

**BEFORE THE IOWA BOARD OF PHARMACY**

Re: ) Case No. 2010-58  
Pharmacy Intern Registration of: )  
**ANDREA M. PEREZ,** ) **STATEMENT OF CHARGES**  
Registration No. 4061, )  
Respondent. )

**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 (2009).
3. The Board issued Andrea M. Perez (hereinafter, "Respondent") a pharmacy intern registration number 4061, authorizing her to serve as a pharmacy intern subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent’s address of record is 401 Hawk Ridge Drive #4106, Iowa City, Iowa 52246. Respondent may currently reside at 245 Sadler Avenue #202, North Liberty, Iowa 52317.
5. At all times material to this statement of charges, Respondent was enrolled in the University of Iowa, College of Pharmacy.

**A. CHARGES**

**COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS**

Respondent is charged pursuant to Iowa Code §§ 124.403(3), 155A.6(3) and 155A.21 (2009), and 657 Iowa Administrative Code § 36.1(4)(j) with unlawful possession and use of prescription drugs, including controlled substances.

**COUNT II – VIOLATING LAWS RELATED TO PHARMACY**

Respondent is charged pursuant to Iowa Code §§ 124.403(3), 155A.6(3), 155A.21, 155A.23(1)(a) and 155A.23(3) (2009), and 657 Iowa Administrative Code § 36.1(4)(i), with violating state laws related to the distribution of prescription medications, including controlled substances, and the practice of pharmacy.

### COUNT III – UNETHICAL CONDUCT

Respondent is charged under Iowa Code §§ 155A.6(3) (2009), and 657 Iowa Administrative Code §§ 8.11, 8.11(1) and 8.11(8), with unethical conduct, including fraud.

### COUNT IV – OBTAINING PRESCRIPTION DRUGS BY FRAUD

Respondent is charged under Iowa Code §§ 124.403(3), 155A.6(3) and 155A.23(4) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(c) and 36.1(4)(u), with obtaining prescription drugs, including controlled substances, by fraud.

### B. FACTUAL CIRCUMSTANCES

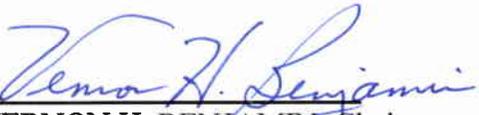
An investigation, commenced on May 20, 2010, revealed the following:

1. Respondent registered as a pharmacy intern after providing proof that she was progressing toward a degree in pharmacy at the University of Iowa, College of Pharmacy. Respondent's application for registration is dated August 24, 2007.
2. Between January 1, 2010 and June 7, 2010, Respondent obtained 850 Hydrocodone/Acetaminophen 5/500 tablets pursuant to prescriptions which appeared to have been generated by Dr. Barbara Stegmann. In connection with receipt of these controlled substances, Respondent made insurance claims.
3. Neither Dr. Stegmann, nor any nurse affiliated with Dr. Stegmann, issued these prescriptions. Stegmann had not seen Respondent as a patient since December 7, 2009, and had not written a prescription for her since August of 2009. The August 2009 prescription was for 20 Hydrocodone/Acetaminophen 5/500 tablets, with no refills.
4. Respondent claims all the prescriptions were valid.

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 8<sup>th</sup> day of March 2011, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

  
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  
Hoover State Office Building  
Des Moines, Iowa 50319

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**BEFORE THE IOWA BOARD OF PHARMACY**

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<b>IN RE:</b>	)	<b>CASE NO. 2010-58</b>
<b>Pharmacist Intern Registration of:</b>	)	<b>DIA NO: 11PHB004</b>
	)	
<b>ANDREA M. PEREZ</b>	)	<b>FINDINGS OF FACT,</b>
<b>Pharmacist Intern No. 4061</b>	)	<b>CONCLUSIONS OF LAW,</b>
<b>RESPONDENT</b>	)	<b>DECISION AND ORDER</b>

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On March 8, 2011, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Andrea M. Perez (Respondent). The Statement of Charges alleged four counts:

Count I: Unlawful possession of prescription drugs, including controlled substances, in violation of Iowa Code §§ 124.403(3)<sup>1</sup>, 155A.6A(3), 155A.21 (2009), and 657 IAC 36.1(4)(j).

Count II: Violating state laws related to the practice of pharmacy and distribution of prescription medications, including controlled substances, and the practice of pharmacy, in violation of Iowa Code §§ 124.403(3), 155A.6A(3), 155A.21, 155A.23(1)(a) (2009), and 657 IAC 36.1(4)(i).

Count III: Unethical conduct, including fraud, in violation of Iowa Code § 155A.6A(3) (2009), and 657 IAC 8.11, 8.11(1), and 8.11(8).

Count IV: Obtaining prescription drugs, including controlled substances, by fraud, in violation of §§ 124.403(3), 155A.6(3), and 155A.23(4)(2009) and 657 IAC 36.1(4)(c) and 36.1(4)(u).

The hearing was held on April 26 and April 27, 2012, before the following members of the Board: Susan Frey, Chairperson; Edward Maier; Mark Anliker; James Miller; LaDonna Gratias, and Margaret Whitworth. Respondent appeared and was represented by attorney Michael Sellers. Assistant Attorney General Scott Galenbeck

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<sup>1</sup> The references to Iowa Code § 124.403(3) in Counts I, II, and IV are obvious typographical errors. Iowa Code § 124.403(3) does not exist. The citation should be to § 124.403(1)(c), which prohibits acquiring or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. The narrative description in the three counts provides clear notice that this is the charge against Respondent.

represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1), and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

## THE RECORD

The record includes the Continuance Requests and Rescheduling Orders; Respondent's Motion To Dismiss and Brief in Support of Motion to Dismiss; State's Resistance to Motion to Dismiss; the testimony of Jim Wolfe; Dr. Barbara Stegeman, M.D.; Kyra Corbett, R.Ph.; Respondent; State Exhibits 1-7 and Respondent Exhibits 1-6.

