BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist-Intern Registration of **CHAD H. MCDERMOTT** Reg. No. 2976 Respondent	}	**COMPLAINT AND STATEMENT OF CHARGES AND NOTICE OF HEARING**

COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 14th day of February, 1992, and files this Complaint and Statement of Charges against Chad H. McDermott, a pharmacist-intern registered pursuant to Iowa Code chapter 155A, and alleges that:

1. Melba L. Scaglione, Chairperson; Alan M. Shepley, Vice Chairperson; Rollin C. Bridge; Donna J. Flower; Phyllis A. Olson; Marian L. Roberts; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was registered as a pharmacist-intern on May 10, 1991.

3. Respondent currently resides at 528 South Lucas, Iowa City, Iowa 52240.

4. Respondent is employed as a pharmacist-intern at the University of Iowa, Division of Pharmaceutical Services, College of Pharmacy, Iowa City, Iowa 52242.

5. The Board has received an investigative report from Pharmacy Investigator E. Ray Shelden dated January 31, 1992. That report alleges that Respondent was in unlawful possession of marijuana and involved in the illegal sale of marijuana, a Schedule I controlled substance, on or before January 29, 1992.

6. The Board has also received an outpatient summary report for Respondent dated February 7, 1992. That report indicates that a urine specimen collected from Respondent on January 31, 1991, tested positive for cannabinoids (THC).

7. 1991 Iowa Code section 204.204 provides, in part, as follows:

> 1. The controlled substances listed in this section are included in schedule I.
>
> ....
>
> 4. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances...:

....

m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.

....

u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medical purposes.

8. Respondent is guilty of violations of 1991 Iowa Code sections 155A.21(1), 155A.23(1), 204.401(1)(c)(6), 204.401(3), and 204.403(1)(c) by virtue of the allegations in paragraph 5.

1991 Iowa Code section 155A.21 provides, in part, the following:

> 1. A person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.

1991 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 prescription drug by:
>
> a. Fraud, deceit, misrepresentation, or subterfuge.
>
> b. Forgery or alteration of a prescription or of any written order.
>
> c. Concealment of a material fact.
>
> d. Use of a false name or the giving of a false address.

1991 Iowa Code section 204.401 provides, in part, 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.

....

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. All or any part of a sentence imposed pursuant to this section may be suspended and the person placed on probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

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;...

9. 1991 Iowa Code section 155A.6(3) provides, in part, as follows:

The Board...may deny, suspend, or revoke a pharmacist-intern registration...for any violation of this chapter.

The Iowa Board of Pharmacy Examiners finds that paragraphs 5 through 8, above, constitute grounds for which Respondent's pharmacist-intern registration in Iowa can be suspended or revoked.

WHEREFORE, the undersigned charges that Respondent Chad H. McDermott has violated 1991 Iowa Code sections 155A.21(1), 155A.23(1), 204.401(1)(c)(6), 204.401(3), and 204.403(1)(c).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Chad H. McDermott appear before the Iowa Board of Pharmacy Examiners on Wednesday, April 29, 1992, at 10:00 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 pharmacist-intern registration issued to Chad H. McDermott on May 10, 1991, 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. If Respondent fails to appear and defend, Iowa Code section 17A.12(3) provides that the hearing may proceed and that a decision may be rendered. The failure of Respondent to appear could result in the permanent suspension or revocation of his pharmacist-intern registration.

The hearing will be presided over by the Board which will be assisted by an administrative law judge from the Iowa Department of Inspections and Appeals. The office of the Attorney General is responsible for the public interest in these proceedings. Information regarding the hearing may be obtained from Lynette A. F. Donner, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8760). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS

Lloyd K. Jessen
Executive Secretary/Director

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist-Intern Registration of	)	Reg. No. 2976 DIA Docket No. 93PHB-3
CHAD H. MCDERMOTT	)	
Respondent	)	DECISION AND ORDER

A Complaint and Statement of Charges and Notice of Hearing was filed by Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners (hereafter referred to as Board) on the 14th day of February, 1992. The Complaint alleged, inter alia, that the Board had received an investigative report from Pharmacy Investigator E. Ray Shelden concluding that the Respondent was in unlawful possession of marijuana and involved in the illegal sale of marijuana, a schedule I controlled substance, on or about January 29, 1992. A hearing before the Board was originally scheduled on April 29, 1992, and continued to January 12, 1993.

