

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

Re:	)	Case No. 2005-60
Pharmacist License of)	
LORRIE JAGIELLO	)	STATEMENT OF CHARGES
License No. 18803)	
Respondent)	

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

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2005).
3. On July 15, 1997, the Board issued Respondent, Lorrie Jagiello, by examination, a license to engage in the practice of pharmacy as evidenced by license number 18803, subject to the laws of the State of Iowa and the rules of the Board.
4. Respondent's pharmacist license is current and active until June 30, 2007.
5. Respondent's current address is 1500 NW 75th Street, Clive, Iowa 50325
6. Respondent was, at all times material to this statement of charges, employed as the pharmacist-in-charge at Community Access Pharmacy, 600 East 14th Street, Des Moines, Iowa 50316.

A. CHARGES

COUNT I – DEPARTURE FROM PROFESSIONAL STANDARDS

Respondent is charged with a lack of professional competency, in violation of Iowa Code § 155A.12(1) (2005) and 657 Iowa Administrative Code § 36.1(4), as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

COUNT II– INADEQUATE RECORD KEEPING

Respondent is charged with inadequate record keeping, including inadequate record keeping relating to controlled substances, in violation of Iowa Code §§ 124.308(3), 155A.12(4),

155A.12(5), 155A.27 (2005) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4)(ac) and 21 CFR 1304.11 & 1306.22(b)(3).

COUNT III – INADEQUATE CONTROLS OVER CONTROLLED SUBSTANCES

The Respondent is charged with failing to maintain accurate control over and accountability for drugs, including controlled substances, in violation of Iowa Code §§ 124.308(3), 124.402(1)(a), 155A.12(1) and 155A.12(5) (2005) and 657 Iowa Administrative Code § 6.7.

COUNT IV – VIOLATION OF CONTROLLED SUBSTANCES LAWS

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

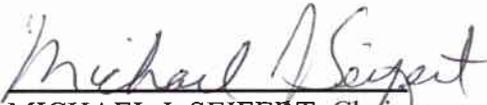
B. CIRCUMSTANCES

The circumstances supporting the above charges are set forth in Attachment A.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


LLOYD K. JESSEN
Executive Secretary/Director

On this 26 day of January 2006, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


MICHAEL J. SEIFERT, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RECEIVED
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IOWA PHARMACY EXAMINERS

Re:) Case No. 2005-60
Pharmacist License of)
LORRIE JAGIELLO) **STIPULATION**
License No. 18803) **AND**
Respondent) **CONSENT ORDER**
)

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2005), the Iowa Board of Pharmacy Examiners (hereinafter, "the Board") and Lorrie Jagiello (hereinafter, "Respondent"), enter into the following Stipulation and Consent Order settling a licensee disciplinary proceeding currently pending before the Iowa Board of Pharmacy Examiners.

Allegations specified in a Statement of Charges filed against Respondent shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. Following examination, Respondent was issued a license to practice pharmacy in Iowa on July 15, 1997, as evidenced by Pharmacist License Number 18803 which is recorded in the permanent records of the Board.
2. The Iowa Pharmacist License issued to and held by Respondent is active and current until June 30, 2007.
3. The Board has jurisdiction over the parties and jurisdiction over the subject matter of these proceedings.
4. A Statement of Charges was filed against Respondent on January 30, 2006.
5. Respondent was, at all times material to the Statement of Charges, employed as the pharmacist in charge at Community Access Pharmacy, 600 East 14th Street, Des Moines, Iowa 50316.
6. Respondent does not contest the allegations set forth in the Statement of Charges

and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.

7. On the date of the Board's approval of this Stipulation and Consent Order, Respondent's license shall be placed on probation. The period of probation shall be not less than three (3) years. Respondent's period of probation shall begin on the date of this order and continue for three years or until Respondent has been employed as a pharmacist in Iowa for three years subsequent to commencement of probation, provided, however, that Respondent may request an early release from probation any time after one year on probation and that request will be given fair consideration by the Board. Only those time periods during which Respondent is employed as a pharmacist in Iowa shall count toward satisfaction of the probation requirement.