## FINDINGS OF FACT

### *Respondent's Educational and Employment History*

Respondent Amanda Perez graduated from the University of Arizona in 1999 with a Bachelor of Science degree in physiology. From 1999-2004, Respondent worked as a histologist for the University of Arizona veterinary diagnostic laboratory. From 2004-2007, Respondent worked in the admissions office of the University of Arizona's College of Law while taking prerequisite courses for pharmacy school. Prior to applying to pharmacy school, Respondent volunteered ten hours a week at the University Medical Center in Tucson, Arizona. In this volunteer position, Respondent filled prescriptions (i.e., counted pills) under the supervision of a pharmacist. (Respondent testimony; Respondent Exhibit 6, pp. 5-9, 14-15)

In the fall of 2007, Respondent enrolled in the University of Iowa's College of Pharmacy. On August 24, 2007, Respondent applied to the Board for registration as a pharmacist intern and was issued pharmacist intern registration number 4061. (Respondent testimony; Respondent Exhibit 6; State Exhibit 2)

During the summers of 2008 and 2009, Respondent returned to Tucson where she worked as a pharmacist intern for a Walgreens pharmacy. Respondent had interviewed with the Walgreens in Iowa City but agreed to work in Tucson where there were more positions. (Respondent testimony; Respondent Exhibit 6, pp. 12, 15-16, 22-23)

Throughout the month of June 2010, Respondent worked as a floater for two Walgreens stores in Cedar Rapids. (Respondent Exhibit 6, p. 41-42; Respondent testimony)

In June 2010, Respondent completed a three week internship (Introductory Practice Experience or IPE) at the Care Pro Liberty Pharmacy in North Liberty, Iowa. After she completed the IPE, Care Pro offered Respondent a part-time position as a pharmacist-intern. Respondent has been employed by Care Pro Liberty Pharmacy since June 29, 2010. One of her supervising pharmacists testified at hearing and reported that Respondent has been an excellent and reliable employee. She has never appeared under the influence of controlled substances at work and has never exhibited any drug seeking behavior. (Testimony of Kyra Corbett, R.Ph.; Respondent)

### *Respondent's Medical/Prescription History*

Respondent has a complicated medical history that includes several painful medical conditions. Respondent was diagnosed with pancreatitis in 2001 following several years of evaluation for gastrointestinal problems and pelvic pain. Pancreatitis is sometimes associated with alcohol abuse, but Respondent has never used alcohol. Following further evaluation, Respondent was diagnosed with pancreas divisum, which is a congenital condition. Respondent had numerous procedures and complications following this diagnosis. In October 2006, Respondent received a spinal nerve stimulator, which replaces pain with vibration, but does not control all of her pancreatic pain. (Respondent testimony; Respondent Exhibit 6, pp. 16-19)

Respondent's pain escalated during her first year of pharmacy school, which made it difficult for her to keep up with all of her classes. She failed biochemistry and had to make it up during the fall of 2008. Respondent started seeing Frederick Johlin, M.D., who is an internal medicine physician at the University of Iowa Hospitals and Clinics (UIHC). Dr. Johlin prescribed hydromorphone (Dilaudid) for Respondent's break through pancreatitis pain and Ambien to help her sleep. Respondent told Dr. Johlin that she had previously been dependent on narcotics (Dilaudid, Fentanyl, and Morphine) for pain relief. Respondent entered into a pain contract with Dr. Johlin, which required her to notify her health care providers of the pain contract, to use a sole provider for her pain medication, and to take no more than 30 pain pills in 30 days. (Respondent, Stegeman testimony; Respondent Exhibit 6, pp. 18-20; State Exhibit 1, Attachment G-5)

The record includes an Automated Prescription Monitoring Report for Respondent for the period from January 15, 2008 through May 14, 2010. (State Exhibit 1, Att. G-1 to G-6). The information on the report is from the Iowa Prescription Monitoring Program (PMP),<sup>2</sup> which is a centralized state database of reportable controlled substance (Schedules II, III, and IV) prescriptions that have been dispensed to patients in Iowa. Respondent has reviewed her Automated Prescription Monitoring Report and agreed that it is accurate. (Testimony of James Wolfe; Respondent; State Exhibit 1, Att. G; Respondent Exhibit 6, p. 20)

Respondent also sought treatment at the UIHC Women's Health Clinic for several issues related to her menstrual cycle, including pelvic pain. Respondent was diagnosed with polycystic ovary syndrome (PCOS) and was prescribed Yasmin, which is a birth control pill, in an attempt to control her menstrual cycle. (Respondent testimony)

***Medical Treatment Provided to Respondent by Dr. Barbara Stegeman***

**April 20, 2009:** On April 20, 2009, Respondent had an initial appointment with Barbara Stegeman, M.D., who is a Reproductive Endocrinologist with the UIHC Women's Clinic. At this appointment:

