BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of **ELIJAH HILL** License No. 15888 Respondent	} } } }	**EMERGENCY ORDER** AND COMPLAINT AND STATEMENT OF CHARGES

NOW on this 19th day of July 1989, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on May 12, 1981, by reciprocity.

2. Respondent was self-employed as the owner/pharmacist in charge of The Medicine Store (later known as the Medicap Pharmacy) located at 1901 Carpenter in Des Moines, Iowa, from May 21, 1981, to May 1, 1987. Respondent was then employed as a staff pharmacist at the Student Health Center Pharmacy located at Iowa State University in Ames, Iowa, from sometime after May 1, 1987, until his employment was terminated on July 14, 1989.

3. The Board has received a copy of an Indictment in the United States District Court for the Southern District of Iowa, titled United States of America v. Elijah Hill, Criminal Case No. 89-5, in which a federal grand jury has charged Respondent with the following:

> COUNT 1: That from on or about the 1st day of May 1985 up to and including the 3rd day of June 1986, the exact dates being to the Grand Jury unknown, in the State of Iowa, in the Southern District of Iowa and elsewhere, ELIJAH HILL, R.Ph., did willfully and knowingly combine, conspire, confederate and agree together and with divers persons unknown to the Grand Jury to commit an offense against the United States, namely to knowingly and intentionally distribute pentazocine (Talwin NX) tablets, a Schedule IV controlled substance, in violation of Title 21, United States Code, section 841(a)(1). This is a violation of Title 21, United States Code, Section 841(a)(1).
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> COUNT 2: That on or about the 23rd day of July 1984 in the Southern District of Iowa, ELIJAH HILL, R.Ph. knowingly and intentionally did use a communication facility, that is the public telephone, in facilitating the knowing and intentional distribution of

acetaminophen with codeine (Tylenol No. 3 and Tylenol No. 4), a Schedule III narcotic controlled substance, and methylphenidate (Ritalin), twenty milligram tablets, a Schedule II non-narcotic controlled substance, not pursuant to a lawful order or prescription of a physician or Drug Enforcement Administration registrant, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 3: That on or about the 8th day of October 1985 in the Southern District of Iowa, ELIJAH HILL, R.Ph., knowingly and intentionally did use a communication facility, that is the public telephone, in facilitating the knowing and intentional conspiracy of ELIJAH HILL and others unknown to the Grand Jury to distribute pentazocine (Talwin NX) tablets, a Schedule IV controlled substance, in violation of Title 21, United States Code, section 846 in that ELIJAH HILL used the telephone to negotiate the sale of Talwin NX tablets to an individual known to the Grand Jury. This is a violation of Title 21, United States Code, Sections 843(b) and 843(c).

COUNT 4: That on or about the 8th day of October 1985 in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally distribute approximately 1,000 dosage units of pentazocine (Talwin NX), fifty milligram tablets, a Schedule IV controlled substance, not pursuant to a lawful order or prescription of a physician or Drug Enforcement Administration registrant, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 5: That between the 1st day of May 1985 and the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 4,600 Dilaudid four milligram tablets, a Schedule II narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 6: That between the 1st day of May 1985 and the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 200 Dilaudid two milligram tablets, a Schedule II narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 7: That between the 1st day of May 1985 and the

3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 7,000 methylphenidate (Ritalin) twenty milligram tablets, a Schedule II non-narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 8: That between the 1st day of May 1985 and the 3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 1,000 meperidine (Demerol) one hundred milligram tablets, a Schedule II narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 9: That between the 1st day of May 1985 and the 3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 82,902 acetaminophen with codeine (Tylenol No. 4 and generic equivalents) sixty milligram tablets and capsules, a Schedule III narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 10: That between the 1st day of May 1985 and the 3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 124,944 acetaminophen with codeine (Tylenol No. 3 and generic equivalents) thirty milligram tablets and capsules, a Schedule III narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 11: That between the 1st day of May 1985 and the 3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 20,316 pentazocine hydrochloride (Talwin NX) fifty milligram tablets, a Schedule IV controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 12: That between the 1st day of May 1985 and the

3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 7,000 aspirin with codeine (Empirin No. 4) sixty milligram tablets, a Schedule III narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 13: That between the 1st day of May 1985 and the 3rd day of June 1986, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally obtain and possess with intent to distribute approximately 6,644 glutethimide (Doriden) 0.5 gram tablets, a Schedule III non-narcotic controlled substance, not pursuant to a lawful order or prescription, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 14: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 4,600 Dilaudid four milligram tablets, a schedule II narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 15: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 200

Dilaudid two milligram tablets, a Schedule II narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 16: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 7,000 methylphenidate (Ritalin) twenty milligram tablets, a Schedule II non-narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 17: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 1,000 meperidine (Demerol) one hundred milligram tablets, a Schedule II narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, section 843(a)(4)(A).