8. Probation is granted under the following conditions, which Respondent agrees to follow:

a. Within six (6) months after the date of the Board's approval of this Stipulation and Consent Order, Respondent shall complete continuing pharmacy education ("CPE") or other formal, structured education in (1) controlled substances record-keeping, including completion of the required biennial controlled substances inventory, (2) maintenance of adequate controls over controlled substances, (3) general pharmacy record-keeping and (4) continuous quality improvement initiatives. The CPE shall be not less than six (6) hours in length and shall be pre-approved by the Board. Documentation of satisfactory completion of the education shall be promptly submitted to the Board. This CPE shall be in addition to – not in lieu of – the thirty (30) hours of continuing

pharmacy education required every two years for license renewal.

b. Within six (6) months after the date of the Board's approval of this Stipulation and Consent Order, Respondent shall take and pass the Multi-State Pharmacy Jurisprudence Exam (MPJE), Iowa edition.

c. Within sixty (60) days after the date of the Board's approval of this Stipulation and Consent Order, Respondent will submit to the Board *typewritten*¹ pharmacy policies and procedures for the following: (1) controlled substances record-keeping, including completion of the required biennial controlled substances inventory, (2) general pharmacy record-keeping, (3) maintaining adequate supervision and control of controlled substances and (4) continuous quality improvement initiatives. Following review and approval by the Board, Respondent agrees to adopt, implement, and adhere to these policies and procedures in her current employment setting – unless specific policies and procedures adopted by her employer make such compliance duplicative or otherwise impractical – and whenever engaging in the practice of pharmacy.

d. Respondent shall inform the Board, in writing, of any change of home address, place of employment, home telephone number, or work telephone number, within ten (10) days of such a change.

e. During probation, Respondent shall report to the Board or its designee quarterly, in writing. The report shall include Respondent's place of employment, current address, *Respondent's most recent efforts to implement the provisions of this Stipulation and Consent Order, by date*, and any further information deemed

necessary by the Board from time to time.

f. Respondent shall not serve as a preceptor.

g. Respondent shall notify all present employers and prospective employers (no later than at the time of an employment interview), including any pharmacist-in-charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this Stipulation and Consent Order.

h. Within thirty (30) days after approval of this Stipulation and Consent Order by the Board, and within fifteen (15) days of undertaking new employment as a pharmacist, Respondent shall cause her present pharmacy employer, and any pharmacist-in-charge she works under, to report to the Board in writing acknowledging that the employer and the pharmacist-in-charge have read this document and understand it.

i. Respondent shall appear informally before the Board, upon the request of the Board, for the purpose of reviewing her performance as a pharmacist during her probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances.

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

9. Upon the Board's approval of this Stipulation and Consent Order, Respondent shall be assessed a civil penalty in the amount of \$1000. This civil penalty payment shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board. All civil penalty payments shall be deposited into the State of Iowa general fund.

1 For the purposes of this order, "typewritten" policies may be generated on computer word-processing equipment.

10. Should the Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A (2005) and 657 IAC 36.

11. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Stipulation and Consent Order.

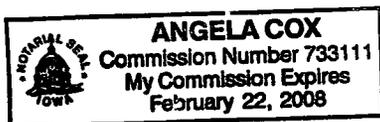
12. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

13. The Board's approval of this Stipulation and Consent Order shall constitute a FINAL ORDER of the Board in a disciplinary action.

This Stipulation and Consent Order is voluntarily executed by Respondent on the 3rd day of November, 2006 for submission to the Board for its consideration at its next regularly scheduled meeting.

Lorrie Jagiello R.Ph.
Lorrie Jagiello, R.Ph.
Respondent

Subscribed and sworn to before me by Lorrie Jagiello on this 3rd day of November 2006.



Angela Cox
NOTARY PUBLIC IN AND FOR
THE STATE OF IOWA

This Stipulation and Consent Order is approved and accepted by the Iowa Board of Pharmacy Examiners on the 15 day of Nov. 2006.