- Dr. Stegeman evaluated Respondent for chronic pelvic pain and noted that Respondent had diagnoses of abnormal menstrual cycles, PCOS, and possible endometriosis.
- Dr. Stegeman has access to Respondent's electronic medical record at UIHC, which listed all of her current medications, including the Dilaudid prescribed by Dr. Johlin for chronic abdominal pain. However, Respondent did not tell Dr. Stegeman that she had signed a pain contract with Dr. Johlin.
- Dr. Stegeman and Respondent discussed discontinuing the Yasmin and placing a Mirena IUD, which would be more effective at controlling Respondent's menstrual cycle without as many side effects. Respondent agreed to call back for an appointment if she decided to have the IUD placed.
- Dr. Stegeman gave Respondent prescriptions for 2 Vicodin (hydrocodone) and 1 Xanax, which Respondent was to take prior to the placement of the IUD. Respondent filled these prescriptions at the 24 hour Walgreens pharmacy

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<sup>2</sup> See Iowa Code 124.553 (Drug Prescribing and Dispensing-Information Program) and 657 IAC chapter 37 (Iowa Prescription Monitoring Program).

(#05977) in Coralville, Iowa.<sup>3</sup> (Testimony of Dr. Stegeman; Respondent; State Exhibit 1, Attachment G-4, G-6; Respondent Exhibit 1, pp. 0126, 0127, 0138)

**May 4, 2009:** Respondent next saw Dr. Stegeman on May 4, 2009 for the insertion of the Mirena IUD. After placing the IUD, Dr. Stegeman gave Respondent a prescription for 20 tablets of Vicodin (hydrocodone) with no refills, for pain associated with the procedure. Respondent filled this prescription at the Walgreens pharmacy (#05977) in Coralville. At hearing, Dr. Stegeman explained that she only gives prescriptions for pain medication in limited numbers and does not give refills on pain medication. Dr. Stegeman feels that the patient should be seen and evaluated before additional pain medication is prescribed. Dr. Stegeman told Respondent to follow up with her in two weeks for an IUD check. (Stegeman testimony; State Exhibit 1, Att. G-4, G-6; State Exhibit 4; Respondent Exhibit 1, pp. 0152, 0154)

**May 14, 2009:** On May 14, 2009, Respondent called Dr. Stegeman's office, spoke to a nurse, and requested additional Vicodin. At hearing, Dr. Stegeman explained that the Women's Clinic has established procedures for taking and documenting phone messages from patients. Consistent with these procedures, the nurse documented Respondent's call on May 14<sup>th</sup> and then gave the message to Dr. Stegeman. Dr. Stegeman called Respondent back and also documented their telephone encounter. Respondent told Dr. Stegeman that she was in Tucson, was improving, but asked if Dr. Stegeman would call in a prescription for her to Walgreens. Dr. Stegeman agreed to call in enough Vicodin to last one week. Dr. Stegeman documented that she prescribed 20 tablets of Vicodin for Respondent. (Stegeman testimony; Respondent Exhibit 1, p. 0157)

**May 21, 2009:** On May 21, 2009, Respondent was examined at the Women's Clinic by Physician Assistant Elizabeth Graf. Dr. Stegeman was apparently not available to see Respondent that day but she reviewed Respondent's chart and signed off on it. The notes from this visit indicate that Respondent was going to be in Arizona on rotation for

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<sup>3</sup> The records show that Respondent used several pharmacies to fill her pain medication prescriptions. Respondent testified that she used Walgreens because it was easier to transfer her prescriptions when she moved from Tucson to Iowa City. Typically she used the 24 hour Walgreens in Coralville but she also used another Coralville Walgreens, which was near the mall, on a few occasions when she was leaving for or returning from Arizona. The records also show that Respondent filled some prescriptions at the UIHC pharmacy, one prescription at a Walgreens in Storm Lake while she was completing an Introductory Practice Experience (IPE), and one prescription at a CVS pharmacy in Iowa City. (Respondent testimony; State Exhibit 1, Att. G)

her PharmD program, and that if her cramps continued she should contact Dr. Stegeman by email to find a local provider and to ensure proper placement of the Mirena IUD. Physician Assistant Graf wrote Respondent another prescription for 20 tablets of Vicodin. Respondent filled this prescription at another Walgreens pharmacy (#10985) in Coralville. (Stegeman; Respondent testimony; State Exhibit 1, G-4, G-6; Respondent Exhibit 1, pp. 0163, 0164, 0168, 0169, 0170)

**Unauthorized Prescriptions for 150 tablets of Vicodin (August 2009):** During the summer of 2009, Respondent worked at the Walgreens in Tucson, Arizona and did not see Dr. Stegeman again until August 31, 2009. However, Respondent obtained a total of 150 hydrocodone tablets through three new prescriptions (purportedly authorized by Dr. Stegeman) on the following dates: August 8, 2009, August 18, 2009, and August 26, 2009. On August 8 and on August 26, 2009, the prescriptions were filled by the Walgreens #05977 in Coralville. On August 18, 2009, the prescription was filled at a Walgreens in Storm Lake, Iowa where Respondent was completing an Introductory Practice Experience (IPE). Dr. Stegeman denies authorizing any of these prescriptions and testified that she would not have prescribed this many Vicodin because she would have been concerned about liver damage. (Stegeman; Respondent testimony; State Exhibit 1, Att. G-4, G-6; State Exhibit 3; Respondent Exhibit 6, pp. 23-24)

At hearing, Respondent testified that she had a lot of pain after the IUD was placed and had to call Dr. Stegeman from Tucson several times for prescription refills during the summer of 2009. She denies obtaining these prescriptions fraudulently and claimed that Dr. Stegeman called these prescriptions in for her. (Respondent testimony; Respondent Exhibit 6, pp. 23-24)