COUNT 18: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Sched-

ule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 82,902 acetaminophen with codeine (Tylenol No. 4 and generic equivalents) sixty milligram tablets and capsules, a Schedule III narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 19: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 124,944 acetaminophen with codeine (Tylenol No. 3 and generic equivalents) thirty milligram tablets and capsules, a Schedule III narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 20: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 20,316 pentazocine hydrochloride (Talwin NX) fifty milligram tablets, a Schedule IV controlled substance, during the period of May 1, 1985, through June 3, 1986, in viola-

tion of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 21: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 7,000 aspirin with codeine (Empirin No. 4) sixty milligram tablets, a Schedule III narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 22: That on or about the 3rd day of June 1986 in the Southern District of Iowa, ELIJAH HILL, R.Ph., owner of the business Medicap Pharmacy, which was registered with the Drug Enforcement Administration as a retail pharmacy to handle controlled substances in Schedule II narcotic, Schedule II non-narcotic, Schedule III narcotic, Schedule III non-narcotic, and Schedule IV and Schedule V as authorized by Title 21, United States Code, Sections 801-829, did knowingly omit material information from records required to be maintained and made available for inspection under Title 21, United States Code, Sections 827(a)(3) and (b), to wit: records of information reflecting the sale, dispensing, delivery and other disposition of approximately 6,644 glutethimide (Doriden) 0.5 gram tablets, a Schedule III non-narcotic controlled substance, during the period of May 1, 1985, through June 3, 1986, in violation of Title 21, United States Code, Section 843(a)(4)(A).

COUNT 23: That on or about the 28th day of September 1987, in the Southern District of Iowa, ELIJAH HILL, R.Ph., did knowingly and intentionally possess with intent to distribute approximately 903 dosage units of acetaminophen with codeine (Tylenol No. 3) thirty milligram tablets, a Schedule III narcotic controlled substance, not pursuant to a lawful order or prescription of a physician or Drug Enforcement Administration registrant, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 24: That on or about the 15th day of April 1985, in the Southern District of Iowa, ELIJAH HILL, a resident of Adel, Iowa, who during the calendar year 1984 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1984, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was a loss of $1,806.00, and that the amount of tax due and owing thereon was the sum of $387.00, whereas, he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $36,839.46, upon which said joint taxable income there was owing to the United States of America an income tax of $8,435.59. In violation of Title 26, United States Code, section 7201.

COUNT 25: That on or about the 15th day of April 1986, in the Southern District of Iowa, ELIJAH HILL, a resident of Adel, Iowa, who during the calendar year 1985 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1985, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $5,742.00, and that the amount of tax due and owing thereon was the sum of $1,129.00, whereas, he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $47,076.32, upon which said joint taxable income there was owing to the United States of America an income tax of $13,029.99. In violation of Title 26, United States Code, section 7201.

COUNT 26: That on or about the 15th day of April 1987, in the Southern District of Iowa, ELIJAH HILL, a resident of Adel, Iowa, who during the calendar year 1986 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1986, by preparing and causing to be

prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $9,417.00, and that the amount of tax due and owing thereon was the sum of $873.00, whereas, he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $27,840.22, upon which said joint taxable income there was owing to the United States of America an income tax of $6,953.25. In violation of Title 26, United States Code, section 7201.

4. The Board has also received a certified copy of a guilty plea agreement entered into between the United States and Elijah Hill on June 20, 1989, in United States District Court for the Southern District of Iowa, in which Respondent has agreed to plead guilty to the following:

COUNT 1: Conspiracy to distribute Talwin NX, a Schedule IV controlled substance, punishable by 3 years imprisonment, a $25,000 fine or both such fine and imprisonment;

COUNT 4: Distribution of approximately 1,000 units of Talwin NX, a Schedule IV controlled substance, punishable by 3 years imprisonment, a $25,000 fine or both such fine and imprisonment;

COUNT 5: Possession with intent to distribute approximately 4,600 units of Dilaudid, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

COUNT 6: Possession with intent to distribute approximately 200 units of Dilaudid, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

COUNT 7: Possession with intent to distribute approximately 7,000 units of Ritalin, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

COUNT 8: Possession with intent to distribute approximately 1,000 units of Demerol, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

COUNT 14: Omission of material information from records

required to be maintained (sale of Dilaudid 4 milligrams), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

COUNT 15: Omission of material information from records required to be maintained (sale of Dilaudid 2 milligrams), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

COUNT 16: Omission of material information from records required to be maintained (sale of Ritalin), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

COUNT 17: Omission of material information from records required to be maintained (sale of Demerol), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

COUNT 23: Possession with intent to distribute approximately 903 units of Tylenol No. 3, a Schedule III controlled substance, punishable by 5 years imprisonment, a $250,000 fine or both such fine and imprisonment;

COUNT 25: Attempt to evade and defeat income tax due and owing (tax year 1985), punishable by 5 years imprisonment, a $10,000 fine or both such fine and imprisonment.