MICHAEL J. SEIFERT, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

David H. Goldman
Babich, Goldman, Cashatt & Renzo, P.C.
100 Court Avenue, Suite 403,
Des Moines, IA 50309-2200

Jagiello settlement.doc

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

Re:)	
Pharmacist License of)	
LORRIE JAGIELLO	)	REINSTATEMENT
License No. 18803,	)	ORDER
Respondent.)	
)	

COMES NOW, Paul Abramowitz, Chairperson of the Iowa Board of Pharmacy Examiners, on the 13th day of November, 2007, and declares that:

1. On August 3, 2007, Respondent's Iowa pharmacist license number 18803 was placed on indefinite suspension pursuant to the terms of an Emergency Order and Complaint and Statement of Charges approved by the Board on August 3, 2007.
2. On October 25, 2007, the Board received and reviewed the following information during a teleconference meeting:
 - a. On September 6, 2007, Respondent received a passing score on the Iowa edition of the Multistate Pharmacy Jurisprudence Examination (MPJE).
 - b. On September 22, 2007, the Board received Respondent's "Policies and Procedures for Controlled and Noncontrolled Drugs."
 - c. On September 24, 2007, the Board received a written medical evaluation of Respondent from Loren A. Olson, M.D. of Des Moines, Iowa, which indicates that Respondent is fit to return to the practice of pharmacy with some restrictions.
3. Based on the evidence presented to the Board on October 25, 2007, the Board concludes that the basis for the indefinite suspension of the Respondent's pharmacist license no longer exists and that it is in the public interest to allow her license to be reinstated.

WHEREFORE, following deliberation by the Board, it is hereby ordered that Respondent's pharmacist license number 18803 shall be reinstated, subject to the following terms and conditions:

- (1) Respondent's license to practice pharmacy is hereby reinstated and placed on probation for three (3) years. The Respondent's probation is subject to

the following terms and conditions:

- a. Respondent's period of probation shall begin on the date of this Order and continue for three years or until Respondent has been employed as a pharmacist in Iowa for three years subsequent to commencement of probation. Only those time periods during which Respondent is employed as a pharmacist in Iowa shall count towards satisfaction of the probation period.
- b. Respondent shall continue to comply with all recommendations of her physician. Respondent shall cause her physician to submit written quarterly medical reports to the Board which describe her current health status and which include a list of Respondent's current medications.
- c. Respondent shall not use any controlled substance or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for Respondent by a licensed, treating physician or other qualified health care provider.
- d. Respondent shall not possess any controlled substance, except medications prescribed in accordance with the preceding paragraph.
- e. Upon demand by an agent of the Board, Respondent shall provide specimens for laboratory analysis, including hair and witnessed blood or urine specimens. All costs relating to specimen analysis shall be paid by Respondent. Specimens shall be used for drug screening and to verify Respondent's compliance with the terms of probation and with any therapy ordered by Respondent's physician or treatment provider.
- f. For the purpose of facilitating paragraph (e), above, Respondent shall work with FirstLabs or another Board-approved testing service to provide random specimens for laboratory testing as directed by the Board.
- g. Respondent shall file written, sworn monthly reports with the Board attesting to her compliance with all the terms and conditions of her probation. The reports shall be filed not later than the 5th of each month. The monthly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.
- h. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearance.

- i. Respondent shall obey all federal and state laws, rules, and regulations related to the practice of pharmacy and the distribution of controlled substances.
- j. Respondent shall comply with her written "Policies and Procedures for Controlled and Noncontrolled Drugs" dated September 22, 2007.
- k. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing pharmacy education (CPE) as directed by the Board.
- l. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.
- m. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.
- n. Within fifteen (15) days after approval of this Reinstatement Order by the Board, Respondent shall notify all present employers, including any pharmacist in charge, of the resolution of this case and the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Respondent shall cause her current pharmacy employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.
- o. Respondent shall provide pre-employment notification to all prospective pharmacy or pharmacy-related employers of the terms, conditions, and restrictions imposed on Respondent by this document. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause any prospective employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

- (2) Should the Respondent violate or fail to comply with any of the terms, conditions, or restrictions of probation, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

Dated this 13th day of November, 2007.