Dr. Stegeman's testimony and the medical records were more credible than Respondent. There is no documentation in the medical records to support Respondent's claim that she called in for these prescriptions or that Dr. Stegeman (or any other health care provider in the clinic) authorized these prescriptions. Dr. Stegeman credibly and persuasively testified that she would not write prescriptions for 50 Vicodin tablets, would not have prescribed 150 tablets over this time period, and would have required Respondent to see a physician if she reported sufficient ongoing pain to require more pain medication. She further testified that no one on her staff and none of her colleagues at the Women's Clinic would have authorized these prescriptions for her patient without consulting her and without seeing the patient. If Respondent had called for additional pain medication and if a prescription had been

authorized, she would expect to see documentation in Respondent's medical record at the UIHC Women's Clinic. (Stegeman; Respondent testimony; State Exhibit 3; Respondent Exhibit 6, pp. 23-24)

**August 31, 2009:** On August 31, 2009, Respondent was seen by Dr. Stegeman and her first year fellow, Evan M. Rosenbluth, M.D. The medical documentation from this visit indicates that Respondent's pain was a little better and she would continue with the IUD, but would consider removing it if the pain continued or worsened. Notably, the medical documentation for this visit states that the patient's last refill on "Lortab" was in May, and "will give a prescription for #20 today." Respondent filled this prescription at the Walgreens #05977 in Coralville. (Stegeman testimony; Respondent Exhibit 1, pp. 0191, 0196; State Exhibit 1, Att. G-4, G-6)

**September 14, 2009:** On September 14, 2009, Respondent called the Women's Clinic and spoke to one of Dr. Stegeman's nurses who documented the call. Respondent reported increasing cramping and pain waking her up at night. Respondent reported that she had been given Vicodin but it wasn't working. The nurse told Respondent to come into the clinic for further advice. The nurse's documentation also states: "(see note re: needs pain med from a single prescriber). (Respondent testimony; Respondent Exhibit 1, pp. 0204)

Respondent claimed that she called the Women's Clinic multiple times during the week of September 14, 2009 to request medication, but only one call was documented by clinic staff. Respondent went to the Emergency Room on September 15, 2009 to have the IUD removed. (Respondent testimony; Respondent Exhibit 1, pp. 0204, 0215; Respondent Exhibits 3, 4).

**September 28, 2009:** Respondent had an appointment with Dr. Stegeman on September 28, 2009 to discuss Respondent's request for a hysterectomy to address her ongoing pelvic pain. They discussed the risks of the surgery and the need for hormone replacement following surgery. Dr. Stegeman introduced Respondent to her partner, Dr. William Davis, who would perform the hysterectomy. No clinical note was generated by Dr. Stegeman for this visit, but the UIHC records show that Dr. Stegeman issued orders for Respondent on that date and gave Respondent a prescription for Percocet (oxycodone) 30 tablets, for pain. Respondent filled this prescription at the Walgreens #05977 in Coralville. (Respondent; Stegeman testimony; Respondent Exhibit 1, pp. 0245, 0247; Respondent Exhibit 4).

**Unauthorized Prescriptions for 400 tablets Vicodin (October–December 2009):** On October 13, 2009, Respondent filled a new prescription for 50 tablets of Vicodin, with three refills. Respondent obtained refills on this prescription on October 22, November 1, and November 11, 2009. On November 19, 2009; Respondent filled another prescription for 50 tablets of Vicodin, with three refills. Respondent obtained refills on this prescription on November 28, December 5, and December 12, 2009. All of these prescriptions were filled at the Walgreens #05977 in Coralville. All of these prescriptions listed Dr. Stegeman as the prescribing physician. Dr. Stegeman credibly denied authorizing any of these prescriptions and also denied that anyone on her staff would have authorized them without consulting her. Dr. Stegeman credibly testified that she would not have issued prescriptions for 50 Vicodin with refills and would have insisted on seeing examining Respondent at least every two weeks before providing additional pain medication. In addition, if Dr. Stegeman had authorized these prescriptions they should be documented in the UIHC records. There were no medical records to support any of these prescriptions. Respondent admits obtaining these prescription drugs through Walgreens and maintains that Dr. Stegeman or someone from her practice authorized the prescriptions by telephone. (Stegeman, Respondent testimony; State Exhibit 1, Att. G-3, G-6)

**December 7, 2009:** On December 7, 2009, Respondent had an appointment with Dr. Stegeman and her resident/fellow, Dr. Laura Bonebrake, for a pre-operative examination prior to her hysterectomy. Dr. Bonebrake documented this visit and her clinical note includes the following statement:

She has a history of narcotic dependence in the past due to her significant pain from her gastroparesis, so she is very careful about the amount of narcotic pain medication that she takes. She desires hysterectomy so that she does not need to take chronic pain medications.