The hearing on the above-captioned contested case was held on January 12, 1993, and commenced at approximately 10:30 a.m. in the second floor conference room in the Executive Hills West Office Building, Capitol Complex, Des Moines, Iowa. Present were the following members of the Board: Alan M. Shepley, Chairperson; Marian L. Roberts; Phyllis A. Olson; Phyllis Miller; and Arlan D. Van Norman; all duly appointed, qualified members of the Iowa Board of Pharmacy Examiners. The Respondent personally appeared, pro se. Assistant Attorney General Lynette A. F. Donner appeared on behalf of the public interest. Lloyd K. Jessen, Executive Secretary/Director, was also present. James R. Axt, an Administrative Law Judge of the Iowa Department of Inspections and Appeals, presided and prepared this decision at the direction of the Board.

The hearing was closed to the public, at the express request of the Respondent, on the record.

The Board, having heard the evidence and arguments of the parties, having examined documentary exhibits offered by the parties at the time of the hearing, and being fully informed in the premises, deliberated in closed executive session. The Board directed the Undersigned Administrative Law Judge to prepare the Board's Decision and Order.

Wherefore, the undersigned Administrative Law Judge, on the authority of the Board, hereby enters the following:

THE RECORD

The evidentiary record in this contested case includes the following: The Complaint and Statement of Charges and Notice of Hearing issued February 14, 1992, the State's Exhibit A, an investigative report, and the State's Exhibit B, a drug-screen urinalysis report, Respondent's Exhibit 1, a Stipulation and Informal Settlement (unexecuted) and Respondent's Exhibit 2, a Referral Status Sheet concerning a substance assistance program of the University of Iowa as well as the testimony and arguments of the parties, which was tape recorded and recorded stenographically by a court reporter.

FINDINGS OF FACT

For all intents and purposes, the operative facts of this contested case are not in material dispute.

During the one-year-interim preceding the incident which precipitated the disciplinary action in this contested case, the Respondent's use of marijuana progressed from "occasional" use, at parties, to daily use. At or about the time of the incident in January 1992, the Respondent was a third-year pharmacy student at the University of Iowa, School of Pharmacy in Iowa City. The Respondent stated, in all due candor, that his weekly expenditure on marijuana was approximately $50.00, at or about the same amount he would expend on food and groceries. The Respondent admitted that his use of marijuana made him complacent.

On or about January 28, 1992, a friend approached the Respondent and wanted to buy marijuana. The Respondent stated that he considered this a chance to make money. After obtaining approximately two pounds of marijuana from an unauthorized person, Respondent was apprehended by law enforcement personnel, arrested, and taken to the Johnson County Sheriff's Department.

During the course of the hearing, the Respondent expressed deep remorse in this involvement both in the use of illicit drugs, and the sale and distribution of illicit drugs.

On January 31, 1992, the Respodent met with Investigator E. Ray Shelden. An investigative report was prepared, admitted as State's Exhibit A, and acknowledged to be true and correct by the Respondent. As of the date of the hearing, no criminal charges were brought or pending against the Respondent as a result of the incident. The Respondent was released by law enforcement officials on the date of the incident.

The Respondent submitted to voluntary urinalysis, at the request of Investigator E. Ray Shelden, which tested positive for cannabinoid (THC) at 1623 mg. per ml. The Respondent stated that he had previously

used LSD, and has refrained from all drug use after the incident.

The Respondent indicated that it was necessary for him to maintain part-time employment throughout his career as a pharmacy student, for financial reasons. It is also apparent from the record that for a while, the Respondent was able to maintain a marijuana habit at the approximate cost of $50.00 per week.

The Respondent attended and completed five educational sessions through the student health service/MECCA through the University of Iowa. See: Respondent's Exhibit 2. The Respondent testified that he has ceased using drugs, however, still has a craving for marijuana at times when he is in contact with other users. The Respondent has been unable to locate a support group offering assistance to former drug users.

Finally, under questioning by Board members, the Respondent stated that he has considered his academic alternatives in the event that his pharmacist-intern registration is not restored.

CONCLUSIONS OF LAW

A "pharmacist-intern" means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the Board, or a graduate of a college of pharmacy, who is participating in a Board-approved internship under the supervision of a preceptor. See: Iowa Code section 155A.3(23) (1991).

