on this matter.
6. Respondent agrees that the State's counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.
7. This Order is subject to approval by a majority of the full Board. If the Board does not approve this Order, it shall be of no force or effect to either party, and shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Order, it shall be the full and final resolution of this matter.

8. This Order 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.

9. Respondent understands the Board is required by federal law to report any adverse action to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank.

10. This Order, 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.

11. The Board's approval of this Order shall constitute a FINAL ORDER of the Board.

IT IS THEREFORE ORDERED:

12. Respondent agrees to **VOLUNTARY SURRENDER** his pharmacist license to resolve this matter.

13. This voluntary surrender is considered discipline and, when accepted by the Board, has the same force and effect as an order of revocation under 657 IAC 36.15. Respondent may not request reinstatement for at least one year from the date of this Order. Respondent may request reinstatement of his Iowa pharmacist license by filing an application for reinstatement under 657 IAC 36.13. Respondent's license shall not be reinstated except upon a showing by Respondent that the basis for revocation of his license no longer exists, and that it is in the public interest for the license to be reinstated.

14. Respondent agrees not to work in a pharmacy in any capacity in Iowa unless his pharmacist license is reinstated.

15. Should Respondent violate the terms of this Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 147, 155A, and 272C and 657 IAC 36.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 29 day of DECEMBER, 2015



MARK ODLAND
Respondent

This Settlement Agreement and Final Order is approved by the Iowa Board of Pharmacy on the 12th day of January, 2016.



Chairperson
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier
Assistant Attorney General
Licensing & Administrative Law Division
Iowa Department of Justice
Hoover Building, 2nd Floor
Des Moines, IA 50319

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2011-183 and 2012-27
Pharmacist License of)	
MARK ODLAND)	STATEMENT OF CHARGES
License No. 16408,)	& NOTICE OF HEARING
Respondent.)	

COMES NOW the Iowa Board of Pharmacy (Board) on January 8, 2013, 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 16408. Respondent's pharmacist license is active and will expire on June 30, 2013.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on March 12, 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

INABILITY TO PRACTICE WITH REASONABLE SKILL AND SAFETY

Respondent is charged under Iowa Code Sections 155A.12(1) (2011) and 657 Iowa Administrative Code 36.1(4)(m) with inability to practice with reasonable skill and safety by reason of mental or physical impairment.

COUNT II

PROFESSIONAL INCOMPETENCY

Respondent is charged under Iowa Code Section 147.55(2) and 272C.10(2) (2011); and 657 Iowa Administrative Code 36.1(4)(b), with professional incompetence.

COUNT III
FAILURE TO MAINTAIN REQUIRED RECORDS
FOR CONTROLLED SUBSTANCES

Respondent is charged under Iowa Code Sections 124.306, 124.402(1)(c), 155A.12(1) and (4), 155A.23(1)(l) (2011) and 657 Iowa Administrative Code 10.17 (accountability of stock supply); 10.33 (Schedule II perpetual inventory, including reconciliation); 10.34(4) (receipt and disbursement records); 10.34(5) (dispensing records); and 10.35(1)-(3) (physical count and record of inventory, including annual inventory).

COUNT IV
VIOLATION OF LAWS RELATED TO
CONTROLLED SUBSTANCES

Respondent is charged under Iowa Code Section 155A.12(1) (2011) and the rules of the Board for failing to comply with the laws related to controlled substances, including 657 Iowa Administrative Code 10.15 (security requirements); 10.16 (report of theft or loss); 10.18 (disposal); 10.21 (prescription requirements); 10.28 (Schedule III, IV, and V refills).

COUNT V
VIOLATING LAWS RELATED TO AUTHORIZATION
FOR REFILL OF PRESCRIPTIONS

Respondent is charged under Iowa Code Section 155A.12(1) and 155A.23(1)(q) (2011); and 657 Iowa Administrative Code 6.16, 10.28, 10.34, 21.5, and 36.1(4)(i) and (j) and 8.19(6) with violating the rules of the Board related to refills of prescription drugs.

