

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA



Re: Pharmacist License of :
 :
 : **COMPLAINT**
 JACK W. BIEBER : **AND**
 : **STATEMENT OF CHARGES**
 License No. 12307 :
 Respondent :

COMES NOW Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 27th day of July, 1987, and files this Complaint and Statement of Charges against Jack W. Bieber, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Jerry M. Hartleip, Vice Chairperson; Donna J. Flower; John M. Rode; Melba Scaglione; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on June 13, 1957, by examination.

3. Respondent is self-employed as the owner/pharmacist/manager of the Medical Park Pharmacy located at 430 West 35th Street in Davenport, Iowa.

4. Respondent currently resides at 231 Westerfield Road in Davenport, Iowa.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1988.

6. The Board has reviewed an investigative report from Board Investigator E. Ray Shelden. That report indicates that in 32 documented instances occurring between September 8, 1986, and June 29, 1987, Respondent (a) failed to comply with the restrictions of Iowa Code section 155.37(3) while engaging in drug product selection by not noting on the involved prescriptions that selection of a generically equivalent drug product was made and by not noting on the prescriptions the name of the manufacturer of the generic drug products selected and (b) misbranded prescriptions by dispensing generic medications labeled as brand name products in violation of Iowa Code sections 203A.3(1), 203A.3(2), 203A.10(1), 203A.10(9)(c), and 155.29(5).

7. Investigator Shelden's report also indicates that in 23 documented instances occurring between September 8, 1986, and June 29, 1987, Respondent submitted false claims to third-party payors in

which he billed for brand name products while he dispensed generic medication. Respondent has admitted that he has (a) intentionally misbranded prescriptions and (b) intentionally defrauded patients and insurance companies.

8. Investigator Sheldon's report also indicates that in two instances observed during an inspection conducted on June 30, 1987, Respondent engaged in drug repackaging and (a) failed to comply with the record keeping requirements of 620 Iowa Administrative Code section 6.3(1) and (b) failed to comply with the label information requirements of 620 Iowa Administrative Code section 6.3(2).

9. Iowa Code section 155.37(3) provides as follows:

If substitution of a generically equivalent drug product for the designated brand or trade name drug product prescribed is made under this section, the pharmacist making the substitution shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's representative, or the substitution shall be reduced to writing by the pharmacist pursuant to section 155.33, subsection 2.

10. Iowa Code section 203A.3 provides in part as follows:

The following acts and the causing thereof within the state of Iowa are hereby prohibited:

1. The...sale, or delivery...of any drug...that is...misbranded.

2. The...misbranding of any drug....

11. Iowa Code section 203A.10 provides in part as follows:

A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

....

9.(c) [I]f it is offered for sale under the name of another drug.

12. Iowa Code section 155.29 provides in part as follows:

No person shall:...

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

13. 620 Iowa Administrative Code section 10.1(4) provides in part as follows:

The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1,000.00, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

....

t. Obtaining any fee by fraud or misrepresentation.

14. 620 Iowa Administrative Code chapter 6 provides in part as follows:

6.3(1) Control record. Pharmacies may prepackage and label drugs in convenient quantities for subsequent prescription labeling and dispensing. Such drugs shall be prepackaged by or under the direct supervision of a pharmacist. The supervising pharmacist shall prepare and maintain a packaging control record containing the following information:

- a. Date.
- b. Identification of drug.
 - (1) Name.
 - (2) Dosage form.
 - (3) Manufacturer.
 - (4) Manufacturer's lot number.
 - (5) Strength.
 - (6) Expiration date (if any).
- c. Container specification.
- d. Copy of the label.
- e. Initials of the packager.
- f. Initials of the supervising pharmacist.
- g. Quantity per container.
- h. Internal control number or date.

6.3(2) Label information. Each prepackaged container shall bear a label containing the following information:

- a. Name.
- b. Strength.
- c. Internal control number or date.
- d. Expiration date (if any).

e. Auxiliary labels, as needed.

15. Iowa Code section 155A.12 provides in part as follows:

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
2. Engaged in unethical conduct as that term is defined by rules of the board.