Iowa Code section 155A.6 (1991) provides in pertinent part:

> **Internships - pharmacist-intern registration.**
> . . . (3) The board shall establish standards for the registration and may deny, suspend, or revoke a pharmacist-intern registration for failing to meet the standards or for any violation of this chapter.

In turn, Rule 657 Iowa Administrative Code 9.1 provides:

> **Authority and grounds for discipline.**
> (1) The board has authority to impose discipline for any violations of Iowa Code chapters . . . 155A . . . 204, . . . or the rules promulgated thereunder.
> (2) The board has the authority to impose the following disciplinary sanctions:
> (a) Revocation of the registration or of a license to operate a pharmacy or to practice pharmacy. [emphasis added]

The Board concludes that the Respondent has violated two provisions of Chapter 155A of the Iowa Code. Iowa Code section 155A.21 (1991) provides in pertinent part as follows:

> **Unlawful possession of prescription drug - penalty.**
> (1) A person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.

Iowa Code section 155A.23 (1991) provides:

> **Prohibitive acts.**
> A person shall not: (1) Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by (a) fraud, deceit, misrepresentation or subterfuge.

Marijuana is a schedule I controlled substance. See: Iowa Code section 204.204(1) and (4) (m) (1991). Pursuant to Iowa Code section 204.401(1) (1991), except as authorized by Chapter 204 of the Iowa Code, it is unlawful for any person to deliver or possess with the intent to deliver, a controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more persons to deliver or to possess with the intent to deliver a controlled substance. It is clear and uncontroverted from the record that the Respondent was in unlawful possession of marijuana, a serious misdemeanor, pursuant to Iowa Code section 204.401(3).

The Board makes a sharp distinction between personal possession and use of illicit drugs, and possession and/or conspiracy with the intent to deliver. The Pharmacy Practice Act, Chapter 155A of the Iowa Code, contains a clear and concise statement of legislative purpose:

> . . . [T]o promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs . . .

See: Iowa Code section 155A.2(1) (1991).

Thus, there is a public trust to dispense a controlled substance within the framework of statutes and administrative rules as a health service profession, and to improve and promote patient health by means of appropriate drug use and related drug therapy. See: Iowa Code section 155A.3(26) (1991). The Respondent's possession of an illicit drug with the intent to deliver the same, for his own personal, monetary gain, shows a total disregard for the statutory scheme, pursuant to Iowa Code Chapter 155A, under which the Respondent would ultimately seek professional licensure. Pursuant to 657 Iowa Administrative Code 9.1(3) (a), the Board may consider the relative seriousness of the violation as it relates to assuring the citizens of this state a high

standard of professional care.

Without the Respondent's registration as a pharmacist-intern, the Respondent is precluded from ultimate licensure as a pharmacist. However, the decision of the Board, at this point of time, will allow the Respondent to change his academic major. The Board encourages the Respondent to continue his efforts to locate and participate in a drug-users support group.

It was the unanimous decision of the Board to permanently revoke the pharmacist-intern registration of the Respondent.

Wherefore the Board enters the following:

ORDER

The pharmacist-intern registration of the Respondent, Chad H. McDermott, is hereby permanently REVOKED. It is also ORDERED, pursuant to Iowa Code section 258A.6 and 657 IAC 9.27, that the Respondent shall pay $75.00 for fees associated with conducting the disciplinary hearing.

Dated at Des Moines this 9th day March, 1993.

Alan M. Shepley, Chairperson
Board of Pharmacy Examiners
of the State of Iowa

James R. Axt
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Appeals and Fair Hearings
Lucas State Office Building
Des Moines, IA 50319

If the Respondent wishes to appeal this Decision, Respondent must file a petition for judicial review in district court within thirty (30) days after issuance of this Decision and Order. Iowa Code section 17A.19 (1991). Alternatively, a party may file an application for rehearing with the Board within twenty (20) days after the issuance

of this Decision and Order. Iowa Code section 17A.16 (1991); 657 Iowa Administrative Code 9.18. In accordance with Iowa Code section 17A.19(3) (1989), a petition for judicial review must be filed within thirty (30) days after the application for rehearing has been denied or deemed denied. If an application for rehearing is granted, the petition for judicial review must be filed within thirty (30) days after the issuance of the Board's final decision on rehearing. If a party does not file an application for rehearing, the petition for judicial review must be filed within thirty (30) days after the issuance of this Decision and Order. Iowa Code section 17A.19 (1991).