

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	Case No. 2011-113
Pharmacy License of	)	
<b>HUGHES HEALTH MART</b>	)	<b>STATEMENT OF CHARGES</b>
<b>PHARMACY</b>	)	<b>&amp; NOTICE OF HEARING</b>
License No. 649,	)	
Respondent.	)	

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**COMES NOW** the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3). Respondent was issued Iowa license 649. Respondent's license is currently active.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on January 15, 2013, before the Iowa Board of Pharmacy. The hearing shall be held during the morning session, beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8<sup>th</sup> Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address.

Meghan Gavin  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor Hoover State Office Building  
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at [Meghan.Gavin@iowa.gov](mailto:Meghan.Gavin@iowa.gov).

Communications. You may contact the Board office (515)281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. However, you may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Meghan Gavin at (515)281-6736.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2011).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148C, and 272C (2011) and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

## **C. CHARGES**

### **Count I—AIDING THE UNLAWFUL PRACTICE OF PHARMACY**

Respondent is charged with knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacist-intern, pharmacy technician, or a pharmacy support person in violation of Iowa Code sections 155A.4 and 155A.12(1) and 657 Iowa Administrative Code rules 5.18, 8.15, and 36.1(4)(u).

### **Count II—DISPENSING SCHEDULE II NARCOTICS**

Respondent is charged with dispensing a Schedule II controlled substance prior to receipt of the original written, signed prescription in violation of Iowa Code section 155A.12(1) and 657 Iowa Administrative Code rules 21.12 and 36.1(4)(u).

## **D. FACTUAL CIRCUMSTANCES**

1. At all times material to this statement of charges, Respondent was operating a general pharmacy at 2216 Main Street, Emmetsburg, Iowa pursuant to license number 649.
2. Gregory Hoyman is the Pharmacist in Charge of Hughes Health Mart Pharmacy.
3. On November 15, 2010 an inspection of Hughes Health Mart Pharmacy cited the pharmacy for delivering medications for customer pickup at the soda foundation, The Villager, in West Bend.

4. On January 1, 2011, the pharmacy requested a waiver of Board rules to permit the pharmacy to continue this practice.

5. The Board denied the waiver request on March 8, 2011.

6. Following denial of the waiver, Hughes Health Mart Pharmacy continued to deliver prescriptions for customer pickup at The Villager.

7. Following denial of the waiver, Hughes Health Mart Pharmacy continued to accept faxed prescriptions for schedule II narcotics from The Villager and, in many cases, dispensed the prescription prior to obtaining the written, signed prescription.

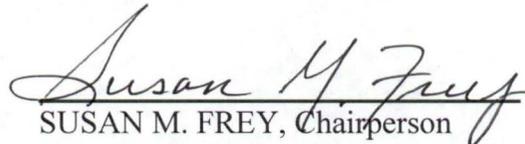
8. Prescriptions at The Villager are not kept in a secured location.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Meghan Gavin.

#### **F. PROBABLE CAUSE FINDING**

On this 9 day of Nov., 2012, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



SUSAN M. FREY, Chairperson  
Iowa Board of Pharmacy  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Meghan Gavin  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa

**BEFORE THE IOWA BOARD OF PHARMACY**

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<b>IN THE MATTER OF:</b>	)	<b>CASE NO: 2011-113</b>
	)	<b>DIA NOS. 12PHB056</b>
<b>Pharmacy License of</b>	)	
<b>HUGHES HEALTH MART</b>	)	
<b>PHARMACY</b>	)	
<b>License No. 649</b>	)	
	)	<b>FINDINGS OF FACT,</b>
<b>Pharmacist License of</b>	)	<b>CONCLUSIONS OF LAW,</b>
<b>GREGORY HOYMAN,</b>	)	<b>DECISION AND ORDER</b>
<b>License No. 13496</b>	)	
	)	
<b>RESPONDENTS</b>	)	

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On November 9, 2012, the Iowa Board of Pharmacy (Board) found probable cause to file Statements of Charges against Respondent Hughes Health Mart Pharmacy and Respondent Gregory Hoyman. Respondent Hughes Health Mart was charged with Aiding the Unlawful Practice of Pharmacy (Count I) and Dispensing Schedule II Narcotics prior to receipt of the original written, signed prescription (Count II). Respondent Gregory Hoyman was charged with Violating the Duties of the Pharmacist in Charge (Count I), Aiding the Unlawful Practice of Pharmacy (Count II), and Dispensing Schedule II Narcotics prior to receipt of the original written, signed prescription (Count III).

