

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacy License of :
: **CLINIC PHARMACY** : **COMPLAINT**
: **License No. 607** : **AND**
: **HARVEY JOEL EERNISSE** : **STATEMENT OF CHARGES**
: **Pharmacist in Charge** :
: **Respondent** :

COMES NOW Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 31st day of May, 1989, and files this Complaint and Statement of Charges against the Clinic Pharmacy, a pharmacy licensed pursuant to Iowa Code chapter 155A, and alleges that:

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

2. Respondent is licensed to operate a pharmacy on South Kenyon Road in Fort Dodge, Iowa 50501, and holds license number 607.

3. General Pharmacy license number 607, issued in the name of Clinic Pharmacy, with Harvey J. Eernisse as pharmacist in charge, was renewed on February 3, 1989, and is current until December 31, 1989.

4. A routine general pharmacy inspection of the Clinic Pharmacy located on South Kenyon Road in Fort Dodge was conducted by Board Investigator Morrell A. Spencer on March 27, 1989. Investigator Spencer's report, which was filed with the Board on April 4, 1989, indicates the following:

a. Respondent has failed to obtain the latest edition and supplements to the United States Pharmacopeia/National Formulary (USP/NF). During a routine inspection conducted on August 26, 1986, by Board Investigator Charles H. Vandenburg, Respondent was found to possess only the 1980 edition of the USP/NF. Investigator Vandenburg instructed Respondent to acquire the 1985 edition of the USP/NF within 60 days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent still had not acquired the 1985 edition of the USP/NF.

b. Respondent has repeatedly failed to obtain the annual edition of the United States Pharmacopeia Dispensing Information (USP DI) Volume I -- Drug Information for the Health Care Provider and Volume II -- Advice for the Patient. During a routine inspection conducted on August 26, 1986, by Board Investigator Charles H. Vandenburg, Respondent was found to be lacking both Volume I and Volume II of the USP DI. Investigator Vandenburg instructed Respondent to acquire the 1986 edition of the USP DI, Volumes I and II, within 60 days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent still had not acquired any edition of the USP DI.

c. Respondent has repeatedly failed to take a timely biennial inventory of all controlled substances. During a routine inspection conducted by Board Investigator Charles H. Vandenburg on August 26, 1986, it was determined that the last biennial inventory taken by Respondent had been completed late on June 23, 1983. Investigator Vandenburg instructed Respondent to take another inventory within seven days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent had completed an untimely inventory on September 8, 1986. Investigator Spencer found that no further inventories had been completed.

d. Respondent has repeatedly failed to follow the procedure for filling federal order forms (DEA form 222) when acting as a supplier of controlled substances for distribution to other registrants. During a routine inspection conducted by Board Investigator Charles H. Vandenburg on August 26, 1986, it was observed that Respondent had failed to forward Copy 2 of all filled federal order forms to the regional office of the Drug Enforcement Administration. On August 26, 1986, Investigator Vandenburg informed Respondent of the procedure to follow when filling federal order forms. On March 27, 1989, Investigator Spencer found that Respondent had again failed to forward Copy 2 of filled federal order forms to the regional office of the Drug Enforcement Administration.

5. Respondent is guilty of violations of 1989 Iowa Code sections 155A.15(2)(c), 155A.15(2)(h), 155A.31, 203.9, 204.306, and 204.307 by virtue of the allegations in paragraph 4.

Iowa Code section 155A.15(2) provides, in part, the following:

2....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...licensee has done any of the following:...

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any

rule adopted under this chapter.

....

- h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

Iowa Code section 155A.31 provides the following:

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

Iowa Code section 203.9 provides the following:

There shall be kept in every place in which drugs or medicines are compounded, a copy of the latest revision of the United States Pharmacopeia and the National Formulary, which books shall be subject at all times to the inspection of the pharmacy examiners.

Iowa Code section 204.306 provides, in part, the following:

Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board.

Iowa Code section 204.307 provides, in part, the following:

...Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

6. Respondent is guilty of violations of 21 Code of Federal Regulations section 1305.09(d) by virtue of the allegations in paragraph 4.

21 Code of Federal Regulations section 1305.09(d) provides the following:

The supplier shall retain Copy 1 of the order form for his own files and forward Copy 2 to the Special Agent in Charge of the Drug Enforcement Administration in the area in which the supplier is located. Copy 2 shall be forwarded at the close of the month during which the order is filled; if an order is filled by partial shipments, Copy 2 shall be forwarded at the close of the month during which the final shipment is made or during which the 60-day validity period expires.

7. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.3(1), 6.3(2), 6.3(3), 6.8(10), 9.1(4)(b)(1), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations in paragraph 4.

657 Iowa Administrative Code section 6.3 provides, in part, the following:

Each pharmacy shall have, as a minimum, the following:

1. The latest edition and supplements to the USP/NF;
2. The latest edition and supplements to the USP DI, Advice for the Patient;
3. The latest edition and supplements to the USP DI, Drug Information for the Health Care Provider;....

657 Iowa Administrative Code section 6.8 provides, in part, the following:

Every inventory or other record required to be kept under 1989 Iowa Code chapter 155A, Iowa Code chapter 204, or 657 -- Chapter 6 shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:...

6.8(10) A biennial inventory of controlled substances shall be maintained;....

657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

b. Professional incompetency. Professional incompetency includes but is not limited to:

- (1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

....

- (4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

....

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

....

u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55 and 1989 Iowa Code sections 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 5, 6, and 7 constitute grounds for which Respondent's license to operate a pharmacy in Iowa can be suspended or revoked.

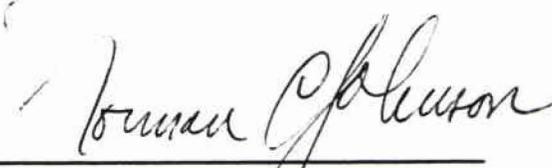
WHEREFORE, the undersigned charges that Respondent Clinic Pharmacy has violated 1989 Iowa Code sections 155A.15(2)(c), 155A.15(2)(h), 155A.31, 203.9, 204.306, and 204.307; 21 Code of Federal Regulations section 1305.09(d); and 657 Iowa Administrative Code sections 6.3(1), 6.3(2), 6.3(3), 6.8(10), 9.1(4)(b)(1), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u).

IT IS HEREBY ORDERED that Harvey Joel Fernisse appear on behalf of Clinic Pharmacy before the Iowa Board of Pharmacy Examiners on August 15, 1989, at 2:00 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, revoke, or not renew the license to operate a pharmacy issued to Clinic Pharmacy on February 3, 1989, and take whatever additional action that they deem necessary and appropriate.

Respondent may bring counsel to the hearing, may cross-examine any witnesses, and may call witnesses of its own. The failure of Respondent to appear could result in the permanent suspension or revocation of its 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 BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

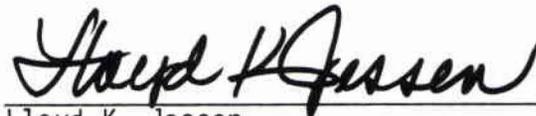
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|-------------------------|---|-------------------------|
| Re: Pharmacy License of | : | |
| CLINIC PHARMACY | : | DISMISSAL OF |
| License No. 607 | : | |
| Harvey J. Eernisse | : | COMPLAINT AND STATEMENT |
| Pharmacist-In-Charge | : | |
| Respondent | : | OF CHARGES |

COMES NOW, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 16th day of January 1990, and files this Dismissal of a Complaint and Statement of Charges filed against Respondent on May 31, 1989.

A Stipulation Agreement and Order and Consent to Order has been entered into between the Board and Harvey Joel Eernisse, pharmacist-in-charge of Clinic Pharmacy. This agreement addresses the issues raised in the Complaint and Statement of Charges.

IT IS HEREBY ORDERED that the Complaint and Statement of Charges filed against Respondent on May 31, 1989, are dismissed.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary

Date January 16, 1990

THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of :
: **COMPLAINT**
HARVEY JOEL EERNISSE : **AND**
License No. 13015 : **STATEMENT OF CHARGES**
Respondent :

COMES NOW Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 31st day of May, 1989, and files this Complaint and Statement of Charges against Harvey Joel Eernisse, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; 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 17, 1964, by examination.