PAUL ABRAMOWITZ, Chairperson
Iowa Board of Pharmacy Examiners
RiverPoint Business Park
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Iowa Assistant Attorney General

Jaki K. Samuelson
Whitfield & Eddy P.L.C.
317 Sixth Avenue
Suite 1200
Des Moines, IA 50309-4195

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

IN THE MATTER OF:	)	CASE NO. 2005-60
)	
LORRIE JAGIELLO	)	ORDER WITHDRAWING
	)	REINSTATEMENT ORDER
RESPONDENT	)	AND NOTICE OF HEARING

On November 13, 2007, the Board issued a Reinstatement Order, returning Respondent's license to active status and placing her on probation with conditions. On November 29, 2007, the Respondent, by and through Attorney Jaki K. Samuelson, filed a Notice of Appeal of Proposed Order Dated November 13, 2007. The Reinstatement Order dated November 13, 2007, is hereby withdrawn, and Respondent's license status is returned to Suspended status.

IT IS HEREBY ORDERED that, pursuant to 657 IAC § 36.14(4), a formal hearing regarding reinstatement of Respondent's pharmacist license is set for January 23, 2008, before the Board. The hearing shall be held during the afternoon session beginning at 1:00 p.m., and shall be held in a conference room located at 400 S.W. Eighth Street, Des Moines, Iowa. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

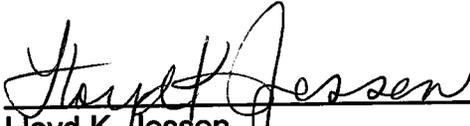
At hearing, you may appear personally and be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you. The procedural rules governing the conduct of the hearing are found at 657 IAC 35.19.

The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of all documents filed with the Board should be provided to counsel for the State at the following address:

Scott Galenbeck
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor, Hoover State Office Building
Des Moines, IA 50319
Phone (515) 281-6658

Respondent's current address is 1500 NW 75th Street, Clive, Iowa.

Dated this 10th day of December, 2007.



Lloyd K. Jessen
Executive Secretary/Director

cc: **Scott Galenbeck**
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Jaki K. Samuelson
Whitfield & Eddy, P.L.C.
317 Sixth Avenue, Suite 1200
Des Moines, Iowa 50309-4195

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

Re:	)	ORDER
Pharmacist License of	)	ACCEPTING
LORRIE JAGIELLO	)	SURRENDER OF
License No. 18803	)	PHARMACIST LICENSE

COMES NOW, Lemman E. Olson, Chairperson of the Iowa Board of Pharmacy, on the 4th day of June, 2008, and declares that:

1. On May 13, 2008, Respondent executed a voluntary surrender of her pharmacist license number 18803.

3. On June 4, 2008, the Board reviewed Respondent's voluntary surrender of her pharmacist license and agreed to accept it.

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

WHEREFORE, it is hereby ordered that Respondent's voluntary surrender of her Iowa pharmacist license number 18803 is hereby accepted.

IOWA BOARD OF PHARMACY



LEMAN E. OLSON, Chairperson

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	DIA NO: 09PHB018
Pharmacist License of)	
LORRIE JAGIELLO	)	FINDINGS OF FACT,
License No. 18803	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On July 22, 2009, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Lorrie Jagiello (Respondent). The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Edward Maier; DeeAnn Wedemeyer Oleson; Mark Anliker; Ann Diehl; and Margaret Whitworth. Respondent was represented by attorney Jaki K. Samuelson. Assistant Attorney General Scott Galenbeck represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2009), and was recorded by a certified court reporter. 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 Notice of Hearing; Respondent's testimony; and Respondent Exhibits 1-21 (See Exhibit Index for description of 1-19; Exhibit 20 is an email exchange dated 6/29/09; Exhibit 21 is a patient history form)

FINDINGS OF FACT

1. On July 15, 1997, the Board issued Respondent license number 18803 to engage in the practice of pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 6)
2. Respondent was instrumental in establishing the Community Access Pharmacy, which was partly funded by a federal grant to improve health services for uninsured Iowans. The Community Access Pharmacy opened on April 1, 2004, with Respondent as its sole pharmacist and pharmacist in charge. After it opened, the pharmacy was

quickly flooded customers who had many special needs. Although Respondent was eventually able to hire some pharmacy technicians, she often worked 18 hour days. Respondent also had two young children at home and she was coping with several of her own medical issues, which included type 1 diabetes, a history of headaches, severe complications from a gall bladder surgery, and a broken leg. Respondent was overwhelmed and felt like she was letting everyone down. As a result, she became seriously depressed.

