

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

Re:	)	Case No. 2004-84
Pharmacist License of	)	
<b>ZACHARY P. McMAHON</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 19377,	)	
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 147, 155A and 272C (2003).
3. On July 13, 2000, the Board issued Respondent, after examination, a license to engage in the practice of pharmacy as evidenced by license number 19377, 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, 2006.
5. Respondent's current address is 2500 N. Sixth Avenue East, Newton, Iowa 50208.
6. Respondent was, at all times material, employed as the pharmacist in charge at the Grinnell Regional Medical Center, 210 Fourth Avenue, Grinnell, Iowa 52806.

**A. CHARGES**

**COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS**

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 155A.12(1) (2003), 155A.21 and 155A.23 (2003) and 657 Iowa Administrative Code §§ 36.1(4)(h) and 36.1(4)(j).

**COUNT II – UNABLE TO PRACTICE DUE TO MENTAL IMPAIRMENT**

The Respondent is charged with an inability to practice with reasonable skill and safety by reason of mental impairment in violation of Iowa Code § 155A.12(1) and 155A.12(5) (2003) and 657

Iowa Administrative Code § 36.1(4)(m).

### COUNT III – FALSE REPORT TO THE BOARD

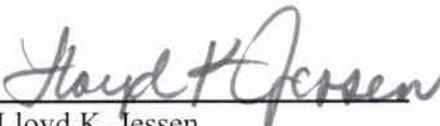
Respondent is charged under Iowa Code §§ 155A.12(1) and 155A.23(2) (2003) with making a false report to the board, specifically tendering to the board on or about June 25, 2004, a false license renewal application stating that he had not been convicted or pled guilty to an alcohol-related offense.

#### B. CIRCUMSTANCES

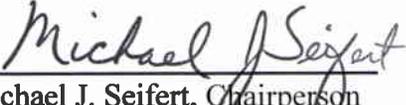
On or about October 29, 2004 an investigation was commenced, revealing the following:

1. On or about June 25, 2004, Respondent submitted an "Iowa Pharmacist License Renewal Application" to the Board. Respondent supplied a "no" answer to the following question: "have you been convicted or pled guilty to a drug- or alcohol-related offense?"
3. Respondent failed to report, on his June 25, 2004 license renewal application, that he was adjudicated guilty of public intoxication in Johnson County, Iowa, on November 11, 1997. Respondent also failed to report that he was adjudicated guilty of public intoxication in Johnson County, Iowa, on October 29, 2000.
3. Respondent was serving as the pharmacist in charge at the Grinnell Regional Medical Center, Grinnell, Iowa, on October 28, 2004. Respondent admits that, on that date, he took controlled substances (liquid morphine and clonazepam) from the Grinnell Regional Medical Center and utilized them in an attempted suicide.
4. In addition to the suicide attempt, Respondent admits to being diagnosed with a general anxiety disorder, and recently wrecking his car, gambling, being charged with shoplifting and experiencing panic attacks.

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 22 day of December 2004, 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

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

Re:	)	Case No. 2004-84
Pharmacist License of	)	
<b>ZACHARY P. McMAHON</b>	)	<b>EMERGENCY ORDER</b>
License No. 19377,	)	
Respondent.	)	

**I. JURISDICTION**

The Iowa Board of Pharmacy Examiners (hereinafter, "Board") has jurisdiction over pharmacist licensees pursuant to Iowa Code Chapters 147, 155A and 272C (2003). Respondent Zachary P. McMahon possesses pharmacist license number 19377 issued by the Board. A Statement of Charges was filed against Respondent on December 22, 2004. After receipt and review of the Statement of Charges, and careful review of evidence relating to the Statement of Charges, the Board has adopted the following Findings of Fact and Conclusions of Law and Emergency Order.

**II. FINDINGS OF FACT**

1. On July 13, 2000, the Board issued Respondent a license to engage in the practice of pharmacy as evidenced by license number 19377, subject to the laws of the State of Iowa and the rules of the Board.
2. Respondent has most recently been employed as the pharmacist in charge at Grinnell Regional Medical Center, Grinnell, Iowa.
3. On October 29, 2004, the board commenced an investigation of Respondent which revealed the following, which the Board hereby finds:

- a. On or about June 25, 2004, Respondent submitted an "Iowa Pharmacist License Renewal Application" to the Board. Respondent supplied a "no" answer to the following question: "have you been convicted or pled guilty to a drug- or alcohol-related offense?"
- b. Respondent failed to report, on his June 25, 2004 license renewal application, that he was adjudicated guilty of public intoxication in Johnson County, Iowa, on November 11, 1997. Respondent also failed to report that he was adjudicated guilty of public intoxication in Johnson County, Iowa, on October 29, 2000.
- c. Respondent was serving as the pharmacist in charge at the Grinnell Regional Medical Center, Grinnell, Iowa, on October 28, 2004. Respondent admits that, on that date, he took controlled substances (liquid morphine and clonazepam) from the Grinnell Regional Medical Center and utilized them in an attempted suicide.
- d. In addition to the attempted suicide, Respondent acknowledges his diagnosis with generalized anxiety disorder, recent panic attacks, a shoplifting charge, gambling and an automobile accident in which his automobile was "totaled."

4. The Board finds that the evidence assembled during the investigation of Respondent supports the December 22, 2004 Statement of Charges against Respondent. The Board also finds that Respondent has violated the provisions of Iowa Code Chapter 155A and Chapter 657 of the Iowa Administrative Code in the manner alleged in the Statement of Charges.

5. The Board finds that Respondent is an immediate danger to the public health, safety and welfare for the following reasons:

- a. Respondent has been working in and serving as the pharmacist in charge of the pharmacy at the Grinnell Regional Medical Center. In that position, he has had access to controlled substances, some of which he diverted to his own use in his attempted suicide. In his employment position, Respondent would be filling prescriptions for hospital patients and providing counseling on medications to patients of the hospital
- b. Numerous recent events in Respondent's life suggest instability. In addition to an

attempted suicide, Respondent stole the drugs used in the attempted suicide from his employer. He has been gambling, has wrecked his car and been charged with theft from a Wal-Mart store. Respondent admits to being diagnosed with a general anxiety disorder, and further admits to recently experiencing panic attacks. Additionally, it is now apparent Respondent falsified his license renewal application to the Board – in an apparent attempt to cover up convictions for public intoxication.

c. Until Respondent's health stabilizes and his behavior is no longer impacted by panic attacks, the practice of pharmacy by Respondent presents an enhanced and undue possibility of mistakes in the preparation of medications and in the dispensing of medications to members of the public. Additionally, given Respondent's instability, there is an enhanced possibility of diversion of controlled substances either for use by the Respondent or for distribution to members of the public.

8. The Board finds that immediate, emergency action must be taken for the reason that if Respondent is allowed to continue to work as a pharmacist, the public health, safety and welfare will be threatened. The public health, safety and welfare would be at risk due to the possibility of improper practices by Respondent related to the dispensing of medications to members of the public.

9. The Board finds that the minimum emergency action needed to protect the public health, safety and welfare is as follows:

a. Immediate restriction of Respondent's pharmacist license, prohibiting Respondent from dispensing and handling prescription medications, including controlled substances, and from having access to prescription medications, including controlled substances.

b. Respondent's license shall remain restricted until satisfactory evidence of Respondent's ability to resume the unrestricted practice of pharmacy has been provided to the Board.

c. Respondent may be employed in an administrative capacity by the Grinnell Regional Medical Center, so long as Respondent does not have access to prescription medications, including controlled substances; does not dispense or handle prescription medications, including controlled substances; and does not process prescription orders or medication orders. In his administrative role, Respondent may provide drug information to other healthcare practitioners, but not to patients.

### **III. CONCLUSIONS OF LAW**

1. Respondent's general instability, as reflected by his diagnosis of generalized anxiety disorder and attempted suicide, has rendered him unable to safely practice pharmacy.
2. The provisions of Iowa Code § 17A.18A (2003) permit the Board of Pharmacy Examiners to take emergency action to protect the health, safety and welfare of the public. A basis for emergency action against Respondent, pursuant to the provisions of the Iowa Code and the Iowa Administrative Code, has been established by the findings of fact adopted above.

### **IV. EMERGENCY ORDER**

The Board ORDERS as follows:

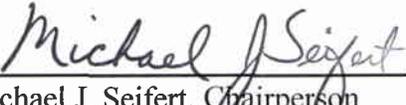
- a. Pursuant to Iowa Code § 17A.18A, chapter 155A (2003) and 657 Iowa Administrative

Code § 35, the pharmacist license of Zachary P. McMahon is restricted indefinitely. This restriction is effective immediately upon issuance of this order. This order shall not be construed to prevent Respondent from employment in an administrative capacity at the Grinnell Regional Medical Center, so long as Respondent does not have access to prescription medications, including controlled substances; does not dispense or handle prescription medications, including controlled substances; and does not process prescription orders or medication orders. In his administrative role, Respondent may provide drug information to other healthcare practitioners, but not to patients.

b. Respondent shall be notified of this order as provided in 657 Iowa Administrative Code 35.30(2).

c. A hearing regarding this Emergency Adjudicative Order and the Statement of Charges against Respondent shall be held on February 17<sup>th</sup>, 2005. The hearing will commence at 10:00 A.M. and be held at the office of the Iowa Board of Pharmacy Examiners, 400 Southwest 8<sup>th</sup> Street, Suite E, Des Moines, Iowa 50309.