The consolidated hearing was held on January 15, 2013 in the Board Conference Room, 400 SW 8<sup>th</sup> Street, Des Moines, Iowa. The following members of the Board served as presiding officers for the hearing: Susan Frey, Chairperson; James Miller; Edward McKenna; DeeAnn Wedemeyer Oleson; and LaDonna Gratias. Assistant Attorney General Meghan Gavin represented the state. Respondent Gregory Hoyman and Hughes Health Mart Pharmacy were self-represented by Gregory Hoyman. The hearing was closed to the public at Respondents' request, in accordance with Iowa Code section 272C.6(1) and 657 IAC 35.19(10). Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was later instructed to prepare the Board's written Decision and Order for their review, in conformance with their deliberations.

## THE RECORD

The record includes the testimony of Gregory Hoyman, R.Ph.; State Exhibits 1-17 (See Exhibit Index for description) and Respondents' Exhibit A.

## FINDINGS OF FACT

1. At all times material to this Decision and Order, Respondent Hughes Health Mart Pharmacy ("Hughes Health Mart") was operating a general pharmacy at 2216 Main Street in Emmetsburg, Iowa, pursuant to Iowa pharmacy license number 649. Respondent Gregory Hoyman, R.Ph. is the owner and pharmacist in charge of Hughes Health Mart. (Gregory Hoyman testimony; State Exhibit 2)

2. In 2006, Hughes Health Mart purchased the inventory and the prescriptions records of the existing pharmacy on Main Street in Emmetsburg, Iowa. Hughes Health Mart also purchased a soda fountain and gift shop in West Bend, Iowa, which was known locally as the "Villager." West Bend, Iowa is approximately 20 miles from Emmetsburg and has not had a pharmacy since 1994. The prior owner of the Emmetsburg pharmacy had been delivering prescriptions to West Bend residents through the Villager for a number of years. Hughes Health Mart continued this practice after purchasing the Emmetsburg pharmacy and the Villager in 2006. (Gregory Hoyman testimony; Respondent Exhibit A; State Exhibit 4)

3. On November 15, 2010, Board Compliance Officer Jean Rhodes, R.Ph., conducted an inspection of Hughes Health Mart. Ms. Rhodes' December 10, 2010 inspection report cited Hughes Health Mart Pharmacy for violating the following Board rules:

- 657-8.15 Delivery of prescription drugs and devices;
- 657-3.22 Technical functions; and
- 657-3.23 Tasks a pharmacy technician shall not perform.

The inspection determined that patients were dropping off their prescriptions at the Villager soda-fountain. The Hughes Health Mart delivery driver picked up those prescriptions and took them to Hughes Health Mart in Emmetsburg to be filled. After the prescription was filled, patients could either pick them up at the

Hughes Health Mart in Emmetsburg or at the Villager in West Bend. The prescriptions could also be delivered to the patient's home.

During the inspection, Ms. Rhodes advised Respondent Gregory Hoyman how he could provide service to patients in West Bend. Ms. Rhodes explained that the local physician's office can fax or call the prescriptions in to Hughes Health Mart, and then the Hughes delivery driver could pick up the written prescriptions from the physician's office. Ms. Rhodes further explained that while the filled prescriptions may not be delivered to the Villager, they could be delivered to the physician's office or to the patient's home. (State Exhibit 4).