Respondent's "history of opioid dependence" was also listed in paragraph 10 of the "plan." Dr. Stegeman also interviewed and examined the patient and confirmed Dr. Bonebrake's findings and plan. (Stegeman testimony; State Exhibit 5)

**December 18, 2009:** On December 18, 2009, Dr. William Davis performed Respondent's hysterectomy without complication. Following the surgery, Dr. Davis prescribed Dilaudid (hydromorphone), 30 tablets, for Respondent. Respondent filled this

prescription at the University of Iowa Hospital and Clinics pharmacy. (Stegeman testimony; State Exhibit 1, pp. G-3, G-6; State Exhibit 6, Respondent Exhibit 1, pp. 0342, 0467, 0469)

Respondent received additional prescriptions from Dr. Davis for 30 tablets of hydromorphone on February 10, 2010 and on February 20, 2010. These hydromorphone prescriptions were both filled at the Walgreens #05977 in Coralville. (State Exhibit 1, Att. G-2, G-6; Respondent Exhibit 1, pp. 0537)

**Unauthorized Prescriptions for 750 tablets Vicodin (January-May 2010):** On 15 occasions between January 1 and May 14, 2010, Respondent obtained 50 tablets of Vicodin from Walgreens #05977 in Coralville. Six of the fifteen prescriptions were entered as new prescriptions, and each one had two or three refills. All of the prescriptions were purportedly called in to the pharmacy and authorized by Dr. Stegeman. Dr. Stegeman last saw Respondent as a patient on December 7, 2009, and she credibly denies that she authorized any of these prescriptions. This pattern of prescribing is inconsistent with Dr. Stegeman's prior practice. The UIHC medical records do not contain any documentation that supports the issuance of these prescriptions. (Stegeman, Respondent testimony; State Exhibit 1, Att. G-1, G-2, G-6)

During her deposition on October 20, 2011, Respondent:

- admitted that she never spoke to Dr. Stegeman or Dr. Stegeman's fellow or physician assistant after her hysterectomy in December 2009;
- claimed that she called Dr. Stegeman's office 1-2 times a month when she was having pain and needed more medication, that the person answering the phone would ask for her phone number so they could call her back and would also ask what pharmacy she used;
- was unable to provide the name of anyone that she spoke to at Dr. Stegeman's office to request more medication;
- reported that no one ever called her back after she left these messages but she would wait a day or more and then call Walgreens to see if a prescription had been called in for her. Sometimes the answer was no, and then she would wait a day or so before calling again.
- Reported that on some occasions she just called Walgreens first and asked them to contact Dr. Stegeman's office for the refill. Respondent acknowledged that she knew that some Walgreens had an automated system for taking voicemails from

doctors who called in prescriptions. After calling the main number, callers are directed to press 1, 2, 3, 4, or 0, depending on whether they wanted physician or patient voicemail or wanted to talk to someone on staff. Respondent further acknowledged that it would be possible for anybody to call in and leave a prescription order using the voicemail system, but denied having ever done that herself.

(Respondent Exhibit 6, pp. 35-45)

Respondent testified that she believed that Dr. Stegeman had authorized all of the hydrocodone prescriptions that were called in to Walgreens from December 2009-May 2010 and would not have taken the medication if she thought the prescriptions were not properly authorized. Respondent acknowledged that she had access to Dr. Stegeman's DEA number because it was on the written prescriptions that she received from Dr. Stegeman, but she denied calling in the prescriptions or using Dr. Stegeman's DEA number. (Testimony of Respondent)

Respondent called Walgreens on one occasion after May 14, 2010 to request a refill of her hydrocodone prescription and was told that the prescription could not be refilled and she should contact her provider. Respondent testified that she called Dr. Stegeman's office but has no idea who she spoke to. (Respondent testimony; Respondent Exhibit 6, pp. 29-30)

### *Investigations*

At all times relevant to the Statement of Charges, Respondent had health insurance through Wellmark Blue Cross and Blue Shield, and Wellmark paid for Respondent's prescriptions. On or about May 19, 2010, Wellmark notified Dr. Stegeman that Respondent had been obtaining approximately 50 tablets of Lortab (hydrocodone) approximately every six days through prescriptions that were called in with Dr. Stegeman's name and Drug Enforcement Agency (DEA) number. Dr. Stegeman immediately notified UIHC's counsel and also contacted Walgreens to ask why she was not notified of the prescriptions. She told Walgreens not to fill any more prescriptions for Respondent under her name. (Stegeman, Jim Wolfe testimony; State Exhibit 1, Att. A-D, G-14 to G-21)

UIHC notified the Board of Pharmacy and the police about Respondent's prescriptions. UIHC also contacted Walgreens to confirm that they had entered the correct prescriber. Walgreens confirmed that Dr. Stegeman was the listed prescriber and that all of the prescriptions had been called in. (State Exhibit 1, Att. B)

Hydrocodone is a Schedule III controlled substance that can be authorized by the prescriber over the phone. Schedule II controlled substances, like oxycodone, cannot be called in and must have a written prescription from the prescriber. (Stegeman testimony).

Walgreens provided copies of the six prescriptions, all with 2 or 3 refills, that someone called in using Dr. Stegeman's name and DEA number. (State Exhibit 1, Att. G-7 to G-12) Respondent's Automated Prescription Monitoring System report for the time period from January 15, 2008 through May 14, 2010 was reviewed and found to be consistent with the Wellmark and Walgreens records for the same time period. (Wolfe testimony; State Exhibit 1, Att. A-2, A-3, Att. G)

The Board's Compliance officer, Jim Wolfe, inquired information about the prescription call in system used at the 24 hour Walgreens in Coralville at the time relevant to this case. Persons calling the pharmacy were asked to press one number on the phone key pad if they were a patient and a different number if they were a physician or a physician's representative. A member of the public who was not a physician or authorized physician's representative could press the number reserved for physicians. If the caller pressed the number for physicians and physician representatives, then the call would ring through to the pharmacist's line. However, the caller was also given the option of bypassing the pharmacist and going straight to voice mail to leave the prescription information. The caller was required to provide the information necessary to generate the prescription, i.e. patient name and date of birth; drug name, strength, quantity, directions for use and any refills; and the authorizing physician's name and DEA number. The pharmacist would reduce this information to a written prescription, which was kept on file at the pharmacy. The voice messages were then deleted. For the prescriptions at issue in this case, Walgreens' pharmacy staff was unable to provide any information about who called in Respondent's prescriptions. All of the prescriptions had Dr. Stegeman's name and all but one had her DEA number. (Wolfe testimony; State Exhibit 1, Att. G-7 to G-12)