DATED this 22<sup>nd</sup> day of December 2004.

  
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

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RE:	)	CASE NO. 2004-84
Pharmacist License of	)	DIA NO: 04PHB024
ZACHARY P. McMAHON	)	FINDINGS OF FACT,
License No. 19377	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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TO: Zachary P. McMahon

On December 22, 2004, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges and an Emergency Order against Zachary P. McMahon (Respondent), a licensed pharmacist in the state of Iowa. The Statement of Charges alleged three counts of violations of state and federal statutes and board rules:

Count I: Unlawful possession of prescription drugs, in violation of Iowa Code §§ 155A.12(1), 155A.21, and 155A.23 (2003) and 657 IAC 36.1(4)(h) and (j);

Count II: Inability to practice due to mental impairment, in violation of Iowa Code §§ 155A.12(1) and (5)(2003) and 657 IAC 36.1(4)(m);

Count III: False report to the board, in violation of Iowa Code §§ 155A.12(1) and 155A.23(2).

The Emergency Order, which was issued pursuant to Iowa Code §17A.18A, chapter 155A(2003) and 657 IAC chapter 35, indefinitely restricted the Respondent's pharmacist license.

The hearing was held on February 15, 2005 at 2:10 p.m. The following members of the Board presided at the hearing: Michael J. Seifert, Chairperson; Katherine A. Linder; Paul Abramowitz; Lemar Olson; Vernon Benjamin; Barbara Ellen O'Roake; and Kathleen Halloran. The Respondent appeared for the hearing and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at the Respondent's request, pursuant to Iowa Code section 272C.6(1)(2003).

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 Emergency Order, Statement of Charges, Notice of Hearing, testimony of the witness, and the following exhibits:

- Exhibit A: Investigative Report and attachments
- Exhibit B: Letters dated 2/2/05 and 2/3/05 (Anderson, LISW to Board and Sushil Upadhyay, M.D. to Board)
- Exhibit C: Letter dated 1/25/05 (Anderson, LISW to Board) and attached progress notes

#### FINDINGS OF FACT

1. On July 13, 2000, the Respondent was issued license number 19377 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. At all times relevant to the Statement of Charges and Emergency Order, the Respondent was employed as the Director and pharmacist in charge of the Grinnell Regional Medical Center Pharmacy Department.

On December 22, 2004, the Board issued an Emergency Order indefinitely restricting Respondent's pharmacist license. Pursuant to the terms of the Emergency Order, the Respondent is only permitted to work in an administrative capacity at the Grinnell Regional Medical Center, providing drug information to other healthcare practitioners. The Respondent is not permitted to have access to prescription medications, including controlled substances, or to process medication or prescription orders. (Emergency Order; Testimony of Respondent)

2. The Respondent was initially diagnosed with general anxiety disorder and panic attacks when he was in college but did not seek ongoing treatment for these conditions. Recently, a number of incidents in the Respondent's life caused an increase in his anxiety and panic attacks.

a. The Respondent was involved in a serious rollover automobile accident in August 2004 and was ticketed for failure to maintain control of his vehicle. Following the accident, the Respondent was prescribed pain medication and muscle relaxants. On August 24, 2004, the Respondent was caught shoplifting two items at a Wal-Mart store. The shoplifting incident was reported in a local newspaper. The criminal charges were later dismissed, apparently because the Respondent convinced the authorities that he was acting under the influence of the medications and his anxiety disorder.

b. The Respondent has been under a financial strain due to a combination of credit card bills, student loans, the recent purchase of a home, and some gambling losses. He denies that he has a gambling problem, but admits occasionally betting on professional football over the Internet. Prior to October 27, 2004, the Respondent had placed bets of \$150 on 4-5 occasions.

c. The Respondent has been described as a perfectionist who may be reluctant to delegate to others. In October 2004, the Respondent was under additional stress at work because his department was short two pharmacy technicians. The Respondent was attempting to perform his own work duties and cover the duties normally performed by the pharmacy technicians.

