

**BEFORE THE IOWA BOARD OF PHARMACY**

|                       |   |                             |
|-----------------------|---|-----------------------------|
| Re:                   | ) | Case No. 2007-107           |
| Pharmacist License of | ) |                             |
| <b>BRIAN FICHTER</b>  | ) | <b>STATEMENT OF CHARGES</b> |
| License No. 19238,    | ) |                             |
| Respondent.           | ) |                             |

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

1. He is the Executive Director for the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2007).
3. On July 27, 1999, the Board issued Brian Fichter (hereinafter, "Respondent"), after examination, a license to engage in the practice of pharmacy as evidenced by license number 19238, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's Iowa pharmacist license is current and active through June 30, 2009.
5. Respondent's address of record is 55208 Fox Road, Glenwood, Iowa 51534.
6. At all times material to this statement of charges, Respondent was operating a pharmacy known as Pet Medicine Chest, 16966 Mindy Street, Tea, South Dakota 57067.

**A. CHARGES**

**COUNT I – LACK OF PROFESSIONAL COMPETENCY**

Respondent is charged with a lack of professional competency, in violation of Iowa Code § 155A.12(1) (2007) and 657 Iowa Administrative Code § 36.1(4)(b), as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the State of Iowa.

COUNT II – FAILURE TO OBTAIN NONRESIDENT PHARMACY LICENSE

Respondent is charged pursuant to Iowa Code § 155A.12(1) (2007), and 657 Iowa Administrative Code §§ 19.2, 19.10 and 36.1(4)(u), with failing to insure that a pharmacy, in which he had an interest, obtained a nonresident pharmacy license.

COUNT III – FAILURE TO REPORT PHARMACY CLOSURE

Respondent is charged pursuant to Iowa Code § 155A.12(1) (2007), and 657 Iowa Administrative Code § 8.35(7) and 36.1(4)(u), with failing to report to the Board the closure of VitamaxRx Pharmacy, which held an Iowa nonresident pharmacy license.

COUNT IV – SUBVERTING A BOARD INVESTIGATION

Respondent is charged pursuant to Iowa Code §§ 155A.12(1) (2007), and 657 Iowa Administrative Code §§ 36.1(4)(z) and 36.1(4)(u), with engaging in conduct which attempted to subvert a Board investigation; specifically, opening, then closing pharmacies – and moving their contents – three times, in three states, in response to investigative activities by the Board.

**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 Director

On this <sup>10</sup>4 day of March 2008, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.

  
PAUL ABRAMOWITZ, 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

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## VOLUNTARY SURRENDER OF PHARMACIST LICENSE

I, Brian Fichter, a resident of <sup>Madison, SD</sup> ~~Glenwood, Iowa~~, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat on the part of anyone, do hereby voluntarily surrender my State of Iowa pharmacist license, number 19238, to the Iowa Board of Pharmacy, for an indefinite period of time. This surrender of license shall become effective upon my notarized signature being affixed to this voluntary surrender document.

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

- (1) My right to a formal hearing before the Iowa Board of Pharmacy on the matter of my continued licensure as a pharmacist pursuant to Iowa Code Chapter 155A (2007).
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy.
- (3) My right to submit evidence, to have witnesses called on my own behalf at formal hearing and my right to cross-examine any other witnesses at such formal hearing.

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

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

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

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

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

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

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

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



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

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|                         |   |                           |
|-------------------------|---|---------------------------|
| Re:                     | ) | <b>ORDER</b>              |
| Pharmacist License of   | ) | <b>ACCEPTING</b>          |
| <b>BRIAN J. FICHTER</b> | ) | <b>SURRENDER OF</b>       |
| License No. 19238       | ) | <b>PHARMACIST LICENSE</b> |

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**COMES NOW**, Lemman E. Olson, Chairperson of the Iowa Board of Pharmacy, on the 17<sup>th</sup> day of February, 2009, and declares that:

1. On February 6, 2009, Respondent executed a voluntary surrender of his pharmacist license number 19238.

3. On February 17, 2009, the Board reviewed Respondent's voluntary surrender of his pharmacist license and agreed to accept it.

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

**WHEREFORE**, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacist license number 19238 is hereby accepted.

IOWA BOARD OF PHARMACY



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LEMAN E. OLSON, Chairperson