### ***Respondent's July 2, 2010 Interview by Law Enforcement***

On July 2, 2010, Respondent was interviewed by an investigator with the University of Iowa Police Department and by a Detective with the Johnson County Sheriff's Department. Respondent explained her complicated medical history and told the officers that all of her prescriptions were valid. She also told the officers that she called Dr. Stegeman's office to request the refills but that no one ever returned her messages. Respondent reported that she then contacted Walgreens on 1<sup>st</sup> Avenue in Coralville and asked about receiving more medication for her pain. Walgreens filled prescriptions for her, and she assumed that they made contact with Dr. Stegeman's office and that the prescriptions were valid. She denied knowing how to fraudulently obtain a prescription. Respondent told the officers that she was taking 2-6 tablets of Lortab (Vicodin) a day for pain. When she was confronted with the number of pills she was prescribed, she admitted that she may have been taking 8 tablets a day. She told the officers that she was able to stop taking the medication entirely in May because the pain subsided, and she had no withdrawal symptoms. (Testimony of Jim Wolfe; State Exhibit 1, Att. F)

### ***Respondent's Polygraph Examination***

Respondent's attorney arranged for her to have a polygraph examination by James L. Hammes Polygraph Inc. on July 26, 2011 at 7:00 p.m. at the Days Inn Motel in Davenport, Iowa. Respondent submitted a two page report of the polygraph examination, which included four questions that the examiner asked Respondent. The report included the examiner's analysis that Respondent was being truthful when she answered the four questions listed in the report. (Respondent testimony; Respondent Exhibit 5)

### ***Respondent's Substance Evaluation and Current Use of Prescription Medications***

Respondent testified that her pelvic pain started to decrease after the hysterectomy, but it took 6-8 months before the pelvic pain was finally gone. She continues to have daily pancreatic pain but has been able to address that pain by finding the right level of vibration on her pain stimulator and by using stress relieving techniques. From May 2010 through May 2012, Respondent has only taken the following controlled substances, all by physician prescription:

- 10 hydrocodone in October 2010 for a strained back;

- 40 hydrocodone in August 2011 for a strained back; and
- Approximately six weeks of Percocet, following knee surgery in February 2012.

Respondent is also taking medication to help her sleep. Respondent fills all of these prescriptions at Care Pro Liberty Pharmacy, where she is currently employed. On March 29, 2012, Respondent completed a substance abuse evaluation at the UIHC Chemical Dependency Biopsychosocial Clinic. The substance abuse evaluation report concluded that Respondent has a low probability of having a Substance Dependence Disorder. (Respondent testimony; Respondent Exhibit 2)

### CONCLUSIONS OF LAW

A pharmacist –intern means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy who is participating in a board-approved internship under the supervision of a preceptor.<sup>4</sup> Pharmacist-interns are required to be registered with the Board during their internship training, pursuant to rules established by the Board.<sup>5</sup>

The Board is authorized to establish standards for pharmacist-intern registration. The Board may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 155A or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the Board.<sup>6</sup> The Board has adopted rules governing pharmacist-interns at 657 IAC chapter 4. The rules include provisions for the discipline of pharmacist interns.<sup>7</sup>

It is unlawful for any person to knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.<sup>8</sup> A person shall not “perform or cause the performance of” or “aid and abet” the “obtaining or attempting to obtain a prescription drug ... by ... [E]ngaging in fraud,

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<sup>4</sup> Iowa Code section 155A.3(30)(2009).

<sup>5</sup> Iowa Code section 155A.6(2)(2009).

<sup>6</sup> Iowa Code section 155A.6(3)(2009).

<sup>7</sup> 657 IAC 4.10, 4.11.

<sup>8</sup> Iowa Code §124.403(1)(c).

deceit, misrepresentation, or subterfuge.”<sup>9</sup> A person shall not falsely assume the title of or claim to be a ... physician ... or other authorized person for the purpose of obtaining a prescription drug.<sup>10</sup> A person shall not make or utter “any false or forged oral ... prescription or oral ... order.”<sup>11</sup>

Any person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.<sup>12</sup>

657 IAC 36.1(4) provides, in relevant part:

**36.1(4) Grounds for discipline.** The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

....

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy...

....

i. Willful or repeated violations of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to ... a pharmacist intern’s ... intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy ....

j. Violating a statute or law of this state ... without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

....

u. Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15 or any rules of the board.

657 IAC 8.11 provides, in relevant part:

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<sup>9</sup> Iowa Code §155A.23(1)(a)(2009).

<sup>10</sup> Iowa Code §155A.23(3)(2009).

<sup>11</sup> Iowa Code §155A.23(4)(2009).

<sup>12</sup> Iowa Code §155A.21(2009).

**657-8.11(147,155A) Unethical conduct or practice.** The provisions of this rule apply to ... registered pharmacist-interns.

**8.11(1) Misrepresentative deeds.** A ... pharmacist-intern shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

....