(Testimony of Respondent; Exhibit A)

3. On October 28, 2004, the Respondent took controlled substances, i.e. Morphine Sulfate and Clonazepam, from the Grinnell Regional Medical Center Pharmacy Department. The Respondent did not have prescriptions for these medications and was not authorized to take them from the pharmacy. The Respondent used these medications in a suicide attempt. After he ingested the medications, the Respondent placed two \$500 sports bets, in the hopes that the winnings would help his fiancé financially. The Respondent left a suicide note and called his fiancé at work, who alerted the police. (Testimony of Respondent; Exhibit A)

4. Since his suicide attempt, the Respondent has been receiving psychiatric treatment, medications for anxiety and depression, and psychotherapy through Capstone Behavioral Healthcare. He has fully cooperated with the Board and has provided documentation of his progress in treatment. The

Respondent's treating licensed social worker and his treating psychiatrist agree that the Respondent's mental health has improved significantly, and he is now fit to return to work, subject to monitoring. The Respondent has not had any additional panic attacks while on his current medication regimen. He continues to have the full support of his fiancé and his family. (Testimony of Respondent; Exhibits B, C)

5. In the course of its investigation, the Board discovered a false answer on the Respondent's most recent license renewal application. On or about June 25, 2004, the Respondent submitted an "Iowa Pharmacist License Renewal Application" to the Board. The Respondent answered "no" to the question: "Since initial licensure in Iowa or another state: ...have you ever been convicted or pled guilty to a drug- or alcohol-related offense?" In fact, the Respondent was convicted of public intoxication in Johnson County, Iowa on November 11, 1997 and again on October 29, 2000. (Testimony of Respondent; Exhibit A, attachments 25, 26)

#### CONCLUSIONS OF LAW

##### *I. Applicable Statutes and Rules*

Iowa Code section 17A.18A and 657 IAC 35.30 authorize the Board to take necessary emergency action to prevent or avoid immediate danger to the public health, safety, or welfare.

Iowa Code section 272C.3(1)(e) and (f)(2003) authorizes licensing boards to initiate and prosecute disciplinary proceedings and impose licensee discipline, including revocation of the license.

Iowa Code section 155A.12 (2003) provides, in relevant part:

##### **155A.12 Pharmacist license-grounds for discipline.**

...The board may...impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

...

5. Violated any provision of the controlled substances Act or rules relating to that Act.

...

Iowa Code section 155A.21(2003) provides, in relevant part:

**155A.21. 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 (2003) provides, in relevant part:

**155A.23 Prohibited 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.

...

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

657 IAC 36.1(4) provides, in relevant part:

**36.1(4) Grounds for discipline.** The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

h. Distribution of drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A.

...

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

...

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

## II. *The Violations*

### A. *Count I*

The preponderance of the evidence established that the Respondent unlawfully possessed and used prescription drugs, i.e. liquid morphine and clonazepam, on October 28, 2004. The Respondent did not have a lawful prescription for these drugs. He took the drugs from the pharmacy where he was employed and later ingested the drugs in a suicide attempt. The Respondent does not dispute these facts. The Respondent has violated Iowa Code sections 155A.12(1), 155A.21, and 155A.23(1)(a)(2003) and 657 IAC 36.1(4)"h" and "j."

### B. *Count II*

The preponderance of the evidence established that the Respondent has been unable to practice pharmacy with reasonable skill and safety by reason of a mental impairment, in violation of Iowa Code sections 155A.12(1) and (5)(2003) and 657 IAC 36.1(4)"m." The evidence established that in late 2004, the Respondent suffered from a severe anxiety disorder and panic attacks that interfered with his ability to practice pharmacy and which culminated in a suicide attempt. The evidence further established that the Respondent has been under significant stress from multiple sources, both personal and professional. The preponderance of the evidence established that at this time the Respondent's mental impairment requires ongoing medication and treatment from medical and mental health professionals.

### C. *Count III*

The preponderance of the evidence established that the Respondent made a false report to the Board, in violation of Iowa Code sections 155A.12(1) and 155A.23(2)(2003) when he filed his license renewal application on June 25, 2004. The Respondent stated that he had no alcohol-related convictions when in fact he had twice been convicted of public intoxication in Iowa City. The second conviction occurred after his initial licensure as a pharmacist. The Respondent is a highly educated professional and should not have had any difficulty understanding that a public intoxication conviction is an alcohol-related offense that must be reported. Alcohol-related

convictions are material to the Board's licensing decisions because they prompt the Board to make further inquiry to determine whether an applicant or licensee has a problem with alcohol abuse or addiction.