In March or April 2005, Respondent sought medical care from her family physician for her depression. Respondent's family physician prescribed medication for her depression but eventually referred her to a psychiatrist when her symptoms failed to improve. (Respondent Exhibits 1, 9; Testimony of Respondent)

3. In May 2005, an employee who kept the log book for the Community Access Pharmacy discovered that some controlled substances were missing and reported the shortages to the Board's Compliance Officer. Respondent's superiors initially directed her to take some time off, but her employment was later terminated. Respondent was not present when the Board conducted its audit of the pharmacy's inventory. Respondent complied with the Board's request that she submit to drug testing. Respondent continued to be exhausted and depressed and did not return to work as a pharmacist until November 2005. At that time she started working in retail pharmacy on a limited part-time basis. (Testimony of Respondent)

4. The Board's audit of the inventory at Community Access Pharmacy revealed that the pharmacy was short 241 tablets of 15mg Oxycodone, 237 tablets of 5mg Oxycodone, and 30 tablets of 15mg Roxycodone. There were also significant overages of other drugs. Of the more than 44 Schedule II drugs in the pharmacy's inventory, 6 had shortages of more than 3% and 6 had overages of more than 3%. The same audit revealed missing hard copies of prescriptions, incomplete and incorrect record keeping relating to prescriptions, and incomplete records relating to controlled substances. On January 26, 2006, the Board filed a Statement of Charges charging Respondent with lack of professional competency, inadequate record keeping, inadequate controls over controlled substances, and violations of controlled substance laws. (Respondent Exhibit 2)

On November 16, 2006, Respondent and the Board entered into a Stipulation and Consent Order in settlement of the Statement of Charges. Respondent did not contest

the allegations in the Statement of Charges, and she agreed to have her license placed on probation for a minimum period of three years, subject to terms and conditions. The terms and conditions included, in part:

- completing a minimum of 6 hours of continuing education in specified subject areas related to controlled substance and general pharmacy record keeping within six months;
- taking and passing the Multi-State Pharmacy Jurisprudence Examination (MPJE) within six months;
- submitting typewritten pharmacy policies and procedures within sixty days;
- informing her employer of the terms of the Stipulation and Consent Order;
- submitting quarterly reports; and
- paying a \$1000 civil penalty.

(Respondent Exhibit 3).

5. Respondent acknowledges that she failed to timely comply with the terms of the November 16, 2006 Stipulation and Consent Order. According to Respondent, "panic struck" early in June 2007 and she started working on the continuing education requirement. Respondent also recognized that her license would expire on July 1st. On Friday June 29, 2007, Respondent emailed Lloyd Jessen, the Board's Executive Director, and told him that she would come to his office on Monday morning (July 2nd) to discuss her failure to fulfill the terms of her probation and to submit her license renewal. Mr. Jessen responded that he would be available to talk to her and they arranged to meet at 9:00 a.m.

On July 2nd, Respondent did not keep her appointment at the Board office but instead sent an email stating that she could not make their appointment and asking to reschedule. At the hearing, Respondent testified that the reason she did not make the meeting was a family medical emergency involving her mother in Illinois. Respondent never called the Board and testified that she was waiting for the Mr. Jessen to call her to reschedule. Respondent's license renewal was not received in the Board office until July 9, 2007, and when it was received it had to be returned to her because it did not include the appropriate late fee. Respondent worked as a pharmacist on July 2, July 3, and July 11, 2007 even though she did not have a current license. Respondent testified that she believed her husband had mailed her renewal application and license fee to the Board on July 3, 2007, and she just assumed that her certificate was coming in the mail.