COUNT VI
MISLEADING, DECEPTIVE, UNTRUE, OR FRAUDULENT REPRESENTATIONS

Respondent is charged under Iowa Code Section 147.55(3), 155A.12(1), and 155A.23(1)(a)(2) (2011); and 657 Iowa Administrative Code 8.11(1) with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy.

COUNT VII
VIOLATING LAWS RELATED TO PHARMACIST IN CHARGE

Respondent is charged with violating Iowa Code Section 155A.12(1) (2011) and 657 Iowa Administrative Code 6.2 and 8.3(1) with violating the rules of the Board related to the responsibility of the pharmacist in charge to ensure the pharmacy is in compliance with the laws governing the practice of pharmacy.

COUNT VIII
VIOLATING LAWS RELATED TO PHARMACY PRACTICE

Respondent is charged with violating Iowa Code Section 155A.12(1) (2011) for failing to comply with the rules of the Board related to pharmacy practice, including 657 Iowa Administrative Code 6.2 (responsibilities of pharmacist in charge), 6.8 (prescription processing documentation); and 8.8 (out-of-date drugs).

COUNT IX
VIOLATING LAWS RELATED TO
SECURITY AND ORDERLINESS OF PHARMACY

Respondent is charged under Iowa Code Section 155A.12(1) and 657 Iowa Administrative Code 8.5(4) and 10.15 with violating the rules of the Board related to the security and the orderliness of a pharmacy.

D. FACTUAL CIRCUMSTANCES

1. Respondent is a licensed pharmacist in the State of Iowa. His license is active and will expire on June 30, 2013.
2. At all times material to this Statement of Charges, Respondent was employed as the pharmacist in charge at Dows Pharmacy in Dows, IA.

Case #2011-183

3. A routine Board inspection in December 2011 of Dows Pharmacy, where Respondent serves as pharmacist in charge, revealed numerous deficiencies which reflected on Respondent's ability to practice pharmacy:
 - a. At the time of the inspection, the most recent entries in the pharmacy's schedule II controlled substances perpetual inventory were from 2009. The annual controlled substance inventory was incomplete.
 - b. The pharmacy's stock, including controlled substances, was spread throughout the pharmacy in a random, disorganized fashion.
 - c. The pharmacy door was secured by a padlock. The door hinges were on the outside of the pharmacy, attached to the building with screws. Respondent reported that there had been five break-ins between November of 2009 and May of 2011.
 - d. Complete records of controlled substance purchases and sales were not being maintained. Verification of controlled substance refills was not being done. Expired medications were stored with in-date medications.
 - e. Deficiencies identified in a 2009 Board inspection had not been corrected, despite the fact that Respondent stated in a report to the Board in March 2009 that they had been corrected.

- f. Respondent had been re-filling prescriptions without prescriber authorization. Respondent indicates that he has difficulty refusing customer requests for refills even though he knows the refill is unauthorized.
4. The Board issued Respondent a Confidential Order for Evaluation on June 27, 2012, which required Respondent to submit to a physical and mental health evaluation at a program approved by the Board.
5. Respondent completed this evaluation under the direction of psychiatrists at the University of Iowa Hospitals and Clinics (UIHC). The Board received a report from UIHC on August 10, 2012. Respondent was diagnosed with ADHD and with Cognitive Disorder NOS. UIHC recommended Respondent take a medical leave until neuropsychological testing could be completed.
6. A Board compliance officer personally delivered a letter from the Board to Respondent on August 30, 2012. That letter advised Respondent was not to return to the practice of pharmacy until the Board received a report from the UIHC that Respondent was fit to return to practice. The Board's compliance officer reviewed the Board's request with Respondent several times, and Respondent agreed to comply.
7. On November 15, 2012, the UIHC issued a second report regarding Respondent's fitness to practice. That report indicated that following additional testing and evaluation there were continuing concerns about Respondent's cognitive functioning and his significant deficits in attention. UIHC strongly recommended Respondent undergo an MRI to evaluate his cognitive impairment, but Respondent has declined to do so.
8. On November 26, 2012, Respondent informed the Board he had been working at his pharmacy. Respondent was again advised he was not to practice pharmacy until the Board approved his return to practice.

