

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2014-175
Pharmacist License of)	
RICHARD UPTON)	COMBINED STATEMENT OF
)	CHARGES, SETTLEMENT
License No. 19779,)	AGREEMENT, AND FINAL ORDER
Respondent.)	

COMES NOW the Iowa Board of Pharmacy ("Board") and Richard (Randy) Upton ("Respondent"), 2487 280th Ave., Sidney, IA 51652, and enter into this Combined Statement of Charges, Settlement Agreement, and Final Order ("Agreement") pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) (2013), stating the following:

1. Respondent holds Iowa pharmacist license number 19779, which is currently active and expires on June 30, 2016.
2. The Board has jurisdiction over the parties and the subject matter of these proceedings.

A. STATEMENT OF CHARGES

Count I

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE

Respondent is charged with unlawful possession of a controlled substance in violation of Iowa Code section 124.401(5), pursuant to Iowa Code section 155A.12(5), and 657 IAC 36.1(4)"j".

Count II

UNETHICAL CONDUCT

Respondent is charged with engaging in unethical conduct, pursuant to Iowa Code sections 147.55(3), 155A.12(2), and (3), and 657 IAC 36.1(4)"c".

Count III

INABILITY TO PRACTICE

Respondent is charged with inability to practice with reasonable skill and safety by reason of chemical abuse, pursuant to Iowa Code sections 147.55(9) and 155A.12(1), and 657 IAC 36.1(4)"m".

B. FACTUAL CIRCUMSTANCES

3. Respondent was formerly employed as the Director of Pharmacy at a hospital in Iowa.
4. Respondent admitted to diverting controlled substances, including ketamine, fentanyl, and morphine, from his employer. Respondent admitted to personal use of the diverted controlled substances both at work and at home.

SETTLEMENT AGREEMENT AND FINAL ORDER

5. Execution of this Combined Statement of Charges, Settlement Agreement, and Final Order constitutes the resolution of a contested case. Respondent has a right to hearing before the Board on the charges, but Respondent waives the right to hearing and all attendant rights, including the right to appeal or seek judicial review of the Board's action, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case and shall have the force and effect of a disciplinary order entered following a contested case hearing.

6. Respondent admits the allegations, and acknowledges that the allegations, if proven in a contested case hearing, would constitute grounds for the discipline agreed to in this Combined Statement of Charges, Settlement Agreement, and Final Order.

7. Respondent is freely and voluntarily entering into this Agreement.

8. Respondent acknowledges that he has the right to be represented by counsel on this matter.

9. Respondent agrees that the State's counsel may present this Agreement to the Board and may have *ex parte* communications with the Board while presenting it.

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

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

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

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

14. Respondent acknowledges and understands that this Agreement will be reported to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse.

15. The Board's approval of this Agreement shall constitute a **FINAL ORDER** of the Board.

IT IS THEREFORE ORDERED:

16. Respondent's license shall be **INDEFINITELY SUSPENDED**. Respondent shall not be permitted to apply for reinstatement of his pharmacist license until all of the following conditions have been satisfied:

- a. A minimum of one year has passed from the date of the Board's approval of this Agreement.
- b. Respondent completes recommended treatment and provides the Board with a current written report from each of Respondent's treatment providers indicating Respondent's status in treatment, recommendations for future treatment, and indicating Respondent is fit to return to work as a pharmacist.
- c. Respondent permits the Board to have complete access to Respondent's medical records, including records of substance abuse treatment, as necessary to fully evaluate Respondent's reinstatement request.

17. At such time as Respondent satisfies all of the requirements set forth in paragraph 16, Respondent may petition the Board for reinstatement of Respondent's license and commencement of a period of probation. Reinstatement of Respondent's license shall be at the discretion of the Board.