5. Respondent currently resides at Rural Route 2, Box 215A, Adel, Iowa 50003.

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

7. As evidenced by his guilty plea agreement referred to in paragraph 4, above, Respondent has admitted that he failed to provide accountability for Schedule II controlled substances and that he engaged in the illegal distribution or disposition of Schedule II, III, and IV controlled substances. This information along with the other information contained in paragraphs 3 and 4 and additional confidential information in the possession of the Board, indicates that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa and thereby have access to controlled substances.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Elijah Hill were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. There-

fore, the Board finds that the public health, safety, and welfare makes emergency summary license suspension imperative, and so directs the Executive Secretary to issue such order.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Elijah Hill to practice pharmacy in Iowa be temporarily suspended until such time as a hearing before the Board of Pharmacy Examiners can be conducted.

With this notice, the Board also directs the Executive Secretary of the Iowa Board of Pharmacy Examiners to file a Complaint and Statement of Charges against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges, the secretary alleges that:

8. 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.

9. Respondent is guilty of violations of 1989 Iowa Code sections 155A.12(1), 155A.12(3), 155A.12(4), 155A.12(5), 155A.23(1)(a), 155A.23(1)(c), 204.308(1), 204.308(3), 204.402(1)(a), and 204.403(1)(c) by virtue of the allegations in paragraphs 3 and 4.

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

> ...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:
>
> 1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
>
> ...
>
> 3. Violated any of the provisions for licensee discipline set forth in section 147.55.
>
> 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 147.55 provides, in part, the following:

> A license to practice a profession shall be revoked or suspended when the licensee is guilty of any

of the following acts or offenses:...

5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Iowa Code section 155A.23 provides, in part, the following:

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a drug by:

a. Fraud, deceit, misrepresentation, or subterfuge....

...

c. Concealment of a material fact.

Iowa Code section 204.308 provides, in part, the following:

1. ...[N]o controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

...

3. ...[A] controlled substance included in schedule III or IV, which is a prescription drug ... shall not be dispensed without a written or oral prescription of a practitioner.

Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;...

Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

10. Respondent is guilty of violations of 1989 Iowa Acts, House File 780, Section 11(1)(c)(6) and 11(1)(d) by virtue of the allegations in paragraphs 3 and 4.

1989 Iowa Acts, House File 780, Section 11 provides, in part, the following:

Section 204.401, subsections 1 and 2, [Iowa] Code 1989, are amended by striking the subsections and inserting in lieu thereof the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

...

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:...

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violations of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor...

11. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(e), and 9.1(4)(h) by virtue of the allegations in paragraphs 3 and 4.

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)...when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

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

...

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

...

h. Distribution of...drugs for other than

lawful purposes.

The Iowa Board of Pharmacy Examiners finds that paragraphs 9, 10, and 11 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(3), 155A.12(4), 155A.12(5), 155A.23(1)(a), 155A.23(1)(c), 204.308(1), 204.308(3), 204.402(1)(a), and 204.403(1)(c); 1989 Iowa Acts, House File 780, Section 11(1)(c)(6) and 11(1)(d); and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(e), and 9.1(4)(h).

IT IS HEREBY ORDERED that Elijah Hill appear before the Iowa Board of Pharmacy Examiners on September 5, 1989, at 10:00 o'clock a.m. in the second floor conference room, 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 Elijah Hill on May 12, 1981, 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

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist License of

ELIJAH HILL
License No. 15888

Respondent

DIA NO. 89PHB-9

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

To: Elijah Hill:

An Emergency Order and Complaint and Statement of Charges was filed by the executive secretary of the Iowa Board of Pharmacy Examiners, Norman C. Johnson, on July 19, 1989. The Emergency Order temporarily suspended the Respondent's pharmacist license until hearing before the Board. The Order set the hearing for October 10, 1989, at 10:00 a.m. in the second floor conference room, 1209 E. Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa. The hearing on the above Emergency Order and Complaint and Statement of Charges was held on Tuesday, October 10, 1989, at 10:00 a.m. in the second floor conference room, 1209 E. Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa. Present were the following members of the Board: Rollin C. Bridge, Chairperson, Melba L. Scaglione, Vice-Chairperson, Donna L. Flower, Marian L. Roberts, John F. Rode, Alan M. Shepley, and Gale W. Stapp. Assistant Attorney General Thomas D. McGrane, appeared on behalf of the State. The Respondent, Elijah Hill, was not present and was not represented by counsel. The Respondent was lawfully served with the Emergency Order and Complaint, and therefore, pursuant to Iowa Code section 17A.12(3), the hearing proceeded in his absence. Present also were members of the staff of the Board and a Court reporter. The undersigned Administrative Law Judge presided. The hearing was open to the public. After hearing the testimony and examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code section 21.5(1)f (1989) to deliberate. The undersigned Administrative Law Judge was instructed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Emergency Order and Complaint and Statement of Charges, a second page 14 to the Emergency Order and Complaint and Statement of Charges, the recorded testimony of the witness, and the following exhibits:

State's Exhibit 1	Proof of service
State's Exhibit 3	Letter dated June 16, 1989, from Ronald M.

