

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	CASE NO. 2015-110
Pharmacy License of)	
)	NOTICE OF HEARING AND
HY-VEE PHARMACY 1068)	STATEMENT OF CHARGES
License No. 811)	
Respondent.)	

COMES NOW the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing and Statement of Charges against Hy-Vee Pharmacy 1068 ("Respondent"), 800 N Second Street, Cherokee, IA 51012, pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 272C.3(1)"e", and 657 IAC 35.5 and 36.5. Respondent's Iowa pharmacy license number 811 is currently active through December 31, 2015.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 12, 2016, before the Board. The hearing shall be held during the morning session beginning at 9:00 a.m. and shall be located in the Board conference room located at the Iowa Board of Pharmacy Office, 400 S.W. 8th Street, Suite E, Des Moines, Iowa, 50309-4688.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to 657 IAC 35.11. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Filing of Pleadings. Pleadings shall be filed with the Board at the following address: Iowa Board of Pharmacy, 400 S.W. 8th Street, Suite E, Des Moines, Iowa, 50309-4688.

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.

Pre-hearing Conference. Any party may request a prehearing conference in accordance with 657 IAC 35.15 to discuss issues related to the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 IAC 35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. If you need to request an alternative time or date for the hearing, you must comply with the requirements in 657 IAC 35.16. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The Office of Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address:

Laura Steffensmeier
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Ms. Steffensmeier can also be reached by phone at (515) 281-6690 or by e-mail at laura.steffensmeier@iowa.gov.

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the 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.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2015).

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 147, 155A, and 272C, and 657 IAC 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 IAC 35.21.

C. CHARGES

COUNT I

FAILURE TO ESTABLISH EFFECTIVE CONTROLS AGAINST DIVERSION

Respondent is charged with failing to establish effective controls against diversion of prescription drugs in violation of 657 IAC 6.7 and 10.15, pursuant to Iowa Code section 155A.15(2)"i" and 657 IAC 36.1(4)"u".

COUNT II

FAILURE TO KEEP RECORDS

Respondent is charged with failing to keep records as required by law, specifically supplier invoices, in violation of 657 IAC 8.9(1), pursuant to Iowa Code section 155A.15(2)"h" and 657 IAC 36.1(4)"u" and "ac".

**COUNT III
FAILURE TO MAINTAIN RECORDS**

Respondent is charged with failing to properly maintain records, specifically failing to have a responsible person clearly record the date of receipt of controlled substances on supplier invoices, in violation of 657 IAC 8.9(1), pursuant to Iowa Code section 155A.15(2)"h" and 657 IAC 36.1(4)"u" and "ac".

**COUNT IV
FAILURE TO MAINTAIN SEPARATE RECORDS**

Respondent is charged with failing to maintain records of controlled substances listed in Schedules III, IV, and V separately from all other records or in such a form that the required information is readily retrievable from the ordinary business records, in violation of 657 IAC 10.34(2), pursuant to Iowa Code section 155A.15(2)"h" and 657 IAC 36.1(4)"u" and "ac".

D. FACTUAL CIRCUMSTANCES

1. An audit of Respondent's records from September 2013 through April 2015 indicated the following shortages: approximately 5800 tablets of hydrocodone-containing products, approximately 830 tablets of Lorazepam, and approximately 469 tablets of Diazepam.

2. Respondent attributes the losses to employee pilferage.

3. For the same audit period, Respondent did not have invoices for the following: approximately 25,000 tablets of hydrocodone-containing products, approximately 30,300 tablets of Lorazepam, and approximately 2,000 tablets of Diazepam.

4. A review of Respondent's 2015 invoices for controlled substances revealed the following:

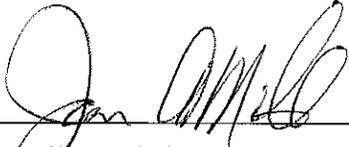
- a. For multiple months, Respondent's invoices for controlled substances in Schedules III, IV, and V were not maintained separately from other prescription drug invoices.
- b. In one month, several of Respondent's invoices for controlled substances were not signed or dated by the person responsible for receiving the order.
- c. Respondent had possession of two original controlled substances invoices for another Hy-Vee pharmacy.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 IAC 36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Laura Steffensmeier at (515) 281-6690.

F. FINDING OF PROBABLE CAUSE

On this 4th day of November, 2015, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



James Miller, Chairperson
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier
Assistant Attorney General
Hoover Building, 2nd Floor
1305 E. Walnut St.
Des Moines, IA 50319

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).