3. Respondent is self-employed as a part owner and the pharmacist in charge of the Clinic Pharmacy located on South Kenyon Road in Fort Dodge, Iowa 50501.

4. Respondent currently resides at 2012 North 26th in Fort Dodge, Iowa 50501.

5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1990.

6. A routine general pharmacy inspection of the Clinic Pharmacy located on South Kenyon Road in Fort Dodge was conducted by Board Investigator Morrell A. Spencer on March 27, 1989. Investigator Spencer's report, which was filed with the Board on April 4, 1989, indicates the following:

a. Respondent has failed to obtain the latest edition and supplements to the United States Pharmacopeia/National Formulary (USP/NF). During a routine inspection conducted on August 26, 1986, by Board Investigator Charles H. Vandenburg, Respondent was found to possess only the 1980 edition of the USP/NF. Investigator Vandenburg instructed Respondent to acquire the 1985 edition of the USP/NF

within 60 days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent still had not acquired the 1985 edition of the USP/NF.

b. Respondent has repeatedly failed to obtain the annual edition of the United States Pharmacopeia Dispensing Information (USP DI) Volume I -- Drug Information for the Health Care Provider and Volume II -- Advice for the Patient. During a routine inspection conducted on August 26, 1986, by Board Investigator Charles H. Vandenburg, Respondent was found to be lacking both Volume I and Volume II of the USP DI. Investigator Vandenburg instructed Respondent to acquire the 1986 edition of the USP DI, Volumes I and II, within 60 days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent still had not acquired any edition of the USP DI.

c. Respondent has repeatedly failed to take a timely biennial inventory of all controlled substances. During a routine inspection conducted by Board Investigator Charles H. Vandenburg on August 26, 1986, it was determined that the last biennial inventory taken by Respondent had been completed late on June 23, 1983. Investigator Vandenburg instructed Respondent to take another inventory within seven days following the inspection on August 26, 1986. On March 27, 1989, Investigator Spencer found that Respondent had completed an untimely inventory on September 8, 1986. Investigator Spencer found that no further inventories had been completed.

d. Respondent has repeatedly failed to follow the procedure for filling federal order forms (DEA form 222) when acting as a supplier of controlled substances for distribution to other registrants. During a routine inspection conducted by Board Investigator Charles H. Vandenburg on August 26, 1986, it was observed that Respondent had failed to forward Copy 2 of all filled federal order forms to the regional office of the Drug Enforcement Administration. On August 26, 1986, Investigator Vandenburg informed Respondent of the procedure to follow when filling federal order forms. On March 27, 1989, Investigator Spencer found that Respondent had again failed to forward Copy 2 of filled federal order forms to the regional office of the Drug Enforcement Administration.

7. Respondent is guilty of violations of 1989 Iowa Code sections 155A.12(1), 155A.12(4), 155A.12(5), 155A.31, 203.9, 204.306, and 204.307 by virtue of the allegations in paragraph 6.

Iowa Code section 155A.12 provides, in part, the following:

The board...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...licensee has done any

of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

....

4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.

5. Violated any provision of the controlled substances Act or rules relating to that Act.

Iowa Code section 155A.31 provides the following:

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

Iowa Code section 203.9 provides the following:

There shall be kept in every place in which drugs or medicines are compounded, a copy of the latest revision of the United States Pharmacopeia and the National Formulary, which books shall be subject at all times to the inspection of the pharmacy examiners.

Iowa Code section 204.306 provides, in part, the following:

Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board.

Iowa Code section 204.307 provides, in part, the following:

...Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

8. Respondent is guilty of violations of 21 Code of Federal Regulations section 1305.09(d) by virtue of the allegations in paragraph 6.

21 Code of Federal Regulations section 1305.09(d) provides the following:

The supplier shall retain Copy 1 of the order form for his own files and forward Copy 2 to the Special Agent in Charge of the Drug Enforcement Administration in the area in which the supplier is located. Copy 2 shall be forwarded at the close of the month during which the order is filled; if an order is filled by partial shipments, Copy 2 shall be forwarded at the close of the month during which the final shipment is made or during which the 60-day

validity period expires.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.3(1), 6.3(2), 6.3(3), 6.8(10), 9.1(4)(b)(1), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u) by virtue of the allegations in paragraph 6.

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Every inventory or other record required to be kept under 1989 Iowa Code chapter 155A, Iowa Code chapter 204, or 657 -- Chapter 6 shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:...

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657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.
....

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.
....

j. Violating a statute or law of this state, another state, or

the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

....

u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55 and 1989 Iowa Code sections 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 7, 8, and 9 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent has violated 1989 Iowa Code sections 155A.12(1), 155A.12(4), 155A.12(5), 155A.31, 203.9, 204.306, and 204.307; 21 Code of Federal Regulations section 1305.09(d); and 657 Iowa Administrative Code sections 6.3(1), 6.3(2), 6.3(3), 6.8(10), 9.1(4)(b)(1), 9.1(4)(b)(4), 9.1(4)(j), and 9.1(4)(u).

IT IS HEREBY ORDERED that Harvey Joel Eernisse appear before the Iowa Board of Pharmacy Examiners on August 15, 1989, at 1:00 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 Harvey Joel Eernisse on June 17, 1964, and take whatever additional action that they deem necessary and appropriate.

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

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IOWA PHARMACY EXAMINERS

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

| | | |
|----------------------|---|-------------|
| In the Matter of | : | |
| HARVEY JOEL EERNISSE | : | STIPULATION |
| Pharmacist | : | |
| License No. 13015 | : | |

WHEREAS, Harvey Joel Eernisse, hereinafter referred to as the Licensee, has had certain allegations made against him by the Board of Pharmacy Examiners, hereinafter referred to as the Board, concerning his professional conduct as a pharmacist, and

WHEREAS, the Licensee admits to the allegations made against him, and

WHEREAS, both the Licensee and the Board desire to arrive at a mutually agreeable informal settlement of this matter,

IT IS MUTUALLY AGREED AND STIPULATED as follows between the Licensee and the Board:

1. That the Board and the Licensee have entered into settlement discussions and have agreed upon a disposition of this matter.

2. That the Licensee desires to avoid the uncertainty and the expense of a trial and desires to consent to the disciplinary action to be taken by the Board as specified in paragraph 4, infra.

3. It is the purpose and intent of the parties hereto to waive all the provisions of Chapter 17A of the 1989 Code of Iowa as they relate to notice and hearing on the matter of revocation or suspension of Licensee's license to be a pharmacist, and to acknowledge that each are fully aware of their rights and procedures afforded them through Chapter 17A of the 1989 Code of Iowa and the rules of the Board of Pharmacy Examiners promulgated in accordance and pursuant thereto, particularly Section 17A.12 as it relates to contested cases and provides notice of hearing and records, and Section 17A.18 as it relates to the requirements concerning notice of the suspension and revocation of licenses.

4. It is the understanding of both the Licensee and the Board that they will enter into an Order and Consent to Order which will provide for the following:

a. Certificate 13015 is placed on probation for a period of two years with the following terms and conditions:

(1) Licensee shall obey all federal and state laws substantially related to the practice of pharmacy.

(2) Licensee shall take a complete controlled substances inventory at Clinic Pharmacy as of the close of business December 31, 1989. Licensee shall provide notice to the Drug Enforcement Administration of this change in inventory date. A copy of that notice shall be sent to the Board office.

(3) Licensee shall take an annual inventory of all controlled substances on December 31, 1990, and December 31, 1991. Thereafter he shall be in strict compliance with the federal biennial inventory requirements. Licensee shall provide a copy of these annual inventories immediately upon their completion.

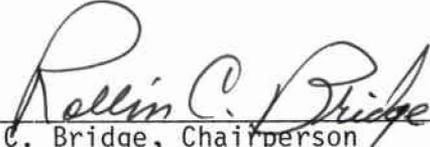
(4) Licensee cannot serve as a preceptor during the first year of the probationary period. Licensee may serve as a preceptor during the second year of probation provided that he has been in strict compliance with all state and federal laws.

b. Licensee shall comply with the continuing education requirements established by the Board.

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

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

THE ABOVE AND FOREGOING CONSTITUTE THE FULL AND COMPLETE STIPULATION AND AGREEMENT OF THE PARTIES HERETO.



Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners



Harvey Joel Ernise
Licensee

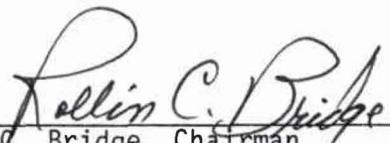
BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

In the Matter of Pharmacist :
: ORDER AND CONSENT TO ORDER
HARVEY JOEL EERNISSE :

The Iowa Board of Pharmacy Examiners, having been advised of the allegations that Harvey Joel Eernisse has conducted himself in a manner which could cause his license to practice pharmacy to be disciplined or revoked, and the Board of Pharmacy Examiners and said Harvey Joel Eernisse, having entered into a Stipulation representing their mutual informed consent as to the waiver of the provisions found in the Iowa Administrative Code appearing at Chapter 17A, particularly Section 17A.12 and Section 17A.18, Code of Iowa 1989, in regards to notice and hearing, the parties to this action agree to an informal settlement of this matter, namely that the license of Harvey Joel Eernisse to practice pharmacy in Iowa will be disciplined according to the conditions attached hereto.

ORDER

IT IS THEREFORE ORDERED, subject to Harvey Joel Eernisse's consent to be contained herein to this Order, that the license of Harvey Joel Eernisse to practice pharmacy in Iowa be suspended according to the conditions outlined in the Stipulation attached hereto and made part of this Order.



Rollin C. Bridge, Chairman
Iowa Board of Pharmacy Examiners

Date 12/19/89.

CONSENT TO ORDER

I, Harvey Joel Eernisse, hereby consent to the Order set forth above, waive my right to a hearing in this matter, and thereby specifically waive a right to confrontation, cross-examination of witnesses, production of evidence, making of a record and judicial review.



Harvey Joel Eernisse

Date 1/8/90

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

| | | |
|---------------------------|---|-----------------------------|
| Re: |) | Case No. 2006-14 |
| Pharmacist License of |) | |
| HARVEY J. EERNISSE |) | STATEMENT OF CHARGES |
| License No. 13015 |) | |
| 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 (2005).
3. On June 17, 1964, the Board issued Respondent, Harvey J. Eernisse, following examination, a license to engage in the practice of pharmacy as evidenced by license number 13105, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license expired on June 30, 2004.
5. Respondent's current address is 2012 N. 26th Street, Fort Dodge, Iowa 50501.
6. Respondent was, at all times material to this statement of charges, employed as the pharmacist-in-charge at Clinic Pharmacy, 804 Kenyon Road, Fort Dodge, Iowa 50501.
7. Respondent was the subject of disciplinary charges during 1989 which were resolved by a stipulated order dated January 8, 1990.

A. CHARGES

COUNT I – DISPENSING AND PRACTICING WITHOUT A LICENSE

Respondent is charged with dispensing drugs and practicing pharmacy without an active license, in violation of Iowa Code §§ 155A.4, 155A.7, 155A.12(1) (2005) and 657 Iowa Administrative Code § 36.1(4)(v).

COUNT II – DEPARTURE FROM PROFESSIONAL STANDARDS

Respondent is charged with a lack of professional competency, in violation of Iowa Code

§ 155A.12(1) (2005) and 657 Iowa Administrative Code § 36.1(4), 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 III – INADEQUATE RECORD KEEPING

Respondent is charged with inadequate record keeping, including inadequate record keeping relating to controlled substances, in violation of Iowa Code §§ 124.308(3), 155A.12(4), 155A.12(5), 155A.27 (2005) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4)(ac) and 21 CFR 1304.11 & 1306.22(b)(3).

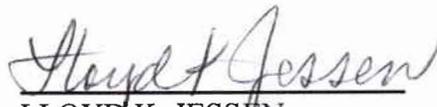
COUNT IV – VIOLATION OF CONTROLLED SUBSTANCES LAWS

Respondent is charged with a failure to comply with controlled substances laws, in violation of Iowa Code §§ 124.306, 124.308, 124.402 and 155A.12(5) (2005) and 657 Iowa Administrative Code § 36.1(4)(j).

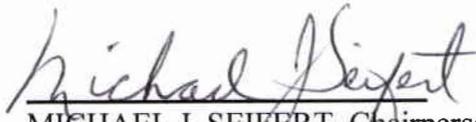
B. CIRCUMSTANCES

Circumstances supporting the above charges are set forth in Attachment A.

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 8th day of March 2006, 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 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

| | | |
|------------------------|---|---------------------|
| Re: |) | CASE NO: 2006-14 |
| Pharmacist License of: |) | DIA NO. 06PHB018 |
| HARVEY J. EERNISSE |) | |
| License No. 13015 |) | |
| Respondent |) | |
| |) | FINDINGS OF FACT, |
| and: |) | CONCLUSIONS OF LAW, |
| |) | DECISION AND ORDER |
| Pharmacy License of |) | |
| CLINIC PHARMACY |) | |
| License No. 607 |) | |
| Respondent |) | |

On March 8, 2006, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file Statements of Charges against Harvey J. Eernisse (Respondent), a registered pharmacist, and against Clinic Pharmacy (Respondent), a licensed pharmacy.

The Statements of Charges alleged that Respondent Eernisse:

COUNT I: DISPENSING AND PRACTICING WITHOUT A LICENSE
Violated Iowa Code sections 155A.4, .7, and .12(1)(2005) and 657 IAC 36.1(4)(v) by dispensing and practicing pharmacy without an active license.

COUNT II: DEPARTURE FROM PROFESSIONAL STANDARDS
Violated Iowa Code section 155A.12(1)(2005) and 657 IAC 36.1(4) 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 III: INADEQUATE RECORD KEEPING
Violated Iowa Code sections 124.308(3), 155A.12(4), 155A.12(5) and 155A.27 (2005) and 657 IAC 6.2, 6.8, 8.15 & 36.1(4)(a)(c) and 21 CFR 1304.11 & 1306.22(b)(3) by exhibiting inadequate record keeping relating to controlled substances.

COUNT IV: VIOLATION OF CONTROLLED SUBSTANCES
Violated Iowa Code sections 124.306, 124.308, 124.402 and 155A.12(5)(2005) and 657 IAC 36.1(4)(j) by failing to comply with controlled substances laws.

The Statement of Charges alleged Respondent Clinic Pharmacy:

COUNT I: OPERATING WITHOUT A LICENSE

Violated Iowa Code sections 155A.4, 155A.15(1)(2005) and 657 IAC 36.1(4)(v) by dispensing drugs and operating a pharmacy without an active license.

COUNT II: LACK OF PROFESSIONAL COMPETENCY

Violated Iowa Code section 155A.15(2)(c)(2005) and 657 IAC 36.1(4)(b) 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 III: FAILURE TO MAINTAIN ADEQUATE RECORDS

Violated Iowa Code sections 155A.15(2)(c) and 155A.15(2)(h)(2005) and 657 IAC 36.1(4)ac by failing to maintain adequate records of purchases, distribution and disposal of drugs listed in the controlled substances act.

COUNT IV: FAILURE TO MAINTAIN CONTROL OVER DRUGS

Violated Iowa Code sections 124.308(3), 124.402(1)(a), 155A.15(2)(c) and 155A.15(2)(i)(2005) and 657 IAC 6.2, 6.7 and 36.1(4)(u) by failing to maintain accurate control over and accountability for drugs, including controlled substances.

The hearing on the Statements of Charges was held on March 27, 2006 at 10:00 a.m. at the Board's offices in Des Moines, Iowa. The following members of the Board presided: Michael J. Seifert, Chairperson; Katherine A. Linder; Vernon H. Benjamin; Paul Abramowitz, and Kathleen Halloran. The Respondent appeared personally. Assistant Attorney General Scott Galenbeck represented the state. Administrative Law Judge John M. Priester assisted the Board in conducting the hearing and was instructed to prepare the Board's written Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Statements of Charges filed against Respondents Harvey J. Eernisse and Clinic Pharmacy on March 8, 2006; Notice of Hearing; the testimony of the witnesses, and the following exhibits:

- Exhibit 1: Statement of Charges, Harvey J. Eernisse, Pharmacist License No. 13015;
- Exhibit 2: Statement of Charges, Clinic Pharmacy, Pharmacy License No. 607;
- Exhibit 3: Emergency Order, Clinic Pharmacy, Pharmacy License No. 607;
- Exhibit 4: Return of Service-Clinic Pharmacy; Harvey J. Eernisse;
- Exhibit 5: Investigative Report, dated February 26, 2006;
- Exhibit 6: Addendum to Investigative Report, dated March 3, 2006;
- Exhibit 7: Letter from Michael W. Stitt, M.D., dated March 16, 2006;
- Exhibit 8: Letter from S.O. Lee, M.D., dated March 21, 2006.