State's Exhibit 4	Kayser, Assistant U.S. Attorney, to Paul Scott. Judgment in the case of United States of America versus Elijah Hill.

FINDINGS OF FACT

1. The Respondent, Elijah Hill, received legal notice of the Complaint and Statement of Charges. Specifically, the Respondent received the second corrected page of the Complaint and Statement of Charges which stated that the hearing would be held on October 10, 1989, at 10:00 a.m. (testimony of Norman Johnson; State's Ex 1).

2. The Respondent was issued Iowa pharmacist license number 15888 by reciprocity on May 12, 1981. (official file; testimony of Mr. Johnson).

3. On August 25, 1989, Judgment in Criminal Case Number CR.89-5, United States of America versus Elijah Hill, was filed in the United States District Court for the Southern District of Iowa. In that case, the Defendant, Elijah Hill, was the same person as the Respondent in this case before the Iowa Board of Pharmacy Examiners. In the criminal case, Elijah Hill pled guilty to a number of criminal offenses. Mr. Hill pled guilty to Counts 1, 4 through 8, 14 through 17, 23, and 25 of the indictment in that case. (testimony of Mr. Johnson; State's Exs 3 and 4).

4. The Respondent pled guilty to and was convicted of the following counts of the indictment:

   Count 1: Conspiracy to distribute Talwin NX, a Schedule IV controlled substance, punishable by 3 years imprisonment, a $25,000 fine or both such fine and imprisonment;

   Count 4: Distribution of approximately 1,000 units of Talwin NX, a Schedule IV controlled substance, punishable by 3 years imprisonment, a $25,000 fine or both such fine and imprisonment;

   Count 5: Possession with intent to distribute approximately 4,600 units of Dilaudid, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

   Count 6: Possession with intent to distribute approximately 200 units of Dilaudid, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

Count 7: Possession with intent to distribute approximately 7,000 units of Ritalin, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

Count 8: Possession with intent to distribute approximately 1,000 units of Demerol, a Schedule II controlled substance, punishable by 15 years imprisonment, a $125,000 fine or both such fine and imprisonment;

Count 14: Omission of material information from records required to be maintained (sale of Dilaudid 4 milligrams), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

Count 15: Omission of material information from records required to be maintained (sale of Dilaudid 2 milligram), punishable y 4 years imprisonment, a $30,000 fine or both such fine and imprisonment;

Count 16: Omission of material information from records required to be maintained (sale of Ritalin), punishable by 4 years imprisonment, a $30,000 fine or oth such fine and imprisonment;

Count 17: Omission of material information from records required to be maintained (sale of Demerol), punishable by 4 years imprisonment, a $30,000 fine or both such fine and imprisonment:

Count 23: Possession with intent to distribute approximately 903 units of Tylenol No. 3, a Schedule III controlled substance, punishable by 5 years imprisonment, a $250,000 fine or both such fine and imprisonment;

Count 25: Attempt to evade and defeat income tax due and owing (tax year 1985), punishable by 5 years imprisonment, a $10,000 fine or both such fine and imprisonment.

(testimony of Mr. Johnson; State's Exs 3 and 4).

5. The Respondent pled guilty and was convicted of violations of 21 United States Code section 846; 21 U.S.C. section 841(a)(1); 21 U.S.C. section 843(a)(4)(A); and 26 U.S.C. section 7201. The Respondent was sentenced to a term of imprisonment of (effectively) five years. He was further sentenced to a special parol term of (effectively) three years. (testimony of Mr. Johnson; State's Ex 4).

6. The violations of the Respondent were related to the practice of pharmacy. (testimony of Mr. Johnson; State's Exs. 3 and 4.)

7. The Respondent is currently in prison. (testimony of Mr. Johnson).

CONCLUSIONS OF LAW

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

> . . . The Board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The Board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the Board finds that the applicant or licensee has done any of the following:
>
> 1. Violated any provision of this chapter or any rules of the Board adopted under this chapter. . . .
>
> 3. Violated any of the provisions for licensee discipline set forth in section 147.55.
>
> 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.

2. Iowa Code section 147.55 provides in part, the following:

> A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses: . . .
>
> 5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

3. Iowa Code section 155A.23 provides, in part, the following:

> A person shall not:
> 1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a drug by:

a. Fraud, deceit, misrepresentation, or subterfuge. . . .
c. Concealment of a material fact.

