

BEFORE THE IOWA BOARD OF PHARMACY

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|-------------------------|---|-----------------------------|
| Re: |) | Case No. 2009-96 |
| Pharmacist License of |) | |
| SHEILA M. WAGNER |) | STATEMENT OF CHARGES |
| License No. 19777, |) | |
| Respondent |) | |

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Director of 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 Board of Pharmacy and files this Statement of charges solely in his official capacity.
3. Sheila M. Wagner (hereinafter, "Respondent") was originally licensed as a pharmacist in Iowa, following examination, on December 5, 2002 as evidenced by license number 19777.
4. Respondent's pharmacist license number 19777 is current and active until June 30, 2010, subject to the laws of the State of Iowa and the rules of the Board.
5. Respondent's current address is 1601 Bertch Avenue, Waterloo, Iowa 50702.
6. Respondent was, at all times material to this statement of charges, employed as the pharmacist in charge at Hy-Vee Pharmacy #1866, located at 1422 Flammang Drive, Waterloo, Iowa 50702.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2009) and 657 Iowa Administrative Code § 36.1(4)(b) 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.

COUNT II – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

Respondent is charged under Iowa Code §§ 155A.12(1), 155A.21 and 155A.23(11) and (18) (2009) and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(u) with unlawful distribution to herself, possession and use of prescription drugs.

COUNT III – VIOLATION OF CONTROLLED SUBSTANCES LAW

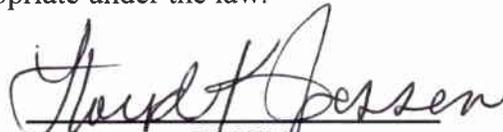
Respondent is charged under Iowa Code §§ 124.402(1)(a), 124.308 and 155A.12(5) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(j) with violating laws relating to controlled substances.

B. CIRCUMSTANCES

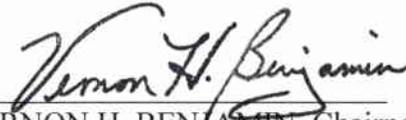
An investigation was commenced on July 24, 2009 which revealed the following:

1. At all times material to this proceeding, Respondent was employed as the pharmacist in charge at a Hy-Vee Pharmacy in Waterloo, Iowa.
2. On July 29, 2009 Respondent was asked to provide a urine specimen during a routine examination of Respondent's on-the-job activities. Respondent's specimen tested positive for amphetamine, Hydrocodone, Oxazepam, Temazepam and Tramadol.
3. Respondent provided evidence of prescriptions for Tramadol and for Tussionex Suspension, (which contains 10mg/5mg Hydrocodone).
4. In an August 12, 2009 written statement, Respondent acknowledged that she had taken lorazepam that belonging to her father. She further stated that a boyfriend – at the time the urine specimen was provided – was an amphetamine user.
5. Respondent claimed, however, to have taken no amphetamine, Temazepam or Oxazepam.

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 October 2009, the Iowa Board of Pharmacy Examiners 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 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

Wagner-SOC 10-09

BEFORE THE IOWA BOARD OF PHARMACY

Re:)
Pharmacist License of)
SHEILA M. WAGNER)
License No. 19777)
Respondent)

Case No. 2009-96

**STIPULATION
AND
CONSENT ORDER**

IOWA BOARD OF PHARMACY

JUL 28 2010

RECEIVED

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2009), the Iowa Board of Pharmacy (hereinafter, "Board") and Sheila M. Wagner (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 was issued a license to practice pharmacy in Iowa on December 5, 2002, following examination, as evidenced by Pharmacist License Number 19777, which is recorded in the permanent records of the Board.
2. The Iowa Pharmacist License issued to and held by Respondent is active and current until June 30, 2010.
3. Respondent was, at all times material to the Statement of Charges, employed as the pharmacist in charge at Hy-Vee Pharmacy #1866, 1422 Flammang Drive, Waterloo, Iowa 50702.
4. A Statement of Charges was filed against Respondent by the Board on October 19, 2009.
5. The Board has jurisdiction over the parties and jurisdiction over the subject matter

of these proceedings.

6. Respondent has chosen not to contest the allegations set forth in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

7. On the date of the Board's approval of this Stipulation and Consent Order, Respondent's license shall be suspended indefinitely. Suspension of Respondent's license may be terminated only at such time as Respondent:

a. Obtains a complete physical and mental health evaluation – including a substance abuse evaluation – from a physician/treatment provider approved in advance by the Board.

b. Delivers to the Board a written, fully documented and current physical and mental health evaluation -- including a substance abuse evaluation -- of Respondent which concludes that Respondent is mentally and physically fit to practice pharmacy. Any conclusion that the Respondent is fit to return to *the practice of pharmacy* will include an assessment of Respondent's ability to cope with the presence of controlled substances in the pharmacy setting.

c. Permits the Board complete access to Respondent's medical records, including records of substance abuse evaluation and treatment.