FINDINGS OF FACT

1. On June 17, 1964, Respondent Harvey J. Eernisse was issued license number 13105 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. The Respondent owns and operates Clinic Pharmacy, which has been issued License No. 607 to operate a pharmacy in Fort Dodge, Iowa. Respondent Eernisse's license expired on June 30, 2004. Respondent Clinic Pharmacy's general pharmacy license expired on December 31, 2005. (Exhibits 1, 2; Testimony of Respondent)
2. Jean Rhodes, an investigator with the Iowa Board of Pharmacy Examiners, conducted a routine inspection of the Respondent's pharmacy on February 26, 2006. At that time Respondent Eernisse was practicing as a pharmacist with an expired license and the Clinic Pharmacy's license had expired on December 31, 2005 and had not been renewed. (Testimony of Jean Rhodes; Exhibit 1, 2, 5)
3. Investigator Rhodes conducted an inspection and a Schedule II audit of the Clinic Pharmacy. The inspector found 21 areas of non-compliance, including the following:
 - There were no policies and procedures for any operation of the pharmacy;
 - The Iowa law manual was outdated;
 - Schedule II substance, fentanyl injection, had receipts, no disbursements, and was not found during the inventory taken for the audit, resulting in a shortage of 240;
 - Schedule II audit revealed many shortages, including oxycodone ER 20mg;
 - 21 of 24 DEA 222 forms had not been filled in by the purchaser;
 - Gastrotroview, a prescription medication, was being dispensed without a prescription;
 - During the inspection, two boxes of outdated medications were pulled from the dispensing shelves, including controlled substances, legend medications, and refrigerated medications;
 - Medication refrigerator had frozen over and was filthy. Dispensing shelves were dusty.

(Testimony of Jean Rhodes, Exhibit 5)

4. The Respondent testified and did not challenge any of the Inspector's testimony. The Respondent explained that this all goes back ten years ago. He was in a partnership with another who embezzled from the business. It was eventually determined that the Respondent was responsible for a bill between \$200,000 and \$300,000. The Respondent has been personally liable for this debt and he has been trying very hard to pay off the debt. The Respondent is contemplating filing bankruptcy to discharge the debt.

The Respondent hopes to continue practicing as a pharmacist. He hopes to act as a relief pharmacist and he will not longer operate his own pharmacy. The Respondent needs to continue working to make a living.

The Respondent provided two letters from physicians. One indicated that the Respondent "suffers from adjustment disorder with depression and anxiety. It is not a psychiatric disorder or

impairment, rather it is an emotional status deemed to be appropriate under the process he is going through. The intense feelings of depression, anxiety, shame, guilt, etc., are through symptom formation. The recommendation is that he engage in talk therapy and use medications to help attenuate such emotions.”

(Testimony of Respondent Eernisse, Exhibit 8)

CONCLUSIONS OF LAW

The Iowa Board of Pharmacy Examiners was created pursuant to Iowa Code section 147.13 and has been empowered by statute with general authority to adopt all necessary and proper rules to implement and interpret Iowa Code chapters 147 and 155A. Iowa Code § 147.76. In addition, the legislature has vested the Board with authority to promulgate rules interpreting, implementing and enforcing the Iowa Drug, Device, and Cosmetic Act. Iowa Code §§ 126.2(3); 126.10(8); 126.11(2); 126.17.

The declared purpose of Iowa Code chapter 155A is to promote, preserve, and protect the public health, safety and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized. Iowa Code § 155A.2.

Iowa law provides that a “person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.” Iowa Code § 155A.4. Additionally, the law states that a “person shall not engage in the practice of pharmacy in this state without a license.” Iowa Code § 155A.7.

Iowa Code section 155A.12(1)(2005) authorizes the board to impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, or place a license on probation, if the board finds that the licensee has violated any provision of Iowa Code chapter 155A or any rules of the Board adopted under Iowa Code chapter 155A.

Another basis of punishment is a failure “to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.” Iowa Code § 155A.12(4). Also, if a licensee violates “any provisions of the controlled substances Act or rules relating to that Act” the licensee shall be disciplined. Iowa Code § 155A.12(5).

“A pharmacy subject to section 155A.13 shall not be operated until a license or renewal certificate has been issued to the pharmacy by the board.” Iowa Code § 155A.15(10). Iowa law also provides that, with respect to a pharmacy, 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 license on probation, if the board finds that the applicant or licensee has done any of the following:

...

- c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

...

- h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.
- i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

Iowa Code § 155A.15(2)

The Iowa Controlled Substances Act is found in Iowa Code chapter 124. This Act provides requirements for keeping records in section 124.306. "Prescriptions shall be retained in conformity with the requirements of section 124.306." Iowa Code § 124.308(3). The Act also makes it unlawful for any person "who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308." Iowa Code § 124.402(1)(a).

The Board has promulgated administrative rules to effectuate the Code's requirements. 657 IAC 36.1(4)(i) provides, in relevant part, that the board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee is guilty of willful or repeated violations of a lawful rule or regulation promulgated by the board of pharmacy examiners.

657 IAC section 6.2(1) provides in relevant part:

657-6.2(155A) Personnel

6.2(1) Pharmacist in charge. Each pharmacy shall have one pharmacist in charge who is responsible for, at a minimum, the following:

...

- k. Legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, or regulations governing the practice of pharmacy.

657 IAC chapter 6 provides, in relevant part:

657-6.7 Procurement and storage of drugs. The pharmacist in charge shall have the responsibility for procurement and storage of drugs.

...

6.7(3) Out-of-date drugs or devices.

...

- b. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are disposed of properly.

...

657-6.8(155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657-Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as otherwise required in this rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

...

6.8(6) Copy 3 of DEA Order Form 222 shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents.

...

6.8(8) Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual.

The administrative rules state that the "board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts:

...

- j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.
- ...
- k. Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15 or any of the rules of the board.
- l. Practicing pharmacy without an active license and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license . . .
- ...
- ac. Failing to create and maintain complete and accurate records as required by state or federal law, regulation, or rule of the board.

657 IAC 36.1(4)

The preponderance of the evidence established that Respondent Eernisse was dispensing and practicing pharmacy without a license. His actions showed a lack of professional competency and a departure from professional standards as demonstrated by willful and repeated departures from and a failure to conform to the minimum standards and acceptable prevailing practice of pharmacy in the state of Iowa. The Respondent also is found to have inadequate record keeping relating to controlled substances and violated controlled substances laws.

The preponderance of the evidence also established that Respondent Clinic Pharmacy was dispensing drugs and operating without an active license. The Respondent Clinic Pharmacy also is found to lack professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimum standard and acceptable and prevailing practice of pharmacy in the state of Iowa. The Clinic Pharmacy is found to have failed to maintain complete and adequate records of purchases, distribution and disposal of drugs listed in the controlled substances act. The Clinic Pharmacy also failed to maintain accurate control over and accountability for drugs, including controlled substances.