4. On January 11, 2011, Hughes Health Mart filed a Request for Waiver of 657 IAC 8.15, 3.22, and 3.23. Hughes Health Mart asked the Board to waive its rules and allow it to continue its practice of using the Villager as a site for West Bend patients to drop off and pick up their prescriptions. Hughes Health Mart maintained that the Villager employees were not performing any technical duties when they took refill requests or hard copy prescriptions from patients or when they delivered filled prescriptions to patients. (State Exhibit 5) On March 8, 2011, the Board voted to deny the waiver request filed by Hughes Health Mart. (State Exhibit 6). On August 29, 2011, the Board issued its written Order denying the Waiver Request. (State Exhibit 7)

5. After the Board denied the waiver request, Hughes Health Mart continued to use the Villager as a location for prescription drop offs and deliveries.

a) On September 23, 2011, Board Compliance Officers Jean Rhodes and Kathy Hall were present at the Villager in West Bend when the delivery vehicle arrived from Hughes Health Mart. The Villager's cashier was in the back room and told the compliance officers that she was organizing the prescription bags to take on her delivery route.

After the cashier completed the deliveries, the compliance officers returned to the Villager to speak to her. The cashier showed them the prescriptions waiting for pick up by customers. The prescriptions were on a desk in the back room. The back room has a door to the parking lot that was not locked during business hours. The back door was not visible from the Villager's front counter. The cashier maintained a daily tally sheet of how many prescriptions were picked up at the Villager, how many were delivered to a patient's home and signed for, and how many were delivered to a patient's home and not signed for. On that day,

there were nine prescriptions at the Villager waiting to be picked up. For the month of September, a total of 45 prescriptions had been picked up at the Villager. There were notes on the back room wall naming three customers who always picked up their prescriptions at the Villager. (State Exhibits 2, 10-12)

There were also hard copy prescriptions for Schedule II controlled substances on a clip board on the desk in the back room. The cashier explained that she picked up the hard copy prescriptions from the physician's clinic, faxed them to Hughes Health Mart, and then later sent the hard copies to Hughes Health Mart with the delivery driver. (State Exhibit 2)

A document entitled: "Hughes Pharmacy Services, West Bend prescription service, policy and procedures" was posted on the wall and included the following statement:

Orders that are not able to be delivered within 48 hours (2 days) will be returned to Hughes Pharmacy. The pick-up of prescription orders at The Villager is to be discouraged, however may occasionally occur.

(State Exhibit 2, p. 3; Exhibit 13)

b) The Compliance Officers also met with Gregory Hoyman on September 23, 2011. Mr. Hoyman acknowledged that the practice of using the Villager for the customer pickup of prescriptions had gone on for many years. Mr. Hoyman provided a document that showed how refill requests are faxed to Hughes Health Mart from the Villager. The document included the name and address of the customers and the name and strengths of the medications to be refilled. Mr. Hoyman further acknowledged that a Villager clerk picked up the hard copy of Schedule II prescriptions, faxed them to the pharmacy, and later sent them to the pharmacy with the delivery driver. On many occasions, the delivery driver delivered the Schedule II medication to the Villager prior to the pharmacy having the hard copy of the prescription in its possession. (State Exhibit 2; Exhibit 14)

6. On September 26, 2011, Respondent Gregory Hoyman requested a hearing before the Board on his Request for Waiver. (State Exhibit 8) <sup>1</sup>

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<sup>1</sup> The Board's rules governing waiver requests provide that "Prior to issuing an order granting or denying a waiver, ...the board may, on its own motion or at the petitioner's request, schedule a

7. At hearing, Gregory Hoyman described the prescription service that Hughes Health Mart provides through the Villager in West Bend, Iowa. Mr. Hoyman explained that Hughes Health Mart employs the four people who currently work at the Villager. None of these four employees is a registered pharmacy technician<sup>2</sup> or a registered pharmacy support person.<sup>3</sup> The four employees have been given training on fraud, abuse and HIPAA (Health Insurance Portability and Accountability Act). (Gregory Hoyman testimony)

According to Mr. Hoyman, most prescriptions are called into the Hughes Health Mart's electronic phone system, and patients only rarely drop off prescription hard copies at the Villager. Some patients do bring their empty bottles into the Villager to request refills. When a patient brings a prescription to the Villager to be filled or refilled, a Villager staff member writes down the prescription information and then sends it to Hughes Health Mart by facsimile. Hughes Health Mart fills the prescription order from the faxed copy. Hughes Health Mart does not necessarily have the written hard copy prescriptions at its Emmetsburg pharmacy before prescriptions (including prescriptions for Schedule II controlled substances) are filled and delivered to the Villager or the patient. Mr. Hoyman knows of no case where his pharmacy did not eventually receive a hard copy of the prescription.