**8.11(8) Unprofessional conduct or behavior.** A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy .... Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

Following its review of the testimony and exhibits, the Board was convinced that Respondent illegally obtained a large number of controlled substances (hydrocodone) through prescriptions that were called in to Walgreens without Dr. Stegeman's knowledge or approval. The Board was also convinced that Respondent knew that these prescriptions were not properly authorized when she filled them.

Dr. Stegeman provided a consistent and credible description of her prescribing practices. It was not Dr. Stegeman's practice to prescribe pain medication in large quantities or to authorize automatic refills on pain medication. Dr. Stegeman required patients to make an appointment and be evaluated before she would prescribe additional pain medication.

When Dr. Stegeman prescribed hydrocodone for Respondent, she gave her prescriptions for 20 tablets with no refills. Although Dr. Stegeman did not know that Respondent had a pain contract with Dr. Johlin, she was aware that Respondent had previously been dependent on narcotics for pain. Respondent admits that she did not see Dr. Stegeman and did not speak to Dr. Stegeman after her last appointment on December 7, 2009. It is implausible that Dr. Stegeman would authorize prescriptions (with refills) totaling 750 tablets of hydrocodone for Respondent over a five month period without ever examining Respondent and without ever speaking to Respondent on the phone.

Dr. Stegeman also described the procedures used in her clinic to handle requests for additional medication and to record telephone encounters with patients. If a patient called to request a prescription refill, a record was made of the call and the message was given to the treating health care provider. The treating health care provider would return the patient's call and document their telephone encounter. If a prescription was ordered, the prescription would also be documented. Respondent's medical record includes documentation by a nurse and by Dr. Stegeman concerning telephone encounters with Respondent on May 14, 2009. (State Exhibit 1, p. 0157) It is unlikely that the other authorized prescribers in the Women's Clinic would have approved a prescription for Respondent when she was not their patient. It is even more unlikely that they would have authorized a prescription using Dr. Stegeman's name and DEA number.

The Board recognizes that information must be entered into the medical record by the Women's Clinic's staff and that there could be record keeping mistakes or omissions. Respondent pointed out that Dr. Stegeman failed to create a clinical note for one of Respondent's clinical appointments (September 28, 2009; Respondent Exhibit 1, pp. 0245, 0247). Nevertheless, while it is possible that Dr. Stegeman or her staff could have neglected to document a telephone encounter or a prescription, it is highly improbable that record keeping omissions could account for the large number of completely undocumented prescriptions in this case.

Respondent has taken pain medications over a lengthy period of time to treat the symptoms of her complicated medical conditions. As she reported, the pressures of pharmacy school no doubt aggravated the legitimate pain that she was experiencing. As a pharmacy student who had worked in pharmacies and as a person with a complex medical history, Respondent had more than sufficient knowledge to call in her own prescriptions. She had access to Dr. Stegeman's DEA number from the written prescriptions that had been given to her. She was not forthcoming with Dr. Stegeman about the pain contract she entered into with Dr. Johlin. Following a review of all of the circumstances, the Board is convinced that Respondent obtained a large number of controlled substances (hydrocodone) by fraud and without proper authorization. The Board made this decision based on its evaluation of the testimony of the witnesses and on the medical and pharmacy records. The two page polygraph examination report was given minimal weight by the Board in its evaluation of Respondent's credibility. The Board was not convinced that the polygraph was reliable. The polygraph examiner did not testify, and the record includes no evidence concerning his qualifications.

The preponderance of the evidence established that Respondent:

Unlawfully possessed and used prescription drugs, including controlled substances, in violation of Iowa of Iowa Code §§ 124.403(1)(c), 155A.6A(3), 155A.21 (2009), and 657 IAC 36.1(4)(j). [Count I]

Violated state laws related to the practice of pharmacy and distribution of prescription medications, including controlled substances, and the practice of pharmacy, in violation of Iowa Code §§ 124.403(1)(c), 155A.6A(3), 155A.21, 155A.23(1)(a) (2009), and 657 IAC 36.1(4)(i). [Count II]

Committed unethical conduct, including fraud, in violation of Iowa Code § 155A.6A(3) (2009), and 657 IAC 8.11, 8.11(1), and 8.11(8). [Count III]

Obtained prescription drugs, including controlled substances, by fraud, in violation of §§ 124.403(1)(c), 155A.6(3), and 155A.23(4)(2009) and 657 IAC 36.1(4)(c) and 36.1(4)(u). [Count IV]

The Board is sympathetic to the fact that Respondent has had to overcome extraordinary medical challenges to attend and complete pharmacy school. The Board believes that Respondent obtained and used the unauthorized hydrocodone solely for relief of legitimate pain. Based on the record made at hearing, including a current substance abuse evaluation, it appears that Respondent has had significant improvements in her medical conditions and is not currently dependent on controlled substances for pain control. She has performed well as a pharmacist-intern and none of the violations involved her place of employment. Although Respondent has committed very serious violations, the Board has decided that she should be given an opportunity to continue to pursue her goal of becoming a pharmacist. The nature of Respondent's violations, however, requires the Board to maintain close supervision and oversight over her pharmacist-intern registration and over her pharmacist license, if one is issued to her. If Respondent has no further violations and otherwise qualifies for an Iowa pharmacist license, it will have to be subject to the same terms of probation as those outlined in this Decision and Order.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacist-intern registration number 4061, issued to Respondent Andrea Perez, is hereby placed on PROBATION for the duration of the registration, subject to the following terms and conditions:

- A. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.
- B. Respondent shall file written, sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of her probation. The reports shall be filed no later than March 5, June 5 September 5 and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.
- C. Respondent shall notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of her probationary status and of the terms and conditions imposed on her by this Decision and Order. Notification shall be made no later than the time of interview. Within thirty (30) days after commencement of the probationary period and within fifteen (15) days of undertaking new employment as a pharmacist-intern or in a pharmacy-related business, Respondent shall cause her pharmacy employer, and any pharmacist-in-charge that she reports to, to report to the Board in writing, acknowledging that the pharmacy employer and pharmacist-in-charge have read this document and understand it.
- D. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.
- E. Respondent shall not use any controlled substances or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for her by a licensed, treating physician or other qualified health care provider. Respondent shall inform any treating physician or other treating health care provider of her medical and medication history. Respondent shall report any new prescription medications to the Board within

ten (10) days of receiving the prescription. The report shall include the name and strength of the drug, the diagnosis, and the name of the authorizing prescriber.

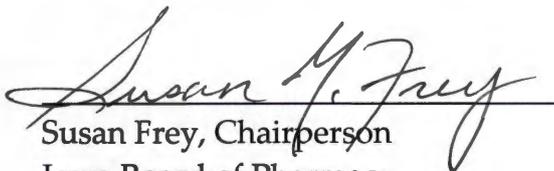
F. Respondent shall promptly provide, upon request from an agent of the Board, copies of or access to all of her medical and prescription records.

G. Respondent shall appear informally before the Board or a Board committee upon request for the purpose of reviewing her performance as a pharmacist during her probationary period. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

H. Should Respondent violate or fail to comply with any of the terms or conditions of probation, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist-intern license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

**IT IS FURTHER ORDERED that if Respondent applies for and otherwise qualifies for an Iowa pharmacist license, her pharmacist license will be issued subject to the same probationary conditions as her pharmacist intern registration.**

Dated this 27<sup>th</sup> day of June, 2012.

  
Susan Frey, Chairperson  
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General  
Michael Sellers, Respondent's Attorney

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

**BEFORE THE IOWA BOARD OF PHARMACY**

Re: Pharmacy Intern Registration of:  
**ANDREA M. PEREZ,**  
Registration No. 4061,  
Respondent.

) Case No. 2010-58 )

**STIPULATED AMENDMENT  
TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER**

The Board of Pharmacy (Board) and Andrea Perez (Respondent) enter into the following Stipulated Amendment to the Findings of Fact, Conclusions of Law, Decision and Order (Order) filed by the Board on June 27, 2012.

1. In the Order, Respondent's Pharmacist-Intern license was placed on indefinite probation subject to a number of conditions.
2. In the Order, the Board stated:  
  
**IT IS FURTHER ORDERED** that if Respondent applies for and otherwise qualifies for an Iowa pharmacist license, her pharmacist license will be issued subject to the same probationary conditions as her pharmacist intern registration.
3. The Order does not specify the term of probation Respondent is to serve upon issuance of her Iowa pharmacist license.
4. The Board and Respondent hereby agree that upon issuance of her pharmacist license, Respondent's license shall be placed on probation for 2.5 years from the date of issuance, subject to the terms as specified in the Order.
5. By entering into this Stipulated Amendment, Respondent waives any objections to the Order and to this Stipulated Amendment.
6. The State's legal counsel may present this Stipulated Amendment to the

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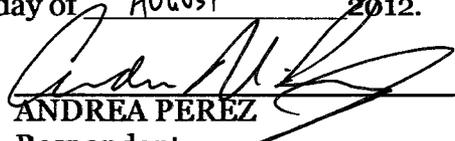
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IOWA BOARD OF PHARMACY

Board.

7. This Stipulated Amendment is subject to the approval of a majority of the full Board. If the Board fails to approve this Stipulated Amendment, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Stipulated Amendment, it shall be the full and final resolution of this matter, along with the original Order.
8. The Board's approval of this Stipulated Amendment shall constitute a FINAL ORDER of the Board.

This Stipulated Amendment is voluntarily submitted by Respondent to the Board for its consideration on the 19 day of AUGUST 2012.

  
ANDREA PEREZ  
Respondent

This Stipulated Amendment is accepted by the Iowa Board of Pharmacy on the 17 day of August 2012.

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

Michael Sellers  
Sellers, Haraldson & Binford  
400 Locust St., Suite 170  
Des Moines, IA 50309

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

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**IN THE MATTER OF THE STIPULATED AMENDMENT TO  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER AGAINST  
ANDEA M. PEREZ, R.Ph., RESPONDENT  
2010-58**

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**TERMINATION ORDER**

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**DATE: November 5, 2013**

1. On August 17, 2012, a Stipulated Amendment to Findings of Fact, Conclusions of Law, Decision and Order was issued by the Iowa Board of Pharmacy stating that upon issuance of Respondent's pharmacist license, her pharmacist license would be placed on probation for two and one-half years under certain terms and conditions.

2. Respondent appeared before the Board on November 5, 2013, to seek early release from probation.

3. The Board directed that the probation placed upon the Respondent's license to practice pharmacy should be terminated.

**IT IS HEREBY ORDERED:**

That the probation placed upon the Respondent's license to practice pharmacy is terminated, and the license is returned to its full privileges free and clear of all restrictions.

**IOWA BOARD OF PHARAMCY**

A handwritten signature in cursive script, appearing to read "Edward Maier". The signature is written in black ink and is positioned above a horizontal line.

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Edward Maier, Board Chairperson  
400 SW 8<sup>th</sup> Street, Suite E  
Des Moines, Iowa 50309-4688