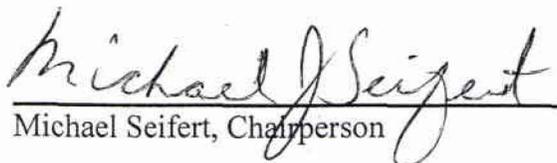
Order

IT IS THEREFORE ORDERED that pharmacist license no. 13015, issued to Harvey J. Eernisse, and pharmacy license no. 607, issued to Clinic Pharmacy, are hereby indefinitely suspended. This indefinite suspension shall remain in place until the Respondent satisfies the following terms and conditions:

- 1) The Respondent shall submit to a full psychiatric evaluation performed by a board-approved psychiatrist and any recommended treatment. The Respondent will not be eligible for licensure until his situational depression has been addressed and a psychiatrist affirms in writing to the Board that Respondent's condition will not affect his ability to practice pharmacy.
- 2) The Respondent shall complete 75 hours of continuing education. At least 50% of these hours shall be in drug therapy. Six hours of continuing education must address controlled substance record keeping and personnel policy and procedures for handling and disbursing controlled substances.
- 3) The Respondent shall apply for and register as a Pharmacy Intern. He shall complete an 80-hour minimum internship with a Board-approved pharmacist. The Respondent shall send written verification of this internship to the Board when completed.
- 4) When these terms and conditions are complete the Respondent shall petition the Board in person for reinstatement.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 20th day of April, 2006.


Michael Seifert, Chairperson

DIA No. 06PHB018

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Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General
Respondent

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.

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

| | | |
|---------------------------|---|----------------------|
| Re: |) | Case No. 2006-14 |
| Pharmacist License of |) | |
| HARVEY J. EERNISSE |) | PROVISIONAL |
| License No. 13015 |) | REINSTATEMENT |
| Respondent |) | ORDER |

COMES NOW, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 15th day of June, 2006, and declares that:

1. On March 8, 2006, the Iowa Board of Pharmacy Examiners issued a Statement of Charges and Notice of Hearing to Respondent. On March 8, 2006, the Board also issued a Statement of Charges and Emergency Order to Respondent's pharmacy, Clinic Pharmacy, of Fort Dodge, Iowa.

2. On March 27, 2006, the Board held an administrative hearing on the Statements of Charges and Emergency Order. The Respondent appeared at the hearing. On April 20, 2006, the Iowa Board of Pharmacy Examiners issued a Decision and Order which indefinitely suspended Respondent's pharmacist license.

3. On June 6, 2006, the Respondent appeared before the Board at an informal reinstatement conference. At the conclusion of the conference, the Board determined that the Respondent had complied with conditions #1 through #3 of the Board Order dated April 20, 2006. As a result, the Board agreed to temporarily reinstate Respondent's Iowa pharmacist license.

WHEREFORE, following deliberation by the Board, it is hereby ordered that pharmacist license number 13015 shall be provisionally reinstated until September 12, 2006, subject to the following terms and conditions:

(1) Pharmacist license number 13015 shall be temporarily restored to current, active status upon receipt of the Respondent's license renewal application and fee of \$720, payment of the \$75.00 hearing fee, and court reporter fees of \$45.

(2) Respondent's pharmacist license shall be placed on probation beginning on the date of restoration of his license. During the probationary period, Respondent shall comply with the following conditions:

(b) Respondent shall notify all present and prospective pharmacy employers of the Provisional Reinstatement Order in this case, and the terms, conditions, and restrictions imposed on Respondent by said Provisional Reinstatement Order. Within 5 days of Respondent undertaking new employment in any pharmacy, Respondent shall cause each pharmacy employer to report to the Board in writing acknowledging that the pharmacy employer has read and understands the Provisional Reinstatement Order in this case.

(c) Respondent shall also cause each pharmacy employer to submit a performance report to the Board in writing every two weeks. The performance report shall include the following:

- (i) An evaluation of competency in the area of managing drug therapy to optimize patient outcomes.
- (ii) An evaluation of competency in the area of ensuring safe and accurate preparation and dispensing of medications.
- (iii) An evaluation of competency in the area of drug information and promoting public health.
- (iv) An evaluation of competency in the area of adhering to professional and ethical standards.
- (v) Any medication dispensing error caused or contributed to by the Respondent, regardless of whether or not the error reaches the patient.
- (vi) A statement as to whether or not the Respondent satisfactorily performs appropriate patient counseling and drug use review.
- (vii) A statement as to whether or not the Respondent provides adequate supervision to pharmacy technicians working under his direction and control.
- (viii) A statement as to whether or not the Respondent maintains his presence in the prescription department during the duration of his scheduled work shift.

(d) Respondent shall report his place(s) of employment and home address to the Board every two weeks.

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

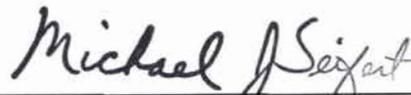
(f) Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.

(g) Respondent shall not supervise any registered pharmacist-intern nor perform any of the duties of a preceptor.

(3) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke this provisional reinstatement of Respondent's pharmacist license. If a petition to revoke this provisional reinstatement of Respondent's pharmacist license 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.

(4) On September 12, 2006, the provisional reinstatement of Respondent's pharmacist license shall end and Respondent shall appear in person before the Board at an informal conference to review his performance as a pharmacist. At the end of the conference, the Board shall determine the future status of the Respondent's pharmacist license and shall either deny continued licensure or shall issue another Reinstatement Order which incorporates whatever terms, conditions, and restrictions the Board deems appropriate at that time.

IOWA BOARD OF PHARMACY EXAMINERS



Michael J. Seifert, Chairperson

CHECKLIST FOR HARVEY EERNISSE EMPLOYMENT

- | A. Managing drug therapy to optimize patient outcomes: | Employer's evaluation
(Yes/No) |
|---|---|
| 1. Mr. Eernisse is able to develop a pharmaceutical care plan for safe and effective drug therapy. | _____ _____ |
| 2. Mr. Eernisse is able to obtain a pertinent drug history from the patient and apply the information appropriately to the pharmaceutical care plan. | _____ _____ |
| 3. Mr. Eernisse is able to use the pharmaceutical care plan developed for a patient to monitor that patient's drug therapy for appropriateness, efficacy, and adverse effects and be able to correct drug-related problems. | _____ _____ |
| 4. Mr. Eernisse is able to use the patient medication profile to monitor drug utilization, note drug interactions, allergies and sensitivities, and is able to take appropriate action to correct drug-related problems. | _____ _____ |
| B. Ensuring the safe and accurate preparation & dispensing of medications: | |
| 1. Mr. Eernisse is able to select the correct product from the pharmacy inventory and properly prepare and label the medication. | _____ _____ |
| 2. Mr. Eernisse is able to accurately dispense and maintain all necessary records for controlled substances in accordance with current state and federal laws and policy. | _____ _____ |
| 3. Mr. Eernisse is able to perform and document the necessary calculations and to perform the required technical and compounding skills necessary to produce a pharmaceutically elegant product. | _____ _____ |
| 4. Mr. Eernisse is able to appropriately dispose of outdated, discontinued, or recalled drugs, controlled substances, needles and syringes, and cytotoxic agents. | _____ _____ |
| 5. Mr. Eernisse is able to detect errors and omissions in a prescription or medication order, and can take appropriate action to correct them. | _____ _____ |
| 6. Mr. Eernisse is able to perform a final check of the prescription/medication order with regard to correct drug, dose, dosage form, and accuracy and clarity of labeling. | _____ _____ |

C. Providing drug information and promoting public health: Employer's Evaluation (Yes/No)

1. Mr. Eernisse is able to effectively communicate all information necessary to encourage proper use and storage of the medication. This includes the importance of compliance with directions, precautions, and relevant warnings. Mr. Eernisse routinely verifies that the patient understands this information. _____

2. Mr. Eernisse is able to effectively select and use appropriate references and resources to accurately answer drug information requests. _____

3. Mr. Eernisse is able to effectively communicate drug information and provide drug-related presentations to pharmacists and other health care providers. _____

4. Mr. Eernisse is able to evaluate the urgency of a poisoning or overdose situation, supply general information on the initial treatment, and refer the problem to the nearest poison information center if necessary. _____

5. Mr. Eernisse is able to effectively communicate with other health professionals for such purposes as counseling, discussing the therapeutic plan, and providing education. _____

6. Mr. Eernisse is able to assess a patient's complaints and discuss the options for therapy. Where the use of a nonprescription medication is indicated, Mr. Eernisse is able to make recommendations and counsel the patient about the proper use of the product. _____

D. Adhering to professional and ethical standards:

1. Mr. Eernisse understands and accepts the pharmacists' responsibilities for patient care. _____

2. Mr. Eernisse shall maintain confidentiality of patient-specific information. Without express written consent from the patient or the order or direction of a court, confidential information may only be divulged or revealed to the patient or the patient's agent, the prescriber or other licensed practitioner caring for the patient, to another licensed pharmacist where the interests of the patient dictate such release, the Board or its representative, or such other person or governmental agencies as authorized by law. _____

E. Medication dispensing errors:

**Employer's Evaluation
(Yes/No)**

Mr. Eernisse has made or contributed to one or more medication dispensing errors. If yes, please attach complete details.