Hughes Health Mart delivers filled prescription orders to the Villager on Monday-Friday at 3:30 p.m. The prescription orders are delivered in bags that are stapled shut. There is an attachment on the outside of the bag that has the Hughes Health Mart name and a toll free number to call for any questions or for consultation. The outside of the bag has only the patient's name and address, a cash register receipt, and a counseling note attached. No HIPAA information is visible on the outside of the bag. According to Mr. Hoyman, the prescription bags are now put in the Villager's locked file cabinet for safe keeping until they are picked up by the patient. The Villager's four employees all have access to the file cabinet key.

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telephonic or in-person meeting between the petitioner and the Board's executive secretary/director, a committee of the board, or a quorum of the Board." 657 IAC 34.7 (emphasis added). There is no provision in the rules for a hearing before the Board after the Board has issued an order denying the waiver request. The person who requested the waiver may seek judicial review of the board's denial of the request, in accordance with Iowa Code chapter 17A. 657 IAC 34.16.

<sup>2</sup> See 657 IAC Chapter 3 for rules governing registered pharmacy technicians.

<sup>3</sup> See 657 IAC Chapter 5 for rules governing registered pharmacy support persons.

When a patient comes in to pick up a prescription, a Villager employee checks the file cabinet for the prescription and then has the patient sign for it. Orders that are not able to be delivered within 48 hours are returned to Hughes Health Mart. (Gregory Hoyman testimony; State Exhibit 13)

In December 2012, Hughes Health Mart Pharmacy delivered a total of 201 prescriptions to West Bend, Iowa. Of these, 80 prescriptions or 26% were picked up by patients at the Villager. (Gregory Hoyman testimony; Respondent Exhibit A)

### CONCLUSIONS OF LAW

The Board is authorized to discipline both pharmacists and pharmacies for any violation of Iowa Code chapter 155A or any rule of the Board. See Iowa Code sections 155A.12(1); 155A.15(2)(c)(2011). 657 IAC 36.1(4)"u" provides that the Board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when it determines that a licensee, registrant, or permittee is guilty of violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code section 147.55, 155A.12, and 155A.15 or any of the rules of the board.

#### *Aiding the Unlawful Practice of Pharmacy*

Iowa Code section 155A.4 provides, in relevant part:

**155A.4 Prohibition against unlicensed persons dispensing or distributing prescription drugs-exceptions.**

1. 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 prescriptions drugs.

Iowa Code section 155A.4(2) sets forth some exceptions to this prohibition, none of which apply to the facts of this case.

Iowa Code section 147.107(2)(a) provides that a pharmacist who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only

when verification of the accuracy and completeness of the dispensing is determined by the pharmacist in the pharmacist's physical presence.

657 IAC chapter 5 is entitled "Pharmacy Support Persons." A "pharmacy support person" is a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by a supervising pharmacist under the pharmacist's responsibility and supervision. 657 IAC 5.1. Beginning on June 1, 2010, a pharmacy support person was required to be registered with the board, pursuant to the requirements of 657 IAC chapter 5. 657 IAC 5.4(1).

657 IAC 5.18 provides, in relevant part:

**657-5.18(155A) Nontechnical pharmacy support tasks.** An appropriately trained and registered pharmacy support person may perform any of the following nontechnical functions that have been delegated to the pharmacy support person by the supervising pharmacist:

1. Perform the duties of a pharmacy clerk. The duties of a pharmacy clerk may include placing a prescription container into a bag or sack for delivery to the patient as part of a sales transaction after the accuracy of the prescription has been verified by the pharmacist.

...

3. Perform routine clerical duties, such as filing processed, hard-copy prescriptions and other pharmacy records.

...

5. Receive from a patient the patient's request for a prescription refill, excluding the processing of the refill request.

...

7. Deliver drugs to patient care areas, long-term care facilities, patient residences, or patient employment locations, excluding the restocking of automated medication distribution system components.