Case #2012-27

9. From 2008 through 2012, on numerous occasions for numerous patients, Respondent refilled prescriptions for controlled and non-controlled prescription drugs without the authorization of the prescriber.
 - a. Respondent admitted he documented these refills by creating a new prescription off the old medication order and using a portion of the original prescription label as the hard copy; or by altering pharmacy records by adding refills to the original prescription.
 - b. Many patients who received refills were taking drugs that required monitoring by the health care provider who authorized the original prescription. Respondent provided refills to these patients despite the fact that the patients

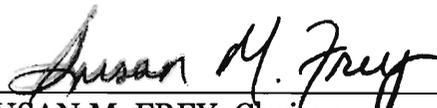
had not been seen by their health care provider for months or even years.

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 8th 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

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case Nos. 2011-183 and 2012-27
Pharmacist License of)	
MARK ODLAND)	EMERGENCY
License No. 16408,)	ADJUDICATIVE ORDER
Respondent.)	

I. JURISDICTION

The Iowa Board of Pharmacy has jurisdiction over pharmacy licensees pursuant to Iowa Code Chapters 155A and 272C (2011). Respondent Mark Odland possesses pharmacist license number 16408 issued by the Board. A Statement of Charges was filed against Respondent on January 8, 2013. After conducting a full investigation of this matter, and after review of the Statement of Charges filed concurrently with this Order, the Board adopts the following Findings of Fact and Conclusions of Law and issues this Emergency Adjudicative Order.

II. FINDINGS OF FACT

1. On February 21, 1984, the Board issued Respondent pharmacy license number 16408.
2. Respondent's pharmacy license is active and will next expire on June 30, 2013.
3. At all times relevant to this Order, Respondent was employed as the pharmacist in charge at Dows Pharmacy in Dows, IA.
4. During a routine Board inspection of Dows Pharmacy in December of 2011, the Board identified a number of deficiencies which reflected on Respondent's ability to practice pharmacy:

- a. At the time of the inspection, the most recent entries in the pharmacy's schedule II controlled substances perpetual inventory were from 2009. The annual controlled substance inventory was incomplete.
 - b. The pharmacy's stock, including controlled substances, was spread throughout the pharmacy in a random, disorganized fashion.
 - c. The pharmacy door was secured by a padlock. The door hinges were on the outside of the pharmacy, attached to the building with screws. Respondent reported that there had been five break-ins between November of 2009 and May of 2011.
 - d. Complete records of controlled substance purchases and sales were not being maintained. Verification of controlled substance refills was not being done. Expired medications were stored with in-date medications.
 - e. Deficiencies identified in a 2009 Board inspection had not been corrected, despite the fact that Respondent stated in a report to the Board in March 2009 that they had been corrected.
 - f. Respondent had been re-filling prescriptions without prescriber authorization. Respondent indicates that he has difficulty refusing customer requests for refills even though he knows the refill is unauthorized.
5. In addition, after receipt of an additional complaint, a Board investigation established that from 2008 through 2012, on numerous occasions for numerous patients, Respondent refilled prescriptions for controlled and non-controlled prescription drugs without the authorization of the prescriber.
- a. Respondent admitted he documented these refills by creating a new prescription off the old medication order and using a portion of the original prescription label as the hard copy; or by altering pharmacy records by adding refills to the original prescription.
 - b. Many patients who received refills were taking drugs that required monitoring by the health care provider who authorized the original prescription. Respondent provided refills to these patients despite the fact that the patients had not been seen by their health care provider for months or even years.
6. The deficiencies identified in paragraphs 4-5, above, constitute violation of numerous Board statutes and rules, as set forth in the Statement of Charges, Counts I-X.