F. Patient counseling

Mr. Eernisse has performed appropriate patient counseling.

G. Drug use review

Mr. Eernisse has conducted drug use review when processing new and refill prescription orders.

H. Supervision of pharmacy technicians

Mr. Eernisse has adequately supervised pharmacy technicians working under his direction and control.

I. Presence in prescription department

Mr. Eernisse has maintained his presence in the prescription department during the duration of his scheduled work shifts.

Additional Comments:

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

| | | |
|---------------------------|---|----------------------|
| Re: |) | Case No. 2006-14 |
| Pharmacist License of |) | SECOND |
| HARVEY J. EERNISSE |) | PROVISIONAL |
| License No. 13015 |) | REINSTATEMENT |
| Respondent |) | ORDER |

COMES NOW, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the **12th day of September, 2006**, and declares that:

1. On March 8, 2006, the Iowa Board of Pharmacy Examiners issued a Statement of Charges and Notice of Hearing to Respondent. On March 8, 2006, the Board also issued a Statement of Charges and Emergency Order to Respondent's pharmacy, Clinic Pharmacy, of Fort Dodge, Iowa.

2. On March 27, 2006, the Board held an administrative hearing on the Statements of Charges and Emergency Order. The Respondent appeared at the hearing. On April 20, 2006, the Iowa Board of Pharmacy Examiners issued a Decision and Order which indefinitely suspended Respondent's pharmacist license.

3. On June 6, 2006, the Respondent appeared before the Board at an informal reinstatement conference. At the conclusion of the conference, the Board determined that the Respondent had complied with conditions #1 through #3 of the Board Order dated April 20, 2006. As a result, the Board agreed to temporarily reinstate Respondent's Iowa pharmacist license until September 12, 2006.

4. On September 12, 2006, the Respondent again appeared before the Board at an informal conference. At the conclusion of the conference, the Board determined that although the Respondent had failed to comply with all of the conditions of the first Provisional Reinstatement Order, he should be given one more opportunity to demonstrate his competency as a pharmacist.

WHEREFORE, following deliberation by the Board, it is hereby ordered that the provisional reinstatement of Respondent's pharmacist license number 13015 shall be continued until January 16, 2007, subject to the following terms and conditions:

(1) Pharmacist license number 13015 shall continue in a current, active status until January 16, 2007.

(2) Respondent's pharmacist license shall remain on probation. During the probationary period, Respondent shall comply with the following conditions:

(a) Respondent shall not be an owner of a pharmacy nor serve as the pharmacist in charge of a pharmacy.

(b) Respondent shall notify *all* present and prospective pharmacy employers and the pharmacist in charge of the Second Provisional Reinstatement Order in this case, and the terms, conditions, and restrictions imposed on Respondent by said Provisional Reinstatement Order. Within 5 days of Respondent undertaking new employment in any pharmacy, Respondent shall ensure that each pharmacy employer reports to the Board *in writing* acknowledging that the pharmacy employer has read and understands the Provisional Reinstatement Order in this case. This requirement shall apply regardless of the number of hours that Respondent is employed by any pharmacy.

(c) Respondent shall ensure that the *pharmacist in charge* of each pharmacy in which the Respondent is employed submits a performance report to the Board *in writing* every two weeks. The report shall be completed on a form provided by the Board, and the *pharmacist in charge* shall include the following in the performance report:

- (i) An evaluation of competency in the area of managing drug therapy to optimize patient outcomes.
- (ii) An evaluation of competency in the area of ensuring safe and accurate preparation and dispensing of medications.
- (iii) An evaluation of competency in the area of drug information and promoting public health.
- (iv) An evaluation of competency in the area of adhering to professional and ethical standards.
- (v) Any medication dispensing error caused or contributed to by the Respondent, regardless of whether or not the error reaches the patient.
- (vi) A statement as to whether or not the Respondent satisfactorily performs appropriate patient counseling and drug use review.
- (vii) A statement as to whether or not the Respondent provides adequate supervision to pharmacy technicians working under his direction and control.
- (viii) A statement as to whether or not the Respondent maintains his presence in the prescription department during the duration of his scheduled work shift.
- (ix) The approximate number of new prescriptions and the approximate number of refill prescriptions that the Respondent fills during each scheduled work shift.
- (x) Written comments regarding any other aspect of

Respondent's performance as a pharmacist or his behavior while performing the duties of a pharmacist.

(d) Respondent shall report his place(s) of employment, his days and hours of employment as a pharmacist, and his home address and phone number to the Board *in writing* every two weeks. Reports shall be submitted whether or not the Respondent was employed as a pharmacist during the two-week period.

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

(f) Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.

(g) Respondent shall not supervise any registered pharmacist-intern nor perform any of the duties of a preceptor.

(3) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke this second provisional reinstatement of Respondent's pharmacist license. If a petition to revoke this second provisional reinstatement of Respondent's pharmacist license 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.

(4) On January 16, 2007, the provisional reinstatement of Respondent's pharmacist license shall end and Respondent shall again appear in person before the Board at an informal conference to review his performance as a pharmacist. At the end of the conference, the Board shall determine the future status of the Respondent's pharmacist license and shall either deny continued licensure or shall issue another Reinstatement Order which incorporates whatever terms, conditions, and restrictions the Board deems appropriate at that time. Failure of Respondent to comply with *all of the terms of this Second Provisional Reinstatement Order* may result in the permanent revocation of his pharmacist license number 13015.

IOWA BOARD OF PHARMACY EXAMINERS



Michael J. Seifert, Chairperson

**PHARMACIST IN CHARGE
TWO-WEEK CHECKLIST
FOR EMPLOYMENT OF
HARVEY EERNISSE**

- | A. Managing drug therapy to optimize patient outcomes: | PIC's Evaluation
(Yes/No) |
|---|--------------------------------------|
| 1. Mr. Eernisse is able to develop a pharmaceutical care plan for safe and effective drug therapy. | _____ _____ |
| 2. Mr. Eernisse is able to obtain a pertinent drug history from the patient and apply the information appropriately to the pharmaceutical care plan. | _____ _____ |
| 3. Mr. Eernisse is able to use the pharmaceutical care plan developed for a patient to monitor that patient's drug therapy for appropriateness, efficacy, and adverse effects and be able to correct drug-related problems. | _____ _____ |
| 4. Mr. Eernisse is able to use the patient medication profile to monitor drug utilization, note drug interactions, allergies and sensitivities, and is able to take appropriate action to correct drug-related problems. | _____ _____ |
| B. Ensuring the safe and accurate preparation & dispensing of medications: | |
| 1. Mr. Eernisse is able to select the correct product from the pharmacy inventory and properly prepare and label the medication. | _____ _____ |
| 2. Mr. Eernisse is able to accurately dispense and maintain all necessary records for controlled substances in accordance with current state and federal laws and policy. | _____ _____ |
| 3. Mr. Eernisse is able to perform and document the necessary calculations and to perform the required technical and compounding skills necessary to produce a pharmaceutically elegant product. | _____ _____ |
| 4. Mr. Eernisse is able to appropriately dispose of outdated, discontinued, or recalled drugs, controlled substances, needles and syringes, and cytotoxic agents. | _____ _____ |
| 5. Mr. Eernisse is able to detect errors and omissions in a prescription or medication order, and can take appropriate action to correct them. | _____ _____ |
| 6. Mr. Eernisse is able to perform a final check of the prescription/medication order with regard to correct drug, dose, dosage form, and accuracy and clarity of labeling. | _____ _____ |

C. Providing drug information and promoting public health:

**PIC's Evaluation
(Yes/No)**

1. Mr. Eernisse is able to effectively communicate all information necessary to encourage proper use and storage of the medication. This includes the importance of compliance with directions, precautions, and relevant warnings. Mr. Eernisse routinely verifies that the patient understands this information.