The preponderance of the evidence established that Respondent Hughes Health Mart Pharmacy and its Pharmacist-in-Charge Gregory Hoyman violated Iowa Code section 155A.4(1) and 657 IAC 5.18 when they permitted employees, who were not registered pharmacy technicians or registered pharmacy support

persons, to perform nontechnical pharmacy support tasks that are only allowed to be performed by persons who are registered by the Board. This includes allowing employees working at the Villager in West Bend, Iowa to:

- receive prescriptions and refill requests from patients and then fax the prescription or refill request information to Hughes Health Mart in Emmetsburg;
- accept deliveries of prescription medications from Hughes Health Mart, hold the medications at the Villager for pick up by patients, and deliver the prescription medications to patients at the Villager.

657 IAC 8.15 provides, in relevant part:

**657-8.15(155A) Delivery of prescription drugs and devices.**

Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws rules and regulations relating to the practice of pharmacy, to patients **at any place of business licensed as a pharmacy.**

**8.15(1).** *Alternative methods.* A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

a. At the office or home of the prescriber.

b. At the residence of the patient or caregiver.

...

e. At the patient's or caregiver's place of employment only pursuant to the following requirements:

...

**8.15(2) Policies and procedures required.** Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined in subrule 8.7(4).

(emphasis added).

The preponderance of the evidence established that Respondents Hughes Health Mart Pharmacy and Pharmacist-in-Charge Gregory Hoyman violated 657 IAC 8.15 when they permitted prescription medications to be delivered to the Villager

in West Bend, Iowa for later pick up by patients. The Villager does not fit within any of the permissible locations identified in 657 IAC 8.15 for the delivery of prescription drugs to patients.

### *Dispensing Schedule II Narcotics*

657 IAC 21.12 provides, in relevant part:

**657-21.12(124, 155A) Prescription drug orders for Schedule II controlled substances.** A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of an electronically prepared prescription if both the prescriber's electronic prescription application and the pharmacy prescription application have been certified to comply with DEA requirements for electronic prescribing of controlled substances. Records of electronically prepared and transmitted prescriptions shall be maintained electronically. A pharmacist may dispense Schedule II controlled substances pursuant to facsimile transmission to the pharmacy of a written, signed prescription from the prescribing practitioner or the practitioner's agent **provided that the original written, signed prescription is received by the pharmacist prior to the actual dispensing of the controlled substance...**

(emphasis added).

The preponderance of the evidence established that Respondents Hughes Health Mart Pharmacy and Pharmacist-in-Charge Gregory Hoyman violated 657 IAC 21.12 by permitting Schedule II controlled substances to be dispensed and delivered to patients before the original, signed prescription was received by the pharmacist.

### *Violating Duties of a Pharmacist-in-Charge*

657 IAC 6.2 provides, in relevant part:

**657-6.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the following:

...

7. Delivering drugs to the patient or the patient's agent.

...

13. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs.

...

15. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

The preponderance of the evidence established that Pharmacist-in-Charge Gregory Hoyman violated 657 IAC 6.2(7),(13), and (15) when he:

- failed to ensure that drugs were properly delivered to the patient or the patient's agent, in compliance with the Board's rules;
- failed to establish and maintain effective controls against the theft or diversion of prescription drugs that were delivered to the Villager; and
- failed to ensure that Hughes Health Mart Pharmacy was operated in compliance with all state and federal laws, rules, and regulations governing the practice of pharmacy.

### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondent Hughes Health Mart Pharmacy and Respondent Gregory Hoyman shall immediately cease and desist the use of the Villager in West Bend, Iowa for the receipt and transmission of patient prescriptions and as a location for the delivery and pick up of patient medications. Within two (2) weeks of the issuance of this Decision and Order, Respondents shall submit to the Board new written Policies and Procedures for the receipt, filling, and delivery of prescriptions for its patients/customers in West Bend, Iowa.

IT IS FURTHER ORDERED that pharmacy license number 649, issued to Respondent Hughes Health Mart Pharmacy, and pharmacist license number 13496, issued to Pharmacist-in-Charge Gregory Hoyman, are hereby placed on probation for a period of one (1) year, subject to the following conditions:

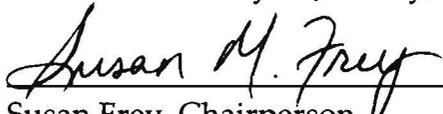
A. Respondent Hughes Health Mart Pharmacy and Respondent Gregory Hoyman shall each pay a civil penalty in the amount of \$1000, for a total civil penalty of \$2,000. The civil penalty payment shall be made by check, payable to the Treasurer of Iowa and mailed to the executive director of the Board within thirty (30) days of the issuance of this Decision and Order. All civil penalty payments shall be deposited into the State of Iowa general fund.