16. 620 Iowa Administrative Code chapter 6 provides in part as follows:

6.5(1) Misrepresentative deeds. It is unethical for a practitioner of the profession of pharmacy to make publication or circulation of any statement tending 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.

....

6.5(5) Nonconformance with law. It is unethical for a practitioner of the profession of pharmacy to serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

The Iowa Board of Pharmacy Examiners finds that paragraphs 6, 7, and 8, above, constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent Jack W. Bieber has violated sections 155.29(5), 155.37(3), 203A.3(1), 203A.3(2), 203A.10(1), and 203A.10(9)(c) of the Code of Iowa 1987, and sections 6.3(1), 6.3(2), 6.5(1), 6.5(5), 10.1(4)(c), and 10.1(4)(t) of 620 Iowa Administrative Code.

IT IS HEREBY ORDERED that Jack W. Bieber appear before the Iowa Board of Pharmacy Examiners on September 16, 1987, at 1:30 p.m. in second floor conference room "A," 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to Jack W. Bieber on June 13, 1957, and take

whatever additional action that they deem necessary.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of his own. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS



Norman C. Johnson
Executive Secretary

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

IN THE MATTER OF THE COMPLAINT)
AND STATEMENT OF CHARGES) DECISION AND ORDER
AGAINST:)
Jack W. Bieber)
Respondent)
License No. 12307)
)

To: Jack W. Bieber

A Complaint and Statement of Charges was filed by the Executive Secretary of the Iowa Board of Pharmacy Examiners (hereinafter Board) on July 27, 1987, alleging that:

1. The respondent, Jack W. Bieber, did not note on prescriptions that selection of a generically equivalent drug product was made and the name of the manufacturer of the generic drug products and misbranded prescriptions by dispensing generic medications labeled as brand name products in 32 documented instances between September 8, 1986 and June 29, 1987.
2. The respondent submitted false claims to third-party payors when he billed for brand name products when he had dispensed generic medications in 23 documented instances between September 8, 1986 and June 29, 1987.
3. The respondent engaged in drug repackaging and failed to comply with record-keeping requirements and label information requirements in two instances observed during an inspection on June 30, 1987.

The Complaint alleged violations of Iowa code sections 155.29(5), 155.37(3), 203A.3(1), 203A.3(2), 203A.10(1) and 203A.10(9)(c), and violations of 620 Iowa Administrative code sections 6.3(1), 6.3(2), 6.5(1), 6.5(5), 10.1(4)(c). and 10.1(4)(t).

A hearing on the above Complaint and Statement of Charges was held on October 13, 1987 at 1:30 p.m. in the Iowa Board's second floor conference room, Executive Hills West, 1209 East Court Avenue, Capitol Complex, Des Moines, Iowa 50319. Present were the Board and its counsel, Thomas D. McGrane, Assistant Attorney General. The respondent, Jack Bieber, was present and was not represented by counsel. Present also were members of the staff of the Board and a court reporter. The undersigned hearing officer for the State of Iowa presided. The hearing was open to the public.

At the hearing, the parties entered an oral stipulation. The respondent, Jack Bieber, admitted the charges as stated in the Complaint and Statement of Charges except for the following contained in paragraph 7, page 2:

"Respondent has admitted that he has (a) intentionally misbranded prescriptions and (b) intentionally defrauded patients and insurance companies."

The above statement was withdrawn from the Complaint by Thomas McGrane. The Respondent testified as to mitigating factors.

After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code §21.5(f)(1987) to deliberate. This hearing officer was instructed to prepare the Board's Decision and Order.