On July 11, 2007, the Board sent an investigator to Respondent's place of employment to notify her that she could not work until her license was renewed. Respondent took her continuing education certificates to the Board office, filled out the renewal application, and paid the late fee that day. Respondent told Lloyd Jessen that her depression was the reason she had not complied with the Stipulation and Consent Order. Mr. Jessen told Respondent to submit a letter from her psychiatrist concerning her treatment. (Testimony of Respondent; Respondent Exhibits 4, 5)

6. Respondent voluntarily submitted to a drug test, which was positive for the medications that were prescribed for her by her physicians, including the hydrocodone that she was taking for headaches, facial pain, and neck pain. On July 25, 2007, Respondent had an appointment with her psychiatrist and he agreed to send a letter to the Board. Respondent's psychiatrist apparently dictated the letter that day before he left on vacation, but the letter was not mailed. (Testimony of Respondent; Respondent Exhibit 9)

7. On August 3, 2007, the Board filed a second Statement of Charges against Respondent charging her with failure to comply with the terms of the Stipulation and Consent Order by failing to complete the continuing education, failing to take the MPJE, failing to submit policies and procedures, failing to pay the fine, and failing to file quarterly reports. On that same date, the Board issued an Emergency Order indefinitely suspending Respondent's license. The Emergency Order included findings that Respondent was working in a pharmacy despite having an expired pharmacist license, that she failed to comply with significant provisions of the Stipulation and Order, and that she attributed her failure to comply to her depression and "medical problems." The Board found that Respondent's depression and medical conditions coupled with her failure to comply with even the most basic provisions of the Stipulation and Consent Order indicated that she was not currently competent to work as a pharmacist without endangering the public health, safety and welfare. The Order suspended Respondent's license until she submitted satisfactory evidence of compliance with all provisions of the November 15, 2006 Stipulation and Consent Order and satisfactory evidence of her ability to resume the practice of pharmacy. (Respondent Exhibit 7; Testimony of Respondent)

8. In a letter dated July 25th and received on August 7, 2007, Respondent's psychiatrist that Respondent had been treated for major depression since December 2005 and was currently in remission. He also reported that Respondent was having

excellent response to her medication and that there was no suggestion that her illness was impairing her in any way. The Board requested additional information. On August 13, 2007, Respondent's psychiatrist sent a more detailed letter concerning Respondent's condition and her treatment. The Board requested an independent psychiatric evaluation and Respondent complied. On September 7, 2007, the independent psychiatrist issued his report to the Board. (Testimony of Respondent; Respondent Exhibits 9, 10, 11, 21)

9. On September 6, 2007, Respondent received a passing score on the MPJE. (Respondent Exhibit 12). On September 22, 2007, Respondent submitted her written policies and procedures for controlled and non controlled drugs. (Respondent Exhibit 8)

10. Respondent and her attorney submitted a reinstatement request on October 25, 2007 and asked the Board to act on it quickly. On November 13, 2007, the Board issued an Order reinstating Respondent's license and placing it on probation, subject to terms and conditions. Respondent objected to the conditions in the order that restricted her possession and use of controlled substances/prescription drugs to those authorized and prescribed by a qualified health care provider. She also objected to the requirement that she participate in drug testing through a Board approved testing service. (Testimony of Respondent; Respondent Exhibit 12)

On November 28, 2007, Respondent's attorney filed a Notice of Appeal and a letter objecting to the Board's procedure in issuing the Reinstatement Order without opportunity for a hearing. (Respondent Exhibit 13). The Board issued an Order Withdrawing Reinstatement Order and a Notice of Hearing, which scheduled a formal reinstatement hearing. (Respondent Exhibit 14). The reinstatement hearing was later continued.