B. Respondents shall obey all federal and state laws, rules, and regulations substantially related to the operation of an Iowa pharmacy and the responsibilities of the pharmacist-in-charge. Respondent Hughes Health Mart Pharmacy will be subject to random inspections by the Board's Compliance Officers to verify compliance.

C. Respondents shall file sworn quarterly reports with the Board attesting to their compliance with the terms and conditions of this Decision and Order. The reports shall be filed not later than March 5, June, 5, September 5, and December 5, 2013. The reports shall include a description of Respondents' most recent efforts to comply with the requirements of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondents Gregory Hoyman and Hughes Health Mart Pharmacy 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 30<sup>th</sup> day of January, 2013

  
\_\_\_\_\_  
Susan Frey, Chairperson  
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

**BEFORE THE IOWA BOARD OF PHARMACY**

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<b>IN THE MATTER OF:</b>	)	<b>CASE NO: 2011-113</b>
	)	<b>DIA NOS. 12PHB056</b>
<b>Pharmacy License of</b>	)	
<b>HUGHES HEALTH MART</b>	)	
<b>PHARMACY</b>	)	
<b>License No. 649</b>	)	
	)	<b>BOARD RULING</b>
<b>Pharmacist License of</b>	)	<b>DENYING REHEARING</b>
<b>GREGORY HOYMAN,</b>	)	<b>REQUEST</b>
<b>License No. 13496</b>	)	
	)	
<b>RESPONDENTS</b>	)	

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On January 30, 2013, the Iowa Board of Pharmacy (Board) issued Findings of Fact, Conclusions of Law, Decision and Order to Hughes Health Mart Pharmacy and Gregory Hoyman (Respondents) following an evidentiary hearing. On February 5, 2013, Respondent Gregory Hoyman met with the Board's Executive Director to request a rehearing. The Board's Executive Director issued a Notice of Hearing and placed Respondents' rehearing request on the Board's agenda for March 12, 2013. The following members of the Board were present and considered Respondents' request for rehearing: Susan Frey, Chairperson; Edward McKenna; James Miller; DeeAnn Wedemeyer Oleson; Margaret Whitworth; and LaDonna Gratias. Respondent Gregory Hoyman appeared on behalf of Respondents and was assisted by Tony Felton, staff pharmacist with Hughes Health Mart. Assistant Attorney General Meghan Gavin represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing, which was closed to the public, pursuant to Iowa Code section 272C.6(1)(2013) and 657 IAC 36.13(3).

At the time of hearing, Respondents clarified that they were only asking for the Board to reconsider the one year probationary terms established in the Decision and Order. The state objected to any additional evidence being taken by the Board and urged the Board to deny the rehearing request. The Board decided to allow Respondents to present their additional evidence.

## THE RECORD

The record on rehearing includes the entire hearing record from January 15, 2013; the Board's January 30, 2013 Findings of Fact, Conclusions of Law, Decision and Order; the additional testimony of Gregory Hoyman; and Respondents' Exhibit B.

## FINDINGS OF FACT

1. On November 9, 2012, the Iowa Board of Pharmacy (Board) found probable cause to file Statements of Charges against Respondent Hughes Health Mart Pharmacy and Respondent Gregory Hoyman. Respondent Hughes Health Mart was charged with Aiding the Unlawful Practice of Pharmacy (Count I) and Dispensing Schedule II Narcotics prior to receipt of the original written, signed prescription (Count II). Respondent Gregory Hoyman was charged with Violating the Duties of the Pharmacist in Charge (Count I), Aiding the Unlawful Practice of Pharmacy (Count II), and Dispensing Schedule II Narcotics prior to receipt of the original written, signed prescription (Count III).