THE RECORD

The evidentiary record in this case consists of the Complaint and Statement of Charges, the recorded testimony of the witness, and the following exhibits:

Board Exhibit 1:	Complaint and Statement of Charges;
Board Exhibit 2:	Summary of Investigative Report with attachments
Board Exhibit 3:	notes dated June 17, 1987 (admitted for the limited purpose of showing how the investigation began)
Board Exhibit 4:	confirmation by the Board regarding patient D.M. (See Respondent's Exhibit B).
Respondent's Exhibit A:	notes and attachment regarding patient A.U.
Respondent's Exhibit B:	notes and attachments regarding patient D.M. (see Board Exhibit 4).
Respondent's Exhibit C:	notes and attachments regarding patient B.S.
Respondent's Exhibit D:	notes and attachments regarding patient R.J.
Respondent's Exhibit E:	notes and attachments regarding patient S.R.
Respondent's Exhibit F:	notes and attachments regarding patient V.S.
Respondent's Exhibit G:	notes and attachments regarding patient D.G.

FINDINGS OF FACT

1. At the hearing the respondent, Jack Bieber, admitted the charges as stated in the Complaint and Statement of Charges except for the following sentence which he specifically did not admit and which was withdrawn by the Board's attorney "Respondent has admitted that he has (a) intentionally misbranded prescriptions and (b) intentionally defrauded patients and insurance companies."

Therefore pursuant to the admission, the following are found to be facts:

- a. Respondent was issued a license to practice pharmacy in Iowa on June 13, 1957, by examination.
- b. Respondent is self-employed as the owner/pharmacist/manager of the Medical Park Pharmacy located at 430 West 35th Street in Davenport, Iowa.
- c. Respondent currently resides at 231 Westerfield Road in Davenport, Iowa.
- d. Respondent's license to practice pharmacy in Iowa is current until June 30, 1988.
- e. In 32 documented instances occurring between September 8, 1986, and June 29, 1987, Respondent (a) failed to comply with the restrictions of Iowa Code section 155.37(3) while engaging in drug product selection by not noting on the involved prescriptions that selection of a generically equivalent drug product was made and by not noting on the prescriptions the name of the manufacturer of the generic drug products selected and (b) misbranded prescriptions by dispensing generic medications labeled as brand name products in violation of Iowa Code sections 203A.3(1), 203A.3(2), 203A.10(1), 203A.10(9)(c), and 155.29(5).
- f. In 23 documented instances occurring between September 8, 1986, and June 29, 1987, Respondent submitted false claims to third-party payors in which he billed for brand name products while he dispensed generic medication.
- g. In two instances observed during an inspection conducted on June 30, 1987, Respondent engaged in drug repackaging and (a) failed to comply with the record-keeping requirements of 620 Iowa Administrative Code section 6.3(1) and (b) failed to comply with the label information requirements of 620 Iowa Administrative Code section 6.3(2). (See also Board Exhibit 2).

2. Between the date the above occurrences were discovered and the date of the hearing, the respondent made restitution or attempted to make restitution for some of the overcharges. (testimony of Mr. Jack Bieber; Board Exhibit 4; Respondent's Exhibits A-G).
3. The respondent obtained statements in August 1987 from seven patients. The statements say that the respondent had their permission to switch to alternate brands of equivalent quality when filling prescriptions. (testimony of Mr. Bieber; Respondent's Exhibits A-G).
4. The respondent is still in the process of negotiating with the Iowa Pharmacy Service Corporation (IPSC) regarding overcharges. Some of those involve patients other than those in Respondent's Exhibits A-G. (testimony of Mr. Bieber)
5. Mr. Bieber testified that he did not intend to defraud the third-party payors in submitting the claims as he did. He does not deny that he misrepresented facts to the third-party payors by turning in the wrong National Drug Code (NDC) numbers and the wrong prices. He also admits that he prepared labels which misrepresented the products contained in the bottles.

The respondent committed fraud by stating that he was dispensing one product while he was dispensing a different product on numerous occasions. The Board does not find credible Mr. Bieber's testimony that he did not intend to defraud third-party payors. (testimony of Mr. Bieber; Respondent's Exhibits A-G; Board Exhibits 2,4).

CONCLUSIONS OF LAW

Substantial evidence was presented to prove that the Respondent, Jack Bieber, committed the acts alleged in paragraphs 6,7 and 8 of the Complaint and Statement of Charges.