8. At such time as Respondent is able to deliver to the Board a written, fully documented and current physical and mental health evaluation, including a substance abuse evaluation, which concludes that Respondent is mentally and physically fit to *practice pharmacy*, Respondent may petition the Board for (a) termination of the

suspension of Respondent's license and (b) commencement of a period of probation.

9. In the event the Board determines that Respondent's license suspension should be terminated, Respondent's license to practice pharmacy shall be placed on probation on terms which shall include, but not be limited to, the following:

- a. Respondent agrees to comply with the terms of probation.
- b. The period of probation shall be five (5) years provided, however, that only those time periods during which Respondent is employed as a pharmacist shall count toward exhaustion of the probationary term.
- c. During probation, Respondent shall inform the Board, in writing, of any change of home address, place of employment, home telephone number, or work telephone number, within ten (10) days of such a change.
- d. During probation, Respondent shall report to the Board quarterly, in writing. The report shall include Respondent's place of employment, current address, *Respondent's most recent efforts to implement the provisions of this Stipulation and Consent Order, by date*, and any further information deemed necessary by the Board from time to time.
- e. Respondent shall notify all present 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, conditions and restrictions imposed on Respondent by this Stipulation and Consent Order.
- f. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a

pharmacist, Respondent shall cause her pharmacy employer, and any pharmacist-in-charge she works under, to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.

g. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing her performance as a pharmacist during Respondent's probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.

h. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy.

i. 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 treating health care provider. Respondent shall inform any treating physician or other treating health care provider of her medical history, including any history of chemical dependency.

j. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. The specimens shall be used for alcohol and drug screening, and to verify Respondent's compliance with this Stipulation and Consent Order and any drug therapy ordered by Respondent's physician or treatment provider. All costs related to the analysis of such specimens shall be paid by Respondent.

- k. To facilitate performance of the preceding paragraph, Respondent shall report to and provide a specimen to any healthcare provider specified by the Board – said healthcare provider to be located in reasonable proximity to Respondent – within 24 hours after notice from the Board requesting that Respondent provide a specimen. Respondent agrees to cooperate with the Board in establishing a specimen testing program through FirstLab, and hereby consents to disclosure to the Board, by FirstLab or any other testing facility, of all medical information, including test results, generated by Respondent's contact with the facility.
- l. Respondent shall provide, upon request of an agent of the Board, copies of or access to all her medical records.
- m. If, as a result of the physical and mental health examinations of Respondent, Respondent's physician/treatment provider recommends a substance abuse treatment program, Respondent shall comply with such recommendations. In the event Respondent is participating in a substance abuse treatment program, Respondent's physician/treatment provider shall submit quarterly reports to the Board documenting Respondent's compliance with the treatment program.
- n. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- o. Such other reasonable terms as the Board may wish to impose as a result of (i) findings that Respondent is chemically dependant, (ii) the length of time Respondent's license is suspended pursuant to paragraph 8 above or (iii) the amount or nature of chemical dependency treatment Respondent must participate

in as directed by her physician/treatment provider. If Respondent is found to be chemically dependent, Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program, under the direct support of a pharmacist advocate.

10. Should Respondent violate or fail to comply with any of the terms and conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2009) and 657 IAC 36.

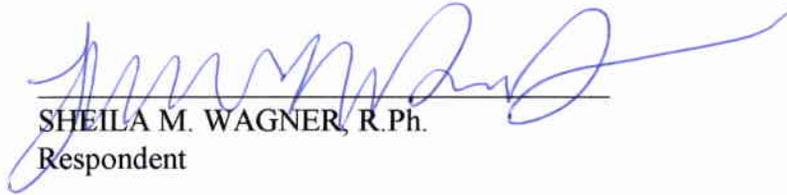
11. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.

12. The State's legal counsel may present this Stipulation and Consent Order to the Board.

13. This Stipulation and Consent Order 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 the Board or Respondent. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

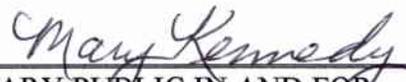
14. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER of the Board.

This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 18 day of July 2010.


SHEILA M. WAGNER, R.Ph.
Respondent

Subscribed and sworn to before me by Sheila M. Wagner on this 18 day of July 2010.




NOTARY PUBLIC IN AND FOR
THE STATE OF IOWA

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 1st day of September 2010.


VERNON H. BENJAMIN, Chairperson
Iowa Board of Pharmacy
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Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
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