

**BEFORE THE IOWA BOARD OF PHARMACY**

Re:	)	
Pharmacist License of	)	Case No. 2009-54
<b>GARY E. BAKER</b>	)	
License No. 14995,	)	<b>STATEMENT OF CHARGES</b>
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. On July 1, 1977 the Board issued Gary E. Baker (hereinafter, "Respondent"), after examination, a license to engage in the practice of pharmacy as evidenced by license number 14995, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license is current and active through June 30, 2010.
5. Respondent's address of record is 1411 23<sup>rd</sup> Street, Harlan, Iowa 51537.
6. At all times material to this statement of charges, Respondent was employed as the pharmacist at Lewis Drug in Ida Grove, and a Wal-Mart Pharmacy, in Carroll, Iowa.

**A. CHARGES**

**COUNT I – ILLEGAL DISTRIBUTION OF DRUGS**

Respondent is charged under Iowa Code §§ 155A.12(1) and 155A.23(11) (2009), and 657 Iowa Administrative Code § 36.1(4)(h), with distribution of drugs for other than lawful purposes; specifically, diversion and distribution of drugs to himself and family members in the absence of a prescription.

## COUNT II – FRAUD IN PROCURING AND DISTRIBUTING OF DRUGS

Respondent is charged under Iowa Code §§ 155A.12(1), 155A.23(1)(a) and 155A.23(16) (2009), and 657 Iowa Administrative Code § 36.1(4)(j), with fraud in procuring and distributing prescription medication; specifically, fraud in procuring and distributing drugs to himself and family members.

## COUNT III – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

Respondent is charged under Iowa Code §§ 155A.12(1), and 155A.21 (2009) and 657 Iowa Administrative Code §§ 36.1(4)(j) and 36.1(4)(u), with unlawful possession and use of prescription drugs and violation of the laws relating to possession of prescription drugs.

## COUNT IV – VIOLATION OF CONTROLLED SUBSTANCES LAW

Respondent is charged under Iowa Code §§ 124.403(c) 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 by distributing a fraudulently obtained controlled substance to a family member.

## COUNT V – 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 as evidenced by Respondent's fraudulent procurement and illegal distribution of drugs.

## COUNT VI – CREATING FALSE RECORDS

Respondent is charged under Iowa Code §§ 155A.12(1), 155A.12(4) and 155A.23(4) (2009), and 657 Iowa Administrative Code §§ 36.1(4)(i) and 36.1(4)(ac), with failing to create and maintain complete and accurate pharmacy records, and creating false pharmacy records and prescription records.

## **B. CIRCUMSTANCES**

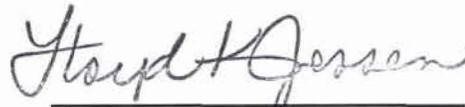
An investigation commenced on May 4, 2009 which revealed the following:

1. At all times material to this statement of charges, Respondent was employed as a pharmacist at Lewis Family Drug in Ida Grove, and Wal-Mart Pharmacy, Carroll, Iowa.
2. Lewis Family Drug prescription records for Respondent, his wife Vickey Baker, and daughter Whitney Baker, reveal hundreds of prescriptions attributed to Physician

Assistant Jill Ferry. The prescriptions attributed to Jill Ferry are dated as recently as April of 2009.

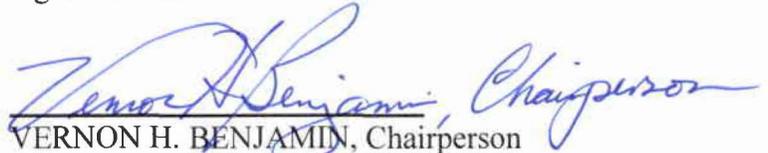
3. Ferry's records confirm that she most recently saw Vickey Baker as a patient on July 8, 2008. She last saw Whitney Baker on July 15, 2008. Respondent was seen by Jill Ferry only once, on August 21, 2002. Although Jill Ferry issued prescriptions for Respondent, Vickey Baker and Whitney Baker, all would have expired long before April of 2009.
4. The medications were dispensed by Respondent through his employment at Lewis Family Drug, and many were paid for with cash. However, some prescription charges were submitted to Express Scripts, a third-party pharmacy benefit manager.
5. Medications dispensed through Lewis Family Drug to Respondent and his family, included drugs – and controlled substances – for which Jill Ferry had never, at any time, issued a prescription.
6. Respondent has signed a written statement admitting that he falsified prescription information and supplied prescription medication to himself and his family members.