4. Iowa Code section 204.308 provides, in part, the following:

1. . . . [N]o controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. . . .
3. . . . [A] controlled substance included in Schedule III or IV, which is a prescription drug . . . shall not be dispensed without a written or oral prescription of a practitioner.

5. Iowa Code section 204.402(1) provides, in part, the following:

It is unlawful for any person:
a. Who is subject to Division III to distribute or dispense a controlled substance in violation of section 204.308; . . ..

6. Iowa Code section 204.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally: . . .
c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, desciption or subterfuge; . . .

7. 1989 Iowa Acts, House File 780, section 11 provides, in part, the following:

Section 204.401, subsections 1 and 2, [Iowa] Code 1989, are amended by striking the subsections and inserting in lieu thereof the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance. . . .
c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a Class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than $1,000.00 nor more than

> $50,000.00; . . . (6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in Schedule I, II, or III.
> d. Violations of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in Schedule IV or V is an aggrivated misdemeanor . . ..

8. 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) . . . when the Board determines that the licensee or registrant is guilty of the following acts or offenses: . . .
>
> > c. Knowingly making misleading, desciptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established. . . .
> > e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence. . . .
> > h. Distribution of . . . drugs for other than lawful purposes.

9. The Respondent has violated 1989 Iowa Code sections 155A.12(1), 155A.12(3), 155A.12(4), 155A.12(5), 155A.23(1)(a), 155A.23(1)(c), 204.308(1), 204.308(3), 204.402(1)(a), and 204.403(1)(c); 1989 Iowa Acts, House File 780, section 11(1)(c)(6) and 11(1)(d); and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(e), and 9.1(4)(h).

DECISION AND ORDER

The Respondent pled guilty to 12 drug related charges and was sentenced to prison. His license was temporarily suspended pending hearing. The Respondent's actions were terribly wrong. For the protection of the public, the Respondent should not be allowed access to drugs in the practice of pharmacy for a period of 20 years. The Board is not fining the Respondent. However, the Board believes that it is appropriate for this Respondent to suffer monetarily because of his illegal actions which were related to his practice of pharmacy. Therefore, the Board deems it appropriate that his license be revoked and that he not be allowed to appear to request reinstatement for a period of at least 20 years. It is appropriate, given the nature of the finding of guilt in the criminal case, that the Respondent stay out of the practice of the profession of pharmacy for a long period of time. He was a professional diverting drugs. The Board will not tolerate such actions. The confidence of the

public in professional pharmacists was breeched by this Respondent's actions.

Therefore, it is hereby the ORDER of the Iowa Board of Pharmacy Examiners that the Respondent's Pharmacy License Number 15888 is hereby revoked. It is the further ORDER of the Iowa Board of Pharmacy Examiners that the Respondent may not appear before the Board to request reinstatement for a period of at least 20 years. This Respondent is licensed in Iowa by reciprocity. The staff of the Board is therefore directed to notify all other states in which this Respondent is licensed in addition to the Clearinghouse for notification.

Dated this 19th day of October, 1989.

Rollin C. Bridge

Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners

Amy Christensen Couch

Amy Christensen Couch, Administrative Law Judge
Iowa Department of Inspections and Appeals

ACC/fah

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

DES MOINES, IOWA

IN THE MATTER OF THE REQUEST FOR LICENSE RECONSIDERATION OF ELIJAH HILL LICENSE NO. 15888 RESPONDENT	)	ORDER DENYING RECONSIDERATION

To: Elijah Hill

COMES NOW, Lloyd K. Jessen, Executive Secretary-Director of the Iowa Board of Pharmacy Examiners, on the 22nd day of April, 1997, and declares that:

1. On July 19, 1989, the Respondent's Iowa pharmacist license was suspended by Emergency Order.

2. A hearing was held on October 10, 1989.

3. In a Decision and Order dated October 19, 1989, the Board revoked Respondent's license to practice pharmacy in Iowa.

4. On March 6, 1997, the Respondent appeared informally before the Board to request reconsideration of the October 19, 1989, Decision and Order.

5. Following the oral testimony of the Respondent, the Board determined that the Respondent failed to establish sufficient facts to enable the Board to determine that the basis for the revocation no longer existed and that it would be in the public interest to reinstate his license. As a result, the Board denied Respondent's request for reconsideration.

IT IS THEREFORE the Order of the Iowa Board of Pharmacy Examiners that the request of Elijah Hill for reconsideration of the October 19, 1989, Decision and Order is hereby denied.

IOWA BOARD OF PHARMACY EXAMINERS

Lloyd K. Jessen
Executive Secretary-Director

As provided in 657 Iowa Administrative Code (I.A.C.) section 9.24(3), the Board has issued this Order as a proposed order denying reconsideration. Pursuant to 657 I.A.C. section 9.24(4), the Respondent may appeal the proposed order and may request a formal hearing. Such appeal and request for a formal hearing must be submitted in writing to the Board by certified mail, return receipt requested, within thirty (30) days of receipt of this Order Denying Reconsideration.