2. Mr. Eernisse is able to effectively select and use appropriate references and resources to accurately answer drug information requests.

3. Mr. Eernisse is able to effectively communicate drug information and provide drug-related presentations to pharmacists and other health care providers.

4. Mr. Eernisse is able to evaluate the urgency of a poisoning or overdose situation, supply general information on the initial treatment, and refer the problem to the nearest poison information center if necessary.

5. Mr. Eernisse is able to effectively communicate with other health professionals for such purposes as counseling, discussing the therapeutic plan, and providing education.

6. Mr. Eernisse is able to assess a patient's complaints and discuss the options for therapy. Where the use of a nonprescription medication is indicated, Mr. Eernisse is able to make recommendations and counsel the patient about the proper use of the product.

D. Adhering to professional and ethical standards

1. Mr. Eernisse understands and accepts the pharmacists' responsibilities for patient care.

2. Mr. Eernisse shall maintain confidentiality of patient-specific information. Without express written consent from the patient or the order or direction of a court, confidential information may only be divulged or revealed to the patient or the patient's agent, the prescriber or other licensed practitioner caring for the patient, to another licensed pharmacist where the interests of the patient dictate such release, the Board or its representative, or such other person or governmental agencies as authorized by law.

E. Medication dispensing errors

**PIC's Evaluation
(Yes/No)**

Mr. Eernisse has made or contributed to one or more medication dispensing errors. If yes, please attach complete details.

F. Patient counseling

Mr. Eernisse has performed appropriate patient counseling. Comments (required): _____

G. Drug use review

Mr. Eernisse has conducted drug use review when processing new and refill prescription orders.

Comments (required): _____

H. Supervision of pharmacy technicians

Mr. Eernisse has adequately supervised pharmacy technicians working under his direction and control.

Comments (required): _____

I. Presence in prescription department

Mr. Eernisse has maintained his presence in the prescription department during the duration of his scheduled work shifts.

Comments (required): _____

J. Number of prescriptions filled

Approximate number of new prescriptions filled by Mr. Eernisse during each scheduled work shift.

| | | | |
|------------|-------------|------------|-------------|
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |
| Date _____ | # Rx _____; | Date _____ | # Rx _____; |

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

| | |
|-----------------------------|----------------------|
| Re:) | Case No. 2006-14 |
| Pharmacist License of) | |
| HARVEY J. EERNISSE) | REINSTATEMENT |
| License No. 13015) | Order |
| Respondent) | |

COMES NOW, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 16th day of January, 2007, and declares that:

1. On March 8, 2006, the Iowa Board of Pharmacy Examiners issued a Statement of Charges and Notice of Hearing to Respondent. On March 8, 2006, the Board also issued a Statement of Charges and Emergency Order to Respondent's pharmacy, Clinic Pharmacy, of Fort Dodge, Iowa.
2. On March 27, 2006, the Board held an administrative hearing on the Statements of Charges and Emergency Order. The Respondent appeared at the hearing. On April 20, 2006, the Iowa Board of Pharmacy Examiners issued a Decision and Order which indefinitely suspended Respondent's pharmacist license.
3. On June 6, 2006, the Respondent appeared before the Board at an informal reinstatement conference. At the conclusion of the conference, the Board determined that the Respondent had complied with conditions #1 through #3 of the Board Order dated April 20, 2006. As a result, the Board agreed to temporarily reinstate Respondent's Iowa pharmacist license until September 12, 2006.
4. On September 12, 2006, the Respondent again appeared before the Board at an informal conference. At the conclusion of the conference, the Board determined that although the Respondent had failed to comply with all of the conditions of the first Provisional Reinstatement Order, he should be given one more opportunity to demonstrate his competency as a pharmacist.
5. On January 16, 2007, the Respondent once again appeared before the Board at an informal conference. At the conclusion of the conference, the Board determined that the Provisional Reinstatement Order be terminated and Respondent's license to practice pharmacy shall be reinstated and placed on probation for a period of two years.

WHEREFORE, following deliberation by the Board, it is hereby ordered that the provisional reinstatement of Respondent's pharmacist license number 13015 shall be terminated and Respondent's pharmacist license number 13015 shall be reinstated and placed on probation for a period of two years, subject to the following terms and conditions:

- (1) Pharmacist license number 13015 shall continue in a current, active status.

(2) Respondent's pharmacist license shall be placed on two years of probation. During the probationary period, Respondent shall comply with the following conditions:

(a) Respondent shall not be an owner of a pharmacy nor serve as the pharmacist in charge of a pharmacy.

(b) Respondent shall notify *all* present and prospective pharmacy employers of the Reinstatement Order in this case, and the terms, conditions, and restrictions imposed on Respondent by said Reinstatement Order. Within 5 days of Respondent undertaking new employment in any pharmacy, Respondent shall ensure that each pharmacy employer reports to the Board *in writing* acknowledging that the pharmacy employer has read and understands the Reinstatement Order in this case. This requirement shall apply regardless of the number of hours that Respondent is employed by any pharmacy.

(d) Respondent shall file written, sworn monthly reports with the Board attesting to his compliance with all the terms and conditions of this Stipulation and Consent Order. The reports shall be filed not later than the 5th day of the month of each year of Respondent's probation. The monthly reports shall include Respondent's place of employment, current home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

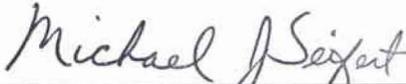
(e) Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

(f) Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy.

(g) Respondent shall not supervise any registered pharmacist-intern nor perform any of the duties of a preceptor.

(3) Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the reinstatement of Respondent's pharmacist license. If a petition to revoke the reinstatement of Respondent's pharmacist license 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.

IOWA BOARD OF PHARMACY EXAMINERS



Michael J. Seifert, Chairperson

BEFORE THE BOARD OF PHARMACY STATE OF IOWA

IN THE MATTER OF THE STIPULATION AND CONSENT ORDER AGAINST
HARVEY J. EERNISSE, R.Ph., RESPONDENT

2006-14

TERMINATION ORDER

DATE: January 19, 2009

1. On January 16, 2007, a Second Reinstatement Order was issued by the Iowa Board of Pharmacy placing the license to practice pharmacy, number 13015 issued to Harvey J. Eernisse on June 17, 1964, on probation for a period of two years under certain terms and conditions.

2. Respondent has successfully completed the probation as directed.

3. The Board directed that the probation placed upon the Respondent's license to practice pharmacy should be terminated.

IT IS HEREBY ORDERED:

That the probation placed upon the Respondent's license to practice pharmacy is terminated, and the license is returned to its full privileges free and clear of all restrictions.

IOWA BOARD OF PHARAMCY



Leman E. Olson, Board Chairperson
400 SW 8th Street, Suite E
Des Moines, Iowa 50309-4688

BEFORE THE IOWA BOARD OF PHARMACY

| | | |
|---------------------------|---|-----------------------------|
| Re: |) | Case No. 2010-74 |
| Pharmacist License of |) | |
| HARVEY J. EERNISSE |) | STATEMENT OF CHARGES |
| License No. 13015 |) | |
| Respondent |) | |

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

1. He is the Executive Secretary/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 June 17, 1964, the Board issued Harvey J. Eernisse (hereinafter, "Respondent"), following examination, a license to engage in the practice of pharmacy as evidenced by license number 13105, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license expired on June 30, 2010 and has not been renewed.
5. Respondent's address of record is 2012 N. 26th Street, Fort Dodge, Iowa 50501.
6. Respondent was most recently employed at Fedders Health Mart, 52 Main Avenue N. Britt, Iowa 50421.

A. CHARGES

COUNT I – PRACTICING WITHOUT A LICENSE

Respondent is charged under Iowa Code §§ 155A.4(1), 155A.7 and 155A.12(1) (2009), and 657 Iowa Administrative Code § 36.1(4)(v), with dispensing drugs and practicing pharmacy without an active license.