The consolidated evidentiary hearing was held on January 15, 2013. On January 30, 2013, the Board issued its Findings of Fact, Conclusions of Law, Decision and Order. The Decision and Order found violations on all of the counts contained in the Statements of Charges. The Decision and Order required Respondents to immediately cease and desist using the Villager in West Bend, Iowa for the receipt and transmission of patient prescriptions and for the delivery and pick up of patient medications. Respondents were also required to submit new written Policies and Procedures for the receipt, filling, and delivery of prescriptions for its patients/customers in West Bend, Iowa. In addition, both Respondents were placed on probation for one year, subject to the following terms and conditions:

A. Respondent Hughes Health Mart Pharmacy and Respondent Gregory Hoyman shall each pay a civil penalty in the amount of \$1000, for a total civil penalty of \$2,000. The civil penalty payment shall be made by check, payable to the Treasurer of Iowa and mailed to the executive director of the Board within thirty (30) days of the issuance of this Decision and Order. All civil penalty payments shall be deposited into the State of Iowa general fund.

B. Respondents shall obey all federal and state laws, rules, and regulations substantially related to the operation of an Iowa pharmacy and the responsibilities of the pharmacist-in-charge. Respondent Hughes Health Mart Pharmacy will be subject to random inspections by the Board's Compliance Officers to verify compliance.

C. Respondents shall file sworn quarterly reports with the Board attesting to their compliance with the terms and conditions of this Decision and Order. The reports shall be filed not later than March 5, June 5, September 5, and December 5, 2013. The reports shall include a description of Respondents' most recent efforts to comply with the requirements of this Decision and Order.

(Findings of Fact, Conclusions of Law, Decision and Order issued January 30, 2013).

2. After receiving the Board's Decision and Order, Respondent Gregory Hoyman immediately posted a sign at the Villager notifying the public that prescriptions could no longer be picked up at the Villager or delivered to the Villager. Mr. Hoyman also submitted new policies and procedures for the receipt, filling, and delivery of prescriptions to patients in West Bend, Iowa. (Hoyman testimony; Respondents Exhibit B)

3. Respondents do not object to the fines imposed in the Board's Decision and Order and do not object to filing quarterly reports. Respondents are asking the Board to reconsider placing their licenses on probation for a period of one year. (Hoyman testimony)

### CONCLUSIONS OF LAW

The Board is authorized to consider timely applications for rehearing.<sup>1</sup> In this case, the Board has considered Respondents' request to remove the one year probationary terms from the January 30, 2013 Decision and Order. The Board has also reviewed the additional evidence presented by Respondents. Respondents' arguments concerning the circumstances of its waiver request were fully considered by the Board when it made its decision. The Board carefully considered Respondents arguments prior to making its determination that both Respondents should be required to serve a one year probationary term.

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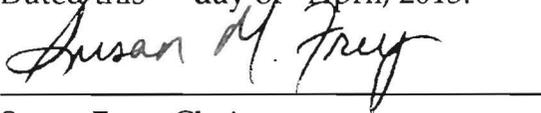
<sup>1</sup> Iowa Code section 17A.16(2013); 657 IAC 35.27.

Following rehearing, the Board was not persuaded to make any changes to the terms of its January 30, 2013 Decision and Order. After returning to open session, the Board unanimously approved a motion denying Respondents' rehearing request to remove the terms of probation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the rehearing request filed by Respondents Hughes Health Mart Pharmacy and Gregory Hoyman is hereby DENIED.

Dated this 3<sup>rd</sup> day of April, 2013.

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

Susan Frey, Chairperson  
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

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

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**IN THE FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER AGAINST  
HUGHES HEALTH MART PHARMACY, RESPONDENT  
2011-113**

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**TERMINATION ORDER**

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**DATE: January 29, 2014**

1. On January 30, 2013, a Findings of Fact, Conclusions of Law, Decision and Order was issued by the Iowa Board of Pharmacy placing the license to operate a pharmacy, number 649 on October 8, 1968, on probation for a period of one year 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 operate a pharmacy should be terminated.

**IT IS HEREBY ORDERED:**

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

**IOWA BOARD OF PHARMACY**



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Edward Maier, Board Chairperson  
400 SW 8<sup>th</sup> Street, Suite E  
Des Moines, Iowa 50309-4688