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE REQUEST FOR REINSTATEMENT OF:	)	DIA NO: 97PHB-003
	)	FINDINGS OF FACT,
ELIJAH HILL License No. 15888 RESPONDENT	)	CONCLUSIONS OF LAW, DECISION AND ORDER

TO: ELIJAH HILL

On October 19, 1989, the Iowa Board of Pharmacy Examiners (Board) revoked the license to practice pharmacy in the state of Iowa, which had been issued to Elijah Hill (Respondent). Additionally, the Board ordered that the Respondent may not appear before the Board to request reinstatement for a period of at least twenty (20) years.

On April 24, 1995, the Respondent filed a request for informal hearing. On May 16, 1995, the Board denied the Respondent's request for modification of the previous Order and for an informal hearing. On June 28, 1996, the Respondent again asked the Board to reconsider its previous denial and grant him an informal hearing. On October 4, 1996, the Board again denied the Respondent's request to modify its previous Order. However, the Respondent was offered the opportunity to appear informally before the Board to appeal this decision.

On March 6, 1997, the Respondent appeared informally before the Board to request reconsideration of the October 19, 1989 Decision and Order. On April 22, 1997, the Board issued an Order Denying Reconsideration. The Respondent appealed from the Board's Order Denying Reconsideration and requested a formal hearing before the Board, which was granted.

On September 10, 1997, a hearing was held before the Board. The following Board members were present: Phyllis A. Olson, R.Ph., Chairperson; Katherine A. Linder, R.Ph.; Phyllis A. Miller, R.Ph.; Matthew C. Osterhaus, R.Ph.; and Arlan D. Van Norman, R.Ph. The Respondent appeared and was not represented by counsel. Linny Emrich, Assistant Attorney General, appeared for the state of Iowa. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code Section 272C.6(1)(1997).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact,

Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Judgment, U.S. District Court for the Southern District of Iowa, Case No. Cr. 89-5; Emergency Order, Complaint and Statement of Charges issued 7/19/89; the Findings of Fact, Conclusions of Law, Decision and Order of the Board issued 10/19/89; the correspondence and subsequent orders described above; the testimony of the witness; and the following exhibits:

Respondent Exhibit A:	Letter dated 4/24/95 (Respondent to Board)
Respondent Exhibit B:	Letter dated 3/26/96 (United States District Court, Southern District Probation Office to Respondent)
Respondent Exhibit C:	State of Montana v. Kurth, 62 LW 4430, issued 6/7/94 (Partial photocopy)
Respondent Exhibit D:	Dept. of Treasury, IRS Notices dated 11/14/94
Respondent Exhibit E:	Letter dated 8/7/97 (Iowa Department of Revenue and Finance to Respondent)
Respondent Exhibit F:	Written statement of Respondent in support of reinstatement request
Respondent Exhibit G:	Summary of Disciplinary Actions, 1980-1993 (Iowa Board of Pharmacy Examiners)

FINDINGS OF FACT

1. Respondent was issued a license to practice pharmacy in Iowa on May 12, 1981, by reciprocity. The Respondent was self-employed as the owner/pharmacist in charge of the Medicine Store (later known as the Medicap Pharmacy) located at 1901 Carpenter in Des Moines, Iowa, from May 21, 1981 until May 1, 1987. Respondent was then employed as a staff pharmacist at the Student Health Center Pharmacy located at Iowa State University in Ames, Iowa, from sometime after May 1, 1987 until his employment was terminated on July 14, 1989. (Testimony of Respondent; Emergency Order and Complaint and Statement of Charges)

2. On July 19, 1989, the Board issued an Emergency Order and Complaint and Statement of Charges, after receiving a copy of a federal indictment against the Respondent and a certified copy of his subsequent guilty plea to twelve (12) counts on June 20, 1989. The counts to which the Respondent pled guilty included Conspiracy to distribute Talwin NX, a Schedule IV controlled substance; Distribution of approximately 1,000 units of Talwin NX; Possession with intent to distribute 4,800 units of Dilaudid, a Schedule II controlled substance; Possession with intent to distribute 7,000 units of Ritalin, a Schedule II controlled substance; Omission of material information from records required to be maintained; Possession with intent to distribute 903 units of Tylenol No. 3, a Schedule III controlled substance; and Attempt to evade and defeat income tax. The Respondent was sentenced to a term of imprisonment of five years and a special parole term of three years. (Testimony of Respondent; Emergency Order and Complaint and Statement of Charges; Findings of Fact, Conclusions of Law, Decision and Order)