Iowa Code section 155.37(3) provides as follows:

If substitution of a generically equivalent drug product for the designated brand or trade name drug product prescribed is made under this section, the pharmacist making the substitution shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's representative, or the substitution shall be reduced to writing by the pharmacist pursuant to section 155.33, subsection 2.

Iowa Code section 203A.3 provides in part as follows:

The following acts and the causing thereof within the state of Iowa are hereby prohibited:

1. The...sale, or delivery...of any drug...that is ...misbranded.
2. The...misbranding of any drug....

Iowa Code section 203A.10 provides in part as follows:

A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

....

- 9.(c) [I]f it is offered for sale under the name of another drug.

Iowa Code section 155.29 provides in part as follows:

No person shall:...

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

620 Iowa Administrative Code section 10.1(4) provides in part as follows:

The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1,000.00, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

....

t. Obtaining any fee by fraud or misrepresentation.

620 Iowa Administrative Code chapter 6 provides in part as follows:

6.3(1) Control record. Pharmacies may prepackage and label drugs in convenient quantities for subsequent prescription labeling and dispensing. Such drugs shall be prepackaged by or under the direct supervision of a pharmacist. The supervising pharmacist shall prepare and maintain a packaging control record containing the following information:

- a. date.
- b. Identification of drug.
 - (1) Name.
 - (2) Dosage form.
 - (3) Manufacturer.
 - (4) Manufacturer's lot number.
 - (5) Strength.
 - (6) Expiration date (if any).
- c. Container specification.
- d. Copy of the label.
- e. Initials of the packager.
- f. Initials of the supervising pharmacist.
- g. Quantity per container.
- h. Internal control number or date.

6.3(2) Label information. Each prepackaged container shall bear a label containing the following information:

- a. Name.
- b. Strength.
- c. Internal Control Number or date.
- d. Expiration date (if any).
- e. Auxiliary labels, as needed.

Iowa Code section 155A.12 provides in part as follows:

...The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
2. Engaged in unethical conduct as that term is defined by rules of the board.

620 Iowa Administrative Code chapter 6 provides in part as follows:

6.5(1) Misrepresentative deeds. It is unethical for a practitioner of the profession of pharmacy to make publication or circulation of any statement tending 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 the operation or conduct of a pharmacy.

...

6.5(5) Nonconformance with law. It is is unethical for a practitioner of the profession of pharmacy to serve in a pharmacy which is not operated in conformance with law, or

which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

Substantial evidence was presented to prove that the respondent violated Iowa Code sections 155.29(5), 155.37(3), 203A.3(1), 203A.3(2), 203A.10(1), and 203A.10(9)(c) (1987); and 620 Iowa Administrative Code sections 6.3(1), 6.3(2), 6.5(1), 6.5(5), 10.1(4)(c), and 10.1(4)(t). Therefore, the respondent is found to have violated those code sections and rules.

DECISION AND ORDER

It is therefore the ORDER of the Iowa Board of Pharmacy Examiners that the license to practice pharmacy issued to Jack W. Bieber is hereby suspended for one year, effective upon receipt by Mr. Bieber of this Decision and Order. Ten months of the suspension is stayed, and Mr. Bieber will serve the two months' suspension beginning no later than thirty days after the receipt of this Decision and Order.

It is the further ORDER of the Board that Mr. Bieber is placed on probation for a period of three years following the completion of the suspension period, upon the following terms and conditions:

Obey All Laws

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

Reporting to the Board

Respondent shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed, the period of probation shall be extended until such time as the final report is made.

Peer Review

Respondent shall submit to peer review as deemed necessary by the Board.

Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

Notice to Employers

Respondent shall notify all present and prospective employers of the decision in case No. NHS880128 and the terms, conditions and restriction imposed on respondent by said decision.

Within 30 days of the effective date of this decision, and

within 15 days of respondent undertaking new employment, respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the decision in case No. J#5 880/28.

No Preceptorships, Supervision of Intern

Respondent shall not supervise any registered intern and shall not perform any duties of a preceptor.