COUNT II – DEPARTURE FROM PROFESSIONAL STANDARDS

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

B. CIRCUMSTANCES

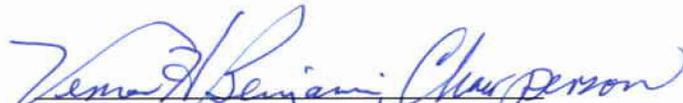
An investigation was commenced on June 28, 2010 which revealed the following:

1. On April 23, 2010 the Iowa Department of Revenue notified the Board that Respondent was potentially subject to license sanctions pursuant to Iowa Code chapter 272D ("Debts Owed to State or Local Government – Licensing Sanctions").
2. The Board served Respondent notice regarding the potential suspension of his pharmacist license on April 28, 2010. The notice provided that Respondent's license would be suspended 60 days following receipt of the notice, unless the Department of Revenue certificate of non-compliance was withdrawn.
3. The Department of Revenue did not withdraw its certificate of non-compliance. Hence, Respondent's license was suspended on June 27, 2010.
4. After verifying that the Department had not withdrawn its certificate of non-compliance, a Board compliance officer contacted Respondent on July 7, 2010 and reminded him that he was not authorized to practice pharmacy.
5. Respondent worked at Fedder's Health Mart Pharmacy on July 1, 2, 3 and 9, 2010 with a suspended license.

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 28 day of September 2010, 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 50319

BEFORE THE IOWA BOARD OF PHARMACY

| | | |
|------------------------------|---|---------------------|
| IN THE MATTER OF THE |) | CASE NO. 2010-74 |
| STATEMENT OF CHARGES AGAINST |) | DIA NO. 11PHB014 |
| |) | |
| HARVEY J. EERNISSE |) | FINDINGS OF FACT |
| License No. 13015 |) | CONCLUSIONS OF LAW, |
| |) | DECISION AND ORDER |
| RESPONDNET |) | |

On September 28, 2010, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Harvey J. Eernisse (Respondent). The Statement of Charges alleged that Respondent practiced pharmacy without an active and current license, in violation of Iowa Code sections 155A.4(1), 155A.7, 155A.12(1)(2009) and 657 IAC 36.1(4)(v) [Count I]. It further alleged that he departed from professional standards, in violation of Iowa Code section 155A.12(1)(2009) and 657 IAC 36.1(4)"b"(4). The hearing was held on June 29, 2011 at 1:00 p.m. The following members of the Board presided at the hearing: Susan Frey, Chairperson; Edward L. Maier; Mark Anliker, James Miller, and LaDonna Gracias. Respondent appeared and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of Jean Rhodes and Respondent and State Exhibits 1-4 (See Exhibit List for description).

FINDINGS OF FACT

1. On June 17, 1964, the Board issued Respondent pharmacist license number 13105 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. Respondent's pharmacist license is now current and active. (State Exhibits 1, 2; Respondent testimony).

2. On April 23, 2010, the Iowa Department of Revenue notified the Board that Respondent was potentially subject to license sanctions pursuant to Iowa Code chapter 272D (“Debts owed to State or Local Government-Licensing Sanctions”) On April 28, 2010, the Board served Respondent with a “Notice of Suspension of Pharmacist License” by certified mail, return receipt requested. The notice stated that Respondent’s pharmacist license would be suspended 60 days following service of the notice, which would have been June 27, 2010. On Monday, June 28, 2010, the Iowa Department of Revenue confirmed that Respondent was still noncompliant. Respondent’s pharmacist license was then suspended, effective June 28, 2010. (Respondent testimony; State Exhibit 1)

3. Respondent’s pharmacist license expired on June 30, 2010. On July 1, 2010, the Board received Respondent’s license renewal application and renewal fee. The renewal application stated that Respondent was working at Fedders Health Mart Pharmacy. The Board returned the renewal application and fee to Respondent with a letter explaining that his license was suspended.

On July 6, 2010, Board Compliance Officer Jean Rhodes visited Fedders Health Mart Pharmacy and spoke to the pharmacist in charge. Ms. Rhodes confirmed that Respondent had worked at the pharmacy on July 1, July 2, and July 3, and was scheduled to work again on July 9, 2010. Ms. Rhodes told the pharmacist in charge to be sure Respondent had a current license before he worked again because his license was not current at that time. Ms. Rhodes also called Respondent and told him that his license was currently suspended, and he could not renew his license until the tax situation was resolved. Respondent’s only comment to Ms. Rhodes was “Yeah yeah I know.” Ms. Rhodes later contacted Fedders Health Mart and discovered that Respondent worked at the pharmacy on July 9, 2010 even though his license was still suspended and expired. (Testimony of Jean Rhodes; State Exhibit 1)

4. This was not an isolated occurrence. Respondent was previously disciplined by the Board for working with an expired pharmacist license. (State Exhibit 1)

5. Respondent does not dispute that he worked as a pharmacist on July 1, July 2, July 3, and July 9, 2010. Respondent testified that a woman employed by the Department of Revenue had assured him that his license would not be suspended. Respondent was unable to provide the name of the woman that he spoke to at the Department of Revenue. Respondent never called the Board to verify the status of his license. As of the date of the Board’s hearing, Respondent had negotiated a repayment

agreement with the Department of Revenue, and his license suspension had been lifted. Respondent is currently working as a part-time pharmacist at Fedders Health Mart.

CONCLUSIONS OF LAW

Practicing Without A License

Iowa Code §155A.12(1) (2009) authorizes the Board to discipline a pharmacist's license for any violation of Iowa Code chapter 155A or of the Board's rules. Iowa Code §155A.4(1) (2009) provides that a person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs. Iowa Code §155A.7 (2009) provides that a person shall not engage in the practice of pharmacy in this state without a license.

657 IAC 36.1(4) provides, in relevant part:

36.1(4) Grounds for discipline. The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

v. Practicing pharmacy without an active and current Iowa pharmacy license,...

The preponderance of the evidence established that Respondent violated Iowa Code §§155A.12(1), 155A.4(1), 155A.7(2009) and 657 IAC 36.1(4)(v) when he practiced pharmacy for four days while his license was suspended and expired. On April 28, 2010, the Board notified Respondent that his license would be suspended in sixty days. In early July 2010, the Board returned Respondent's license renewal application to him and informed him that his license was suspended. Despite these notices, Respondent practiced pharmacy on a license that was both suspended and expired.

Departure From Professional Standards

657 IAC 36.1(4)"b" provides that the Board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when it determines that a licensee is guilty of professional incompetency. Professional incompetency includes but is not limited to a willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa. The preponderance

of the evidence established that Respondent departed from minimum professional standards, in violation of Iowa Code §155A.12(1) and 657 IAC 36.1(4)"b," when he continued to practice pharmacy after his license was both suspended and expired. It is Respondent's professional obligation to ensure that his license is current and in good standing. The Board provided ample notice to Respondent that his license had been suspended. Respondent should not have practiced pharmacy without verifying with the Board that his license was on active status.

DECISION AND ORDER

IT IS THEREFORE ORDERED that within thirty (30) days of issuance of this Decision and Order, Respondent Harvey J. Eernisse shall pay a civil penalty of \$250.00.

IT IS FURTHER ORDERED that license number 13015, issued to Respondent Harvey J. Eernisse, shall immediately be placed on probation for a period of two (2) years, 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 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, the current status of his license, 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 Decision and 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.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 13th day of July, 2011.


Susan Frey, Chairperson
Iowa Board of Pharmacy

cc: Scott Galenbeck, 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.

BEFORE THE BOARD OF PHARMACY STATE OF IOWA

**IN THE MATTER OF THE DECISION AND ORDER AGAINST
HARVEY J. EERNISSE, R.Ph., RESPONDENT
2010-74**

TERMINATION ORDER

DATE: July 14, 2013

1. On July 13, 2011, a Findings of Fact, Conclusions of Law, Decision and Order was issued by the Iowa Board of Pharmacy placing the license to practice pharmacy, number 13015 issued to Harvey J. Eernisse on June 17, 1964, on probation for a period of two years under certain terms and conditions.

2. Respondent has successfully completed the probation as directed.

3. The Board directed that the probation placed upon the Respondent's license to practice pharmacy should be terminated.

IT IS HEREBY ORDERED:

That the probation placed upon the Respondent's license to practice pharmacy is terminated, and the license is returned to its full privileges free and clear of all restrictions.

IOWA BOARD OF PHARAMCY

Edward L. Maier, Board Chairperson
400 SW 8th Street, Suite E
Des Moines, Iowa 50309-4688