3. Following a hearing, the Board revoked the Respondent's pharmacy license and further ordered that he may not appear before the Board to request reinstatement for a period of twenty (20) years. In support of this conclusion, the Board made the following relevant comments:

> ...The Respondent's actions were terribly wrong. For the protection of the public, the Respondent should not be allowed access to drugs in the practice of pharmacy for a period of 20 years. The Board is not fining the Respondent. However, the Board believes that it is appropriate for this Respondent to suffer monetarily because of his illegal actions which were related to his practice of pharmacy. Therefore, the Board deems it appropriate that his license be revoked and that he not be allowed to appear to request reinstatement for a period of at least 20 years. It is appropriate, given the nature of the finding of guilt in the criminal case, that the Respondent stay out of the practice of the profession for a long period of time. He was a professional diverting drugs. The Board will not tolerate such actions. The confidence of the public in professional pharmacists was breached by this Respondent's actions.

(Findings of Fact, Conclusions of Law, Decision and Order)

4. The Respondent also had licenses to practice pharmacy in the states of Illinois and Mississippi. The Respondent had worked in retail pharmacy in Illinois for five and one half years before moving to Iowa in 1981. After the Iowa Board revoked the Respondent's pharmacy license, the Illinois and Mississippi Boards indefinitely suspended his pharmacy licenses in their states. The

indefinite suspensions were based solely on Iowa's revocation action. (Testimony of Respondent)

5. The Respondent was incarcerated for thirty-eight months. After his release from prison, the Respondent worked in various sales positions. He successfully served his special parole term and was released from parole, one year early, on March 11, 1996. He moved to Mississippi two and a half years ago and has remarried. (Testimony of Respondent)

6. The Respondent wants to begin the process of returning to the practice of pharmacy and has contacted the state of Mississippi about obtaining a pharmacy license. The Mississippi Board has advised him that they would not reinstate his license there unless Iowa grants reinstatement first, since Iowa took the initial disciplinary action. The Respondent prefers to remain in Mississippi and hopes to have his license reinstated in Mississippi if he is reinstated in Iowa. He realizes that the profession has changed, and he would need to do an internship, retesting, and continuing education in order to be reinstated. He would be willing to serve an internship in Iowa if the Board required it. The Respondent is not interested in being a pharmacist in charge and is not sure that he would be interested in retail pharmacy anymore. He is considering practicing pharmacy in a hospital setting. (Testimony of Respondent)

7. The Respondent testified that he has never used illegal substances himself and is not chemically dependent. The motivation for his illegal activities in the mid 1980's was money. The Respondent admitted that he was involved in the criminal diversion of drugs from his pharmacy, although not to the extent that he was originally charged. He testified that he feels badly about it and feels he can never compensate for what he did. However, he is now at a different stage in his life, and the factors which negatively influenced him are no longer present. He has discovered what is important to him and how to redirect his priorities. (Testimony of Respondent)

8. The Respondent asserts that he has been disciplined more severely than other pharmacists in similar circumstances. In support of this argument, the Respondent submitted the Board's Summary of Disciplinary Actions between 1980 and 1993. The Board has also reviewed those summaries. It is impossible to directly compare two cases based on the limited information contained in the summaries. Board decisions are based on the totality of factual circumstances presented by the individual case. (Testimony of Respondent; Respondent Exhibits A; G)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 9.23 provides, in relevant part:

657-9.23(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been revoked...must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur,...an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order...

2. A person whose license to practice pharmacy was revoked must successfully pass NAPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license... was revoked...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 settlement conference before the board...

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

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

The Respondent appears before the Board to request waiver of the twenty year waiting period for reinstatement established in the Board's Order dated October 19, 1989. In support of this request, the Respondent presents his own testimony about his current

circumstances, as well as several legal arguments. The legal arguments will be addressed first.

One of the arguments advanced by the Respondent is the constitutional argument that the revocation period imposed by the Board places him in double jeopardy. The Board points out that the Respondent waived all legal arguments with respect to the Board's Order when he did not file a timely appeal of that order. However, the Board also wishes to note its disagreement, in principle, with the Respondent's argument. The United States Supreme Court case which was submitted into the record by the Respondent is not relevant to the facts of his case before the Board. That case addressed the question of whether the imposition of a state tax for possession and storage of dangerous drugs violated the constitutional prohibition against successive punishments for the same offense when criminal sanctions had also been imposed for drug charges. See Respondent Exhibit C.