**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 18<sup>th</sup> day of November 2009, 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

## VOLUNTARY SURRENDER OF PHARMACIST LICENSE

I, Gary E. Baker, a resident of Harlan, Iowa, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat on the part of anyone, do hereby voluntarily surrender my State of Iowa pharmacist license, number 14995, to the Iowa Board of Pharmacy, for an indefinite period of time. This surrender of license shall become effective upon my notarized signature being affixed to this voluntary surrender document.

I, Gary E. Baker, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat by any representative, officer, or employee of the Iowa Board of Pharmacy, or by any other state official, do hereby further acknowledge that by signing this surrender statement I am knowingly and willingly giving up my right to exercise the following legal rights:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy on the matter of my continued licensure as a pharmacist pursuant to Iowa Code chapter 155A (2009).
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy.
- (3) My right to submit evidence and to call witnesses on my own behalf at a formal hearing.

I, Gary E. Baker, do hereby further acknowledge that, pursuant to 657 Iowa Administrative Code § 36.15, a pharmacist license which has been voluntarily surrendered shall be considered a revoked license with respect to any future request for reinstatement. Any request for reinstatement will be handled under terms established by 657 Iowa Administrative Code § 36.13, which provides:

Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Pre-requisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed

from the date of the board's order or the date of voluntary surrender.

36.13(2) Pharmacist license revoked or surrendered--examinations required. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license, registration, or permit. The application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or surrendered. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 36.14 (17A, 124B, 147, 155A, 272C).

36.13(4) Burden of proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) Order. An order for reinstatement shall be based upon a decision that incorporates findings of facts and conclusions of law and shall be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657--Chapter 14.

I, Gary E. Baker, hereby further give my assurance that I will not engage, in any manner, in the practices of a pharmacist in the State of Iowa for which a license is required.

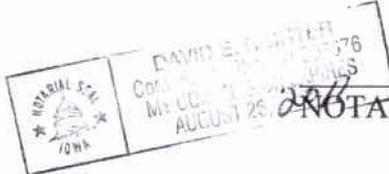
4-9-10  
Date of signature

Gary E Baker  
Gary E. Baker

State of Iowa

County of Shelby

Subscribed and sworn to before me by Gary E. Baker on this 9 day of April 2010.

 David E. [Signature]  
NOTARY PUBLIC FOR THE STATE OF IOWA

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

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Re:	)	<b>ORDER</b>
Pharmacist License of	)	<b>ACCEPTING</b>
<b>GARY E. BAKER</b>	)	<b>SURRENDER OF</b>
License No. 14995	)	<b>PHARMACIST LICENSE</b>

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**COMES NOW**, Vernon H. Benjamin, Chairperson of the Iowa Board of Pharmacy, on the 29<sup>th</sup> day of April 2010, and declares that:

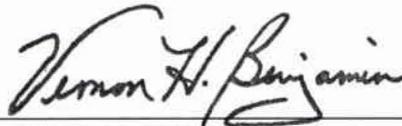
1. On April 9, 2010, Respondent executed a voluntary surrender of his pharmacist license number 14995.

3. On April 29, 2010, the Board reviewed Respondent's voluntary surrender of his pharmacist license and agreed to accept it.

This surrender, pursuant to 657 Iowa Administrative Code § 36.15, shall be considered a revoked license with respect to any future request for reinstatement. Any request for reinstatement will be handled under terms established by 657 Iowa Administrative Code § 36.13.

**WHEREFORE**, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacist license number 14995 is hereby accepted.

IOWA BOARD OF PHARMACY



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VERNON H. BENJAMIN, Chairperson

BEFORE THE IOWA BOARD OF PHARMACY

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RE:	)	CASE NO: 2009-54
	)	DIA NO: 13PHB009
Pharmacist License of	)	
GARY E. BAKER	)	FINDINGS OF FACT,
License No. 14995	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On March 12, 2013, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Gary E. Baker (Respondent). The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward Maier; DeeAnn Wedemeyer Oleson; Edward McKenna; LaDonna Gratias; and Margaret Whitworth. Respondent appeared and was self-represented. Assistant Attorney General Meghan Gavin represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2013), and was recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; the testimony of Respondent; and State Exhibits 1-6 (See Exhibit Index for description).