Tolling of Probation

Should respondent leave Iowa to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

Violation of Probation

Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Completion of Probation

Upon successful completion of probation, respondent's certificate will be fully restored.

Policies and Procedures

Within 60 days of the receipt of this Decision and Order, the respondent must adopt written policies and procedures regarding (a) proper third party billing, (b) drug samples, (c) drug labelling, (d) proper repackaging, (e) generic substitution, (f) proper documentation of prescriptions, and (g) drug recalls. These written policies and procedures must be submitted to the Board for approval within 60 days of the receipt of this Decision and Order. If not approved, the Board may order Mr. Bieber to rewrite the policies and procedures.

Mr. Bieber must submit the following information to the Board within 60 days of the receipt of this Decision and Order: (a) names of all third-party payors he deals with, (b) payment schedules and billing procedure for each third-party payor, (c) a copy of a letter to be written to each third-party payor offering to make restitution for events occurring in 1986 and 1987 and proof of service of such letter and (d) documentation of

any restitution made to third-party payors not shown at the hearing.

It is the further ORDER of the Board that Mr. Bieber is fined the amount of \$1000.00, to be paid within 60 days of the receipt of this Decision and Order.

This Decision and Order was prepared by me at the direction of the Iowa Board of Pharmacy Examiners on the 30~~th~~ day of October, 1987.


Amy Christensen Couch
Hearing Officer
Iowa Dept. of Inspections
and Appeals
Lucas State Office Building
Second Floor
Des Moines, Iowa 50319

ACC/sac

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

Re:)	Case No. 2004-83
Pharmacist License of)	
JACK W. BIEBER)	STATEMENT OF CHARGES
License No. 12307,)	
Respondent.)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners 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 (2003).
3. On June 13, 1957, the Board issued Respondent, by exam, a license to engage in the practice of pharmacy as evidenced by license number 12307, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2006.
5. Respondent's current address is 231 Westerfield Road, Davenport, Iowa 52806.
6. Respondent was, at all times material, employed as the pharmacist in charge at Medical Park Pharmacy, 430 W. 35th Street, Davenport, Iowa 52806.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.12(1) (2003) 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 – ILLEGAL DISTRIBUTION OF DRUGS

Respondent is charged with distribution of drugs for other than lawful purposes in violation of Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(h), including

diversion of prescription drugs and controlled substances, and distribution of drugs to his wife in the absence of a prescription.

COUNT III – VIOLATION OF CONTROLLED SUBSTANCES LAWS

Respondent is charged with violation of controlled substances laws in violation of Iowa Code § 155A.12(5) (2003) and 657 Iowa Administrative Code § 36.1(j).

COUNT IV – INADEQUATE RECORD KEEPING

Respondent is charged under Iowa Code §§ 124.308(3), 155A.12(4), 155A.27 (2003) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4)(ac) and 21 CFR 1304.11 & 1306.22(a) with inadequate record keeping, including but not limited to failure to maintain records of prescriptions in a readily retrievable manner.

COUNT V – INADEQUATE CONTROLS OVER CONTROLLED SUBSTANCES

The Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a), 155A.12(1) (2003) and 657 Iowa Administrative Code § 6.7 with failing to maintain accurate control over and accountability for drugs, including controlled substances.

COUNT VI – UNETHICAL CONDUCT; FRAUD

Respondent is charged with engaging in unethical conduct in violation of Iowa Code §§ 155A.12(1) and 155A.12(2) (2003), and 657 Iowa Administrative Code § 36.1(4)(c) by, among other things, falsifying pharmacy records and falsifying medical insurance claims.

COUNT VII – UNETHICAL CONDUCT; MISBRANDING DRUGS

Respondent is charged with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy and engaging in unethical conduct and practices harmful and detrimental to the public in violation of Iowa Code § 155A.12(1) (2003) and 657 Iowa Administrative Code § 36.1(4)(c), including tampering with and adulteration of drugs in violation of Iowa Code §§ 126.3, 126.9, and 126.10 (2003).