7. The Board issued Respondent a Confidential Order for Evaluation on June 27, 2012, which required Respondent to submit to a physical and mental health evaluation at a program approved by the Board.
8. Respondent completed this evaluation under the direction of psychiatrists at the University of Iowa Hospitals and Clinics (UIHC). The Board received a report from UIHC on August 10, 2012. Respondent was diagnosed with ADHD and with Cognitive Disorder NOS. UIHC recommended Respondent take a medical leave until neuropsychological testing could be completed.
9. A Board compliance officer personally delivered a letter from the Board to Respondent on August 30, 2012. That letter advised Respondent was not to return to the practice of pharmacy until the Board received a report from the UIHC that Respondent was fit to return to practice. The Board's compliance officer reviewed the Board's request with Respondent several times, and Respondent agreed to comply.
10. On November 15, 2012, the UIHC issued a second report regarding Respondent's fitness to practice. That report indicated that following additional testing and evaluation, there were continuing concerns about Respondent's cognitive functioning and his significant deficits in attention. UIHC strongly recommended Respondent undergo an MRI to evaluate his cognitive impairment, but Respondent has declined to do so.
11. On November 26, 2012, Respondent informed the Board he had been working at his pharmacy. Respondent was again advised he was not to practice pharmacy until the Board approved his return to practice.

III. CONCLUSIONS OF LAW

12. Iowa Code Sections 155A.12(1) (2011) and 657 Iowa Administrative Code 36.1(4)(m) provide the Board may discipline a pharmacist who is unable to practice pharmacy with reasonable skill and safety by reason of a mental or physical impairment.
13. Iowa Code Section 17A.18A (2011) and 657 Iowa Administrative Code 35.30 authorize the Board to take immediate emergency action if necessary to protect the health, safety and welfare of the public.
14. The Board concludes this matter has been fully investigated and that the investigation has been sufficient to ensure the Board is proceeding on the basis of reliable information. Respondent was provided an opportunity to respond to the allegations against him.
15. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:
 - a. Respondent has been diagnosed by psychiatrists at the UIHC as having impaired cognitive functioning and significant deficits in attention which are impacting his ability to practice pharmacy.
 - b. Respondent's impaired cognitive functioning and his significant deficits in attention have resulted in a diminished ability to practice as a pharmacist. The numerous and serious deficiencies in Respondent's pharmacy practice identified in these two cases indicate that his mental and/or physical impairments are impacting his ability to function safely as a pharmacist.
 - c. Respondent's decision to return to the practice of pharmacy without Board approval, after having been previously advised by the Board not to do so, appears to be further evidence of Respondent's impaired functioning.
 - d. Respondent's refusal to have an MRI as recommended by UIHC as necessary to further evaluate his condition appears to be further evidence of Respondent's impaired functioning.
16. Respondent's impaired cognitive functioning and his significant deficits in attention establish that Respondent is currently unable to practice any aspect of pharmacy

with reasonable skill and safety. The Board concludes there is a serious and immediate threat to patient health, safety and welfare if Respondent is allowed to continue to practice pharmacy before the Board's pending Statement of Charges is resolved.

17. The Board finds that there are no aspects of pharmacy practice that Respondent may perform without posing an immediate danger to the public. The Board finds there are no monitoring requirements or other interim safeguards that could be imposed that would be sufficient to ensure public safety.

IV. EMERGENCY ORDER

The Board ORDERS as follows:

- a. Pursuant to Iowa Code § 17A.18A, the pharmacist license of Mark Odland is suspended indefinitely. This suspension is effective immediately upon issuance of this order.
- b. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).
- c. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on March 12, 2013. The hearing will commence at 9:00 A.M. and be held at the office of the Iowa Board of Pharmacy, 400 Southwest 8th Street, Suite E, Des Moines, Iowa 50309.

DATED this 8th day of January 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
Hoover State Office Building
Des Moines, Iowa 5031