18. In the event the Board determines that Respondent's license should be reinstated, Respondent's license to practice pharmacy shall be placed on **PROBATION** for a period of five (5) years. The terms of probation include the following:

- a. Respondent must be employed as a pharmacist for a minimum of forty (40) hours per month for at least thirty (30) months of the probationary term. If Respondent cannot satisfy this requirement, the probationary period will extend beyond five (5) years until such time as Respondent can satisfy this requirement.
- b. Respondent shall not possess or use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed treating physician or other qualified health care provider. Respondent shall inform all treating physicians and other health care providers of his medical history, including all history of chemical dependency. Respondent shall provide the Board a copy of this notification upon request.
- c. Respondent shall provide witnessed blood, hair, or urine specimens on demand by the Board or its agents. Respondent shall provide such witnessed blood, hair, or urine specimens within the timeframe specified on the day of notice from the Board or the Board's chemical screening program requesting that Respondent provide a specimen. The specimens shall be used for alcohol and drug screening to verify Respondent's compliance with this Agreement. All costs related to the analysis of such specimens shall be paid by Respondent.
- d. To facilitate the preceding paragraph "c", Respondent shall participate in the Board's chemical screening program. Respondent shall complete enrollment in the Board's chemical screening program within thirty (30) days of the date his license is placed on probation. Respondent agrees to comply with all requirements of the chemical screening program and shall be responsible for all costs associated with the program. Respondent consents to disclosure to the

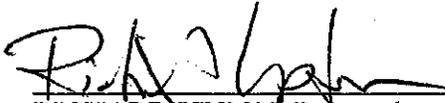
Board, by the chemical screening program, of all medical information, including test results, generated by Respondent's contact with the chemical screening program.

- e. Respondent must comply with all treatment recommendations to address substance abuse issues from treatment providers. Respondent's treatment providers shall submit quarterly reports to the Board documenting Respondent's compliance with treatment for the duration of the treatment. Said quarterly reports are due on March 1, June 1, September 1, and December 1 of each calendar year Respondent is undergoing treatment. Treatment providers shall indicate in the report if treatment is completed and indicate that no further quarterly reports will be submitted as a result.
- f. Respondent permits the Board to have complete access to Respondent's medical records, including records of substance abuse treatment, as necessary to fully evaluate Respondent's compliance with probationary terms.
- g. Respondent shall participate in the Iowa Recovery Network (IPRN) program under the direct support of a pharmacist advocate.
- h. Respondent shall not serve as a pharmacist-in-charge while on probation. Respondent shall not supervise any registered pharmacist-interns or perform any duties of a pharmacy preceptor while on probation.
- i. Respondent shall notify all employers and prospective employers (no later than at the time of an employment interview), including any pharmacist-in-charge, of the resolution of this case and the terms imposed on Respondent by this Agreement. Within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer/s, and any pharmacist-in-charge he works under, to send to the Board a written acknowledgment that the employer and pharmacist-in-charge have read this document and understand the terms.
- j. Respondent shall appear before the Board upon request, for the purpose of reviewing his performance as a pharmacist during Respondent's probationary period. Respondent shall be given reasonable notice of the date, time, and place for such appearances.
- k. Respondent shall inform the Board, in writing, of any change of home address, telephone number, or place of employment within ten (10) days of such a change.
- l. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy.
- m. Respondent understands the Board may impose other terms as a condition of reinstatement Respondent's license.
- n. Respondent shall submit written quarterly reports to the Board, said reports being due on March 1, June 1, September 1, and December 1 during each calendar year

of the probationary period. Each quarterly report shall include Respondent's place of employment, current address, Respondent's most recent efforts to implement the provisions of this Agreement (by date), and any further information requested by the Board.

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

This Combined Statement of Charges, Settlement Agreement, and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 31 day of ~~DECEMBER~~ 2014.


RICHARD UPTON, Respondent

This Combined Statement of Charges, Settlement Agreement, and Final Order is accepted by the Iowa Board of Pharmacy on the 6th day of January, 2015.


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

Copy to:

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Assistant Attorney General
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