B. CIRCUMSTANCES

On or about October 14, 2004 an investigation was commenced, revealing the following:

1. Respondent is the pharmacist in charge at Medical Park Pharmacy, Davenport, Iowa. With the exception of one week per year, Respondent is the only

- pharmacist to work at Medical Park Pharmacy. No technicians work at the pharmacy.
2. An examination of Medical Park Pharmacy revealed that the prescription-filling area and drug storage areas are not secure from the remaining portion of the pharmacy, and the pharmacy is at times left unlocked and unattended. The pharmacy was dusty and the refrigerator unclean.
 3. On the pharmacy dispensing shelves were located 195 bottles of outdated drugs (approximately 40% of the total inventory), empty stock bottles and ointment boxes, and 152 empty patient prescription bottles – some dating back 2 to 3 years. Two patient prescription bottles were filled with prescription medications which apparently were filled at CVC and Walgreens pharmacies.
 4. Manufacturer's sample packages were also found on the dispensing shelves.
 5. Respondent admitted that he provides his wife with prescription medications, in the absence of a prescription.
 6. Bringing current the biennial inventory (beginning on May 1, 2003) for Medical Park Pharmacy revealed substantial shortages of controlled substances, including shortages of Dextroamphetamine Sul., 10 mg. (2, 877 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate ER 30 mg. (3800 tablets), Oxycondone/APAP 5/525 (2740 tablets), Ambien 10 mg. (2164 tablets), APAP with Codeine Phos. 60/300 (2895 tablets), HDCD/APAP 10/325 (QT) (3690 tablets). The current inventory also revealed a shortage of 57 pints of Hydrocodone BT/Guaifenesin liquid.
 7. Respondent identified a box containing 28 bottles of substances which he asserted were controlled substances awaiting destruction. Examination of the bottles revealed that all but one of the 28 bottles contained not the drug identified on the label, but a look-alike drug.
 8. Six bottles located on the dispensing shelves had labels indicating their contents as Methylin 20 mg. All of the bottles contained look-alike drugs, but not Methylin 20 mg.
 9. A review of prescription records revealed a general lack of prescription information.
 10. Where prescription records do exist, they are often incomplete. For some prescriptions, only a number (without name, address, etc.) was recorded. In other cases, hand-written prescriptions were filed. Moreover, some controlled substance prescriptions were refilled more than 5 times, or filled outside the 6 month period following issuance of the prescription.
 11. A sample of 7 original prescriptions was checked for authenticity by calling the purported issuing physician. Each of the 7 prescriptions was declared by a physician or physician's office to be invalid.
 12. Respondent's records reveal Medicare claims were made on the basis of the invalid physician prescriptions.

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 2nd day of November 2004, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Michael J. Seifert, 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

Bieber-SOC.doc

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

Re:)	Case No. 2004-83
Pharmacist License of)	
JACK W. BIEBER)	EMERGENCY ORDER
License No. 12307,)	
Respondent.)	

I. JURISDICTION

The Iowa Board of Pharmacy Examiners (hereinafter, "Board") has jurisdiction over pharmacy licensees pursuant to Iowa Code Chapters 155A and 272C (2003). Respondent Jack W. Bieber possesses pharmacist license number 12307 issued by the Board. A Statement of Charges was filed against Respondent on November 2, 2004. After receipt and review of the Statement of Charges, and careful review of evidence relating to the Statement of Charges, the Board has adopted the following Findings of Fact and Conclusions of Law and Emergency Order.

II. FINDINGS OF FACT

1. On June 13, 1957, the Board issued Respondent a license to engage in the practice of pharmacy as evidenced by license number 12307, subject to the laws of the State of Iowa and the rules of the Board.
2. Respondent has most recently been employed as the pharmacist in charge at Medical Park Pharmacy, Davenport, Iowa.
3. On October 14, 2004, the board commenced an investigation of Respondent which revealed the following, which the Board hereby finds:

- a. Respondent is the pharmacist in charge at Medical Park Pharmacy, Davenport, Iowa. With the exception of one week per year, Respondent is the only pharmacist to work at Medical Park Pharmacy. No technicians work at the pharmacy.
- b. An examination of Medical Park Pharmacy revealed that the prescription-filling area and drug storage areas are not secure from the remaining portion of the pharmacy, and the pharmacy is at times left unlocked and unattended. The pharmacy was dusty and the refrigerator unclean.
- c. On the pharmacy dispensing shelves were located 195 bottles of outdated drugs (approximately 40% of the total inventory), empty stock bottles and ointment boxes, and 152 empty patient prescription bottles – some dating back 2 to 3 years). Two patient prescription bottles were filled with prescription medications which apparently were filled at CVC and Walgreens pharmacies.
- d. Manufacturer's sample packages were also found on the dispensing shelves.
- e. Respondent admitted that he provides his wife with prescription medications, in the absence of a prescription.
- f. Bringing current the biennial inventory (beginning on May 1, 2003) for Medical Park Pharmacy revealed substantial shortages of controlled substances, including shortages of Dextroamphetamine Sul., 10 mg. (2, 877 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate 20 mg. (3800 tablets, Methylphenidate ER 30 mg. (3800 tablets), Oxycondone/APAP 5/525 (2740 tablets), Ambien 10 mg. (2164 tablets), APAP with Codeine Phos60/300 (2895 tablets), HDCD/APAP 10/325 (QT) (3690 tablets). The

current inventory also revealed a shortage of 57 pints of Hydrocodone BT/Guaifenesin liquid.

- g. Respondent identified a box containing 28 bottles which he asserted were awaiting destruction. Examination of the bottles revealed that all but one of the 28 bottles contained not the drug identified on the label, but a look-alike drug.
 - h. Six bottles located on the dispensing shelves had labels indicating their contents as Methylin 20 mg. All of the bottles contained look-alike drugs, but not Methylin 20 mg.
 - i. A review of prescription records revealed a general lack of prescription information.
 - j. Where prescription records do exist, they are often incomplete. For some prescriptions, only a number (without name, address, etc.) was recorded. In other cases, hand-written prescriptions were filed. Moreover, some controlled substance prescriptions were refilled more than 5 times, or filled outside the 6 month period following issuance of the prescription.
 - k. A sample of 7 original prescriptions was checked for authenticity by calling the purported issuing physician. Each of the 7 prescriptions was declared by a physician or physician's office to be invalid.
 - l. Respondent's records reveal Medicare claims were made on the basis of the invalid physician prescriptions.
4. The Board finds that the evidence assembled during the investigation of Respondent supports the November 2, 2004 Statement of Charges against Respondent. The Board also finds that Respondent has violated the provisions of Iowa Code Chapter 155A and Chapter 657 of the Iowa Administrative Code in the manner alleged in the Statement of Charges.

5. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:
- a. Respondent has been operating a pharmacy which appears to have been dispensing outdated prescription medications along with medications repurchased from clients and consumers, all in an unclean environment. These practices represent an immediate and continuing danger to the public, safety and welfare because the public is likely, under the described circumstances, to receive outdated or incorrect – and possibly unclean – medications.
 - b. Large quantities of controlled substances appear to have been dispensed from the pharmacy operated by Respondent. Prescription records to support the dispensed controlled substances are missing or never existed. Because of the amount of controlled substances unaccounted for, it is likely the drugs are being diverted to "street" sale and use, constituting an immediate and continuing danger to the public health, safety and welfare.
 - c. Respondent has engaged in a practice of dispensing prescription medication without requiring a prescription or current prescription. This practice results in prescriptions being dispensed without the usual and requisite involvement of a physician/prescriber. In this circumstance, there is a substantial possibility of misuse or incorrect use of prescription medications which might adversely affect the health of members of the public. Respondent's practices constitute an immediate and continuing threat to the public health, safety and welfare.