On May 13, 2008, Respondent elected to voluntarily surrender her license. (Respondent Exhibits, 15, 16) The Board accepted the surrender in an Order dated June 10, 2008. The Board's Order states that the surrender shall be considered a revoked license with respect to any future request for reinstatement. (Respondent Exhibit 17)

11. On April 27, 2009, Respondent filed an Application for Reinstatement. At the time she submitted the application, Respondent had a job opportunity in pharmacy that did not involve responsibility for maintaining pharmacy records, managing a

pharmacy, dispensing medications, or having access to medications.¹ Respondent acknowledged that since she surrendered her license, she was required to comply with the examination requirements of 657 IAC 36.13(2). (Respondent Exhibit 18; Testimony of Respondent)

12. Respondent acknowledged that in addition to the medications she takes for diabetes and for depression, she is also prescribed narcotic medication for pain due to headaches, facial pain, and neck pain. Respondent also has weekly acupuncture and chiropractic care. She reports that she has been on this regimen for 2½ years and that she only takes her medication as directed by her physicians. Respondent's depression has been in remission since 2007. Respondent does not feel that her medications interfere with her ability to practice all aspects of pharmacy. (Testimony of Respondent)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

657-36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

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

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

¹ As of the date of the hearing, this position was no longer available. (Testimony of Respondent)

36.13(3) Proceedings. The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. 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...

36.13(4) Burden of Proof. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the ... suspension 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.

36.13(5) Order. An order for reinstatement shall be based upon a decision that 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.

Upon reviewing the record of the hearing, the Board is satisfied that Respondent has now fully complied with the prior orders of the Board. Based on her presentation at hearing, Respondent appears prepared to practice pharmacy, consistent with the public interest, so long as her license is placed on probation and made subject to certain terms and conditions. The preponderance of the evidence supports Respondent's claim that her prior violations, including her complete failure to comply with the Stipulation and Consent Order, were largely caused by her major depression. Respondent's presentation at hearing, together with the letter from her psychiatrist and the independent psychiatric evaluation report, support the conclusion that Respondent's depression is currently in remission and is well controlled through medication. It appears that Respondent is physically and mentally prepared to return to the practice of pharmacy. The Board reviewed Respondent's proposed probationary terms but determined that it is unnecessary to prohibit her from practicing at a pharmacy or dispensing medications. The Board also finds that drug testing is not warranted based on this record. However, the record does support the Board's decision to monitor Respondent's psychiatric care and medications to ensure that she remains in successful recovery from her depression.

DECISION AND ORDER

The reasons for the voluntary surrender of Respondent's pharmacist license no longer exist, and it is in the public interest for her license to be reinstated on probation, so long as she fully complies with the terms and conditions established in this Decision and Order.

IT IS THEREFORE ORDERED that to reinstate pharmacist license number 18803, Respondent Lorrie Jagiello must take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, as required by Iowa Code section 657 IAC 36.13(2). Respondent must pass all components in Iowa within a period of one year beginning with the date Respondent passed an initial component. See 657 IAC 2.1. Respondent must complete all examination requirements within eighteen (18) months of the date of this Decision and Order.

Upon timely completion of the required examinations, Respondent's pharmacist license no. 18803 shall be REINSTATED and shall immediately be placed on PROBATION for a term of three (3) years. Periods when Respondent is not employed as a pharmacist shall not count toward satisfaction of the three-year probationary period.

IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

- A. Respondent shall continue psychiatric treatment unless she is discharged from treatment by her psychiatrist and her psychiatrist has provided a written discharge summary to the Board. Respondent shall ensure that her psychiatrist provides the Board with written quarterly reports concerning her compliance and progress in treatment no later than March 5, June 5, September 5 and December 5 of each year of Respondent's probation. The written reports shall also include a list of all of Respondent's current medications.
- B. Respondent shall not use any controlled substances or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for her by a licensed, treating physician or other qualified health care provider.

C. Respondent shall file written, sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of her probation. The reports shall be filed no later than March 5, June 5, September 5 and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

D. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.

E. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.

F. Respondent shall notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause her employer to report to the Board in writing, acknowledging that the employer has read this document and understands it.

G. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.

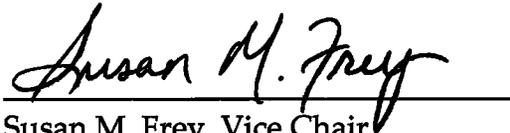
H. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

I. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

J. Should Respondent violate or fail to comply with any of the terms or conditions of probation, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

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Dated this 17th day of August, 2009.

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

Susan M. Frey, Vice Chair
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General
Jaki K. Samuelson, Respondent's Attorney

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.