The Board is satisfied that its imposition of a license revocation, in addition to any criminal sanction imposed on a licensee, does not violate double jeopardy. The primary purpose of the Board's disciplinary action was the protection of the public, which is a remedial purpose. A civil sanction which serves principally a remedial purpose does not subject a defendant to the hazards otherwise safeguarded by the Fifth Amendment's protection against multiple punishments. State v. Funke, 531 N.W.2d 124, 126 (Iowa 1995) [citing to United States v. Halper, 490 U.S. 435, 448 (1989)]

The Respondent also suggests that he was disciplined more severely than other licensees who have appeared before the Board. The Board has already noted the difficulty of comparing the outcomes in two disciplinary cases. The merits of each case are considered based on the unique set of facts presented; no two cases are exactly alike. There is no question that the Respondent's disciplinary case presented an egregious set of facts to the Board. As noted by the Board at the reinstatement hearing, drug diversion motivated solely for profit may suggest a defect of character that is more difficult to rehabilitate than the licensee who diverts drugs for personal use due to an addiction. Although the revocation period set for the Respondent is longer than that set in other drug diversion cases, the Board does not conclude that it was unreasonable.

Nevertheless, based on the Respondent's testimony and presentation at the hearing, the Board concludes that the Respondent does appear ready to begin the process leading to the reinstatement of his license. He has successfully completed the criminal punishment imposed by the federal court. His pharmacy license has now been revoked for nearly eight years. The Respondent has been sufficiently punished for his conduct.

The more difficult issue is whether it is in the public interest for his license to be reinstated. The Board must be satisfied that if his license is reinstated, the Respondent will not violate the public trust or his professional responsibility. The Respondent has been law abiding since his release from prison in 1992, has been employed, and has established family, church and community ties. He appeared sincere when he told the Board that he has learned from his mistakes and that he has different priorities than he had when the crimes were committed. He is aware that his return to the practice will require a large investment of time and study and has expressed a willingness to work hard and cooperate with the Board in achieving this goal. The Board concludes that, with certain safeguards in place, it will be in the public interest to reinstate the Respondent's license to practice pharmacy.

DECISION AND ORDER

The Board is satisfied that the basis for the revocation has been sufficiently addressed by the Respondent, and it is in the public interest that his license be reinstated, provided that the Respondent successfully completes the requirements outlined in this order.

IT IS THEREFORE ORDERED:

1) That the Respondent will be allowed to register as a pharmacist-intern in the state of Iowa. The Respondent shall complete 1500 hours of internship in a program that is **pre-approved by the Board.** In order to obtain pre-approval, the Respondent's proposed preceptor must submit to the Board office a written description of the qualifications of the preceptor and a description of the pharmacy practice and the duties of the intern. The internship may be served outside the state of Iowa. However, the Respondent would then be required to also register as an intern in the state where he serves the internship.

2) Within two (2) years of completing his internship, the Respondent must successfully pass the NAPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE) with a score of 75, and the Iowa Drug Law Examination (IDLE) with a score of 75 percent. If there has been a change in the Board's rules before the Respondent is ready to take these examinations, he must successfully complete whatever exams are then currently required by the Board for reinstatement.

3) The Respondent must provide proof of completion of two hundred (200) hours of continuing pharmacy education. All hours of continuing pharmacy education must be approved by the American Council on Pharmaceutical Education (ACPE). At least

fifty percent or 100 hours must be taken in the area of drug therapy.

When the Respondent successfully completes a 1500 hour internship, any and all required licensing exams, and 200 hours of continuing pharmacy education, his license will be reinstated. The Respondent's license will immediately be placed on probation for a period of ten (10) years, subject to the following terms and conditions:

A) The Respondent shall not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereinafter licensed by the Board and shall not own any pharmacy.

B) The Respondent shall not manage, administer, or be the pharmacist-in-charge of any pharmacy.

C) The Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

D) The Respondent shall report to the Board or its designee quarterly. The report shall be in writing. The report shall include the Respondent's place of employment, current address, and any other information deemed necessary by the Board from time to time.

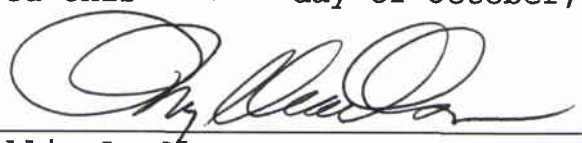
E) The Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy and the distribution of controlled substances. The Respondent shall obey all federal and state criminal laws.

F) The Respondent shall notify all present and prospective pharmacy employers of the decision in this case and the terms, conditions and restrictions imposed upon the Respondent by this decision. Within fifteen (15) days of Respondent undertaking new employment as a pharmacist, Respondent shall cause his pharmacy employer to report to the Board in writing acknowledging that the employer has read this Order of the Board and understands it.

G) Should Respondent violate probation in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may revoke probation and take additional disciplinary action. If a petition to revoke probation is filed against the 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.

H) Upon successful completion of probation, the Respondent's license will be fully restored.

Dated this 14th day of October, 1997.



Phyllis A. Olson
Chairperson
Iowa Board of Pharmacy Examiners

cc: Linny Emrich
Assistant Attorney General

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act (Iowa Code chapter 17A), from the date of the board's decision.