- d. There is no evidence to indicate that the manner in which Respondent has been running the Medical Park Pharmacy is short-term, accidental, the result of a misunderstanding as to appropriate pharmacy practices or other mistake. For example, the failure to maintain dispensing records relating to large volumes of controlled substances suggests either total disregard for controlled substances law or illegal diversion and distribution of drugs.
8. The Board finds that immediate, emergency action must be taken for the reason that if Respondent is allowed to continue to work as a pharmacist, the public health, safety and welfare will be threatened by both his improper practices related to dispensing medications to members of the public.
9. The Board finds that the minimum emergency action needed to protect the public health, safety and welfare is as follows:
 - a. Immediate suspension of Respondent's pharmacist license.
 - b. Issuance of an order directing that Respondent's license shall remain suspended until satisfactory evidence of Respondent's ability to resume the practice of pharmacy has been provided to the Board.

III. CONCLUSIONS OF LAW

1. Respondent's disregard for the provisions of Iowa Code chapter 155A.15 and chapter 657 of the Iowa Administrative Code, as well as the provisions of state and federal law relating to controlled substances, prevent Respondent from working safely as a pharmacist.
2. The provisions of Iowa Code § 17A.18A (2003) permit the Board of Pharmacy Examiners to

take emergency action to protect the health, safety and welfare of the public. A basis for emergency action against respondent, pursuant to the provisions of the Iowa Code and the Iowa Administrative Code, has been established by the findings of fact adopted above.

IV. EMERGENCY ORDER

The Board ORDERS as follows:

- a. Pursuant to Iowa Code § 17A.18A, chapter 155A (2003) and 657 Iowa Administrative Code § 35, the pharmacist license of Jack W. Bieber is suspended indefinitely. This suspension is effective immediately upon issuance of this order.
- b. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).
- c. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on December 16, 2004. The hearing will commence at 1:00 p.m. and be held at the office of the Iowa Board of Pharmacy Examiners, 400 Southwest 8th Street, Suite E, Des Moines, Iowa 50309.

DATED this 2nd day of November 2004.


Michael J. Seifert, 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 50319

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

Re:)	ORDER
Pharmacist License of)	ACCEPTING
JACK BIEBER)	SURRENDER OF
License No. 12307)	PHARMACIST LICENSE

COMES NOW, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 15th day of December, 2004, and declares that:

1. On November 2, 2004, the Board issued a Statement of Charges and Emergency Order to the Respondent.

2. On November 5, 2004, Respondent executed a voluntary surrender of his pharmacist license number 12307 pursuant to 657 Iowa Administrative Code § 36.15. In so doing, Respondent waived his right to a formal hearing before the Iowa Board of Pharmacy Examiners.

3. On December 15, 2004, the Board reviewed Respondent's voluntary surrender of his pharmacist license and agreed to accept it.

WHEREFORE, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacist license number 12307 is hereby accepted and, pursuant to 657 Iowa Administrative Code § 36.13, said surrender shall be considered a revocation of registration with respect to any future request for reinstatement.

IOWA BOARD OF PHARMACY EXAMINERS



MICHAEL J. SEIFERT, Chairperson

VOLUNTARY SURRENDER OF PHARMACIST LICENSE

I, Jack Bieber, a resident of Scott County, 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 12307, to the Iowa Board of Pharmacy Examiners, 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, Jack Bieber, 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 Examiners, 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 relating to proceedings pending before the Iowa Board of Pharmacy Examiners:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy Examiners regarding potential discipline or discontinuance of my license to practice as a pharmacist, issued pursuant to Iowa Code Chapter 155A (2003).
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) My right to submit evidence and to have witnesses called on my own behalf at formal hearing.

I, Jack Bieber, 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) 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 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.

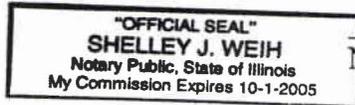
I, Jack Bieber, hereby further give my assurance that I shall not engage, in any manner, in the practices of a pharmacist in the State of Iowa for which a license is required.

11-05-04
Date of signature

Jack W. Bieber
Jack Bieber

State of Illinois :
: ss
County of Rock Island :

Subscribed and sworn to before me by Jack Bieber on this 5th day of November, 2004.



Shelley J. Weih
NOTARY PUBLIC FOR THE STATE OF ILLINOIS

Form-surrender.doc