FINDINGS OF FACT

1. On July 1, 1977, the Board issued Respondent license number 14995 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 1)
2. On November 18, 2009, the Board issued a Statement of Charges against Respondent alleging five counts: illegal distribution of drugs, fraud in procuring and distributing drugs, unlawful possession of prescription drugs, violation of controlled substances law, lack of professional competency, and creating false records. (State

Exhibit 1) During the investigation, Respondent admitted forging many prescriptions for himself and his family members under the name of a physician assistant. The Board accepted the voluntary surrender of Respondent's pharmacist license on April 29, 2010. (State Exhibits 2, 6)

3. Respondent was later charged with a Class B felony based on allegations that he forged a prescription for hydrocodone for a family member. These charges were later dismissed. Respondent pled guilty to Prohibited Acts and was sentenced to two years' probation. Respondent has completed the criminal probation. (Respondent testimony)

4. Respondent admits that he forged prescriptions to treat his own medical conditions, which included high blood pressure, migraine headaches, anxiety, and urinary tract infections. He also admits extending refills on allergy medications for his wife and daughter, without authorization from their physician. At the time that he forged the prescriptions, Respondent was working 60 hours a week as a retail and long term care pharmacist. Respondent felt that he could not take time off to see a physician and so he self-treated his symptoms. Respondent offered "no excuse" for his illegal and unethical behavior and assured the Board that it would never happen again. If Respondent regains licensure as a pharmacist, he would prefer to find a position in industry or as a hospital pharmacist.

Respondent reports completing over 100 hours of continuing education last year. Respondent has been employed as a compounding homeopathic products in a laboratory in Woodbine, Iowa. This position does not require a license to practice pharmacy. (Respondent testimony)

#### CONCLUSIONS OF LAW

The voluntary surrender of a license to practice pharmacy shall be considered a revocation, and a request for reinstatement is handled under the terms of 657 IAC 36.13.<sup>1</sup>

657 Iowa Administrative Code 36.13 provides, in relevant part:

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<sup>1</sup> 657 IAC 36.15.

**657-36.13(17A,124B,147,155A,272C) Reinstatement.** Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

**36.13(1) Prerequisites.** The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if the license...was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order...

**36.13(2) Pharmacist license revoked or surrendered-examinations required.** A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

**36.13(3) Proceedings.** The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board...

**36.13(4) Burden of Proof.** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation... no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**36.13(5) Order.** An order for reinstatement shall be based upon a decision that incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

Upon reviewing the entire record, the Board is satisfied that the basis for the voluntary surrender (revocation) no longer exists and that it is in the public interest to reinstate Respondent's license to practice pharmacy, so long as he fully satisfies the requirements

established in this Decision and Order. It has been three years since Respondent surrendered his license to practice pharmacy. Respondent appeared sincerely remorseful and took responsibility for the actions that led to the voluntary surrender of his license. The Board believes that Respondent is ready to begin the process to gain reinstatement, which should include a period of internship prior to sitting for the NAPLEX and MPJE examinations.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that to reinstate pharmacist license number 14995, Respondent Gary E. Baker must first comply with the following requirements:

- A. Respondent must register as an intern, pay the applicable fee, and successfully complete a 500 hour internship at an Iowa site pre-approved by the Board. Respondent must complete and submit the internship booklet, as defined in 657 IAC 4.1. Upon completion of the internship, Respondent may apply to take the licensing examinations.
- B. Respondent must take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, as required by Iowa Code section 657 IAC 36.13(2). Respondent must pass all components in Iowa within a period of one year beginning with the date Respondent passed an initial component. See 657 IAC 2.1.
- C. The internship and the required examinations must be completed within eighteen (18) months of the date of this Decision and Order.

Upon timely completion of the required examinations, completion of all required continuing education, and payment of all applicable fees, Respondent's pharmacist license no. 14995 shall be REINSTATED and shall immediately be placed on PROBATION for a term of five (5) years. Periods when Respondent is not employed as a pharmacist shall not count toward satisfaction of the five-year probationary period. IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

A. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his 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.

B. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.

C. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.

D. Respondent shall notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause his employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

E. 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.

F. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

G. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

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 license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

Dated this *24<sup>th</sup>* day of April, 2013.

A handwritten signature in cursive script, reading "Susan Frey", is written over a horizontal line.

Susan Frey

Chairperson

Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

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.