The licensee testified that since he started treatment for his anxiety disorder he has decreased his alcohol consumption and now only occasionally uses alcohol at social occasions. The Board has some concerns about the Respondent's continued alcohol use while he is taking a number of medications for his anxiety disorder and believes that the Respondent should have an alcohol assessment.

### *III. Emergency Order*

The preponderance of the evidence supports the Board's earlier decision to issue an Emergency Order indefinitely restricting the Respondent's practice as a pharmacist. The Respondent's actions and suicide attempt clearly indicated that he was unable to practice pharmacy with reasonable skill and safety as a result of a severe anxiety disorder. The Respondent has fully cooperated with the Board's investigation. He has entered into comprehensive treatment for his anxiety disorder and depression. The Respondent is complying with a medication regimen and is regularly participating in psychotherapy. The mental health professionals responsible for his care believe that he is now fit to return to the practice of pharmacy. The Respondent's appearance and demeanor at the hearing before the Board was consistent with the professional assessment of his treating social worker and psychiatrist. It appears that the Respondent is ready to resume the practice of pharmacy, subject to monitoring and terms of probation.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that the Emergency Order issued on December 22, 2004 is hereby VACATED. IT IS FURTHER ORDERED that pharmacist license no. 19377, issued to Zachary P. McMahon, shall be placed on probation for a period of three (3) years, effective upon service of this Decision and Order, and subject to the following conditions:

1. Within sixty (60) days of the issuance of this Decision and Order, the Respondent shall submit to an alcohol assessment at Capstone Behavioral Healthcare or another facility approved by the Board. The Respondent shall sign any necessary releases to allow the Board to

provide the assessing facility with a complete copy of the Board's Investigative Report. The Board will also provide the assessing facility with a copy of this Decision and Order. The Respondent shall ensure that the facility promptly provides the Board with written notice of the outcome of the alcohol assessment and its recommendations, if any. The Respondent shall fully comply with any recommendations made as a result of the alcohol assessment.

2. The Respondent shall continue to receive regular psychiatric care and medication management by his treating psychiatrist. The Respondent shall also continue to participate in regular psychotherapy with his treating licensed social worker or with another mental health professional approved by the Board. The Respondent shall continue under psychiatric care and in psychotherapy at the frequency recommended by the healthcare professionals until he is discharged from treatment and a written copy of the discharge summary(s) is provided to the Board.

The Respondent shall ensure that his treating psychiatrist and social worker provide quarterly written reports to the Board documenting the Respondent's compliance with their treatment recommendations and his progress in treatment. The reports shall be filed no later than March 5, June 5, September 5, and December 5 of each year of the Respondent's probation. Within thirty (30) days, the Respondent shall provide the Board with written verification from his psychiatrist and his social worker that they have been provided a copy of this Decision and Order of the Board and have reviewed it.

3. The Respondent shall not own, manage, or be the pharmacist-in-charge of any pharmacy during the first year of his probation. After successful completion of the first year of probation, the Respondent may petition the Board to lift this restriction.

4. During the period of probation, the Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

5. During the period of probation, the Respondent shall notify all prospective employers of this Decision and Order and the terms, conditions and restrictions imposed on Respondent by this decision. Within 15 days of receipt of this decision, and thereafter within 15 days of undertaking

new employment, the Respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read the Board's decision.

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

7. The Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program under the direct support of an IPRN advocate.

8. The Respondent shall make personal appearances before the Board or a Board Committee upon request. The Respondent shall be given reasonable notice of the date, time and location for such appearances.

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

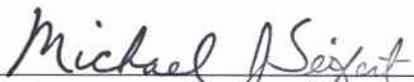
10. The Respondent shall release his medical records to the Board upon request, including all medical recordings pertaining to treatment for mental conditions and for alcohol and substance abuse, if any, and shall sign all necessary releases of information to allow the free flow of information between the Board and the Respondent's physician(s) and treatment provider(s) and to ensure that the Board receives all necessary information if further evaluation or treatment of the Respondent is requested or required.

11. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to prescription drugs, controlled substances, or nonprescription drugs; with Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, and 205; and shall comply with the Board's rules.

12. Should the Respondent violate or fail to comply with any of the terms and conditions of probation, the Board may initiate action to revoke or suspend the Respondent's Iowa pharmacist license or to impose other discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this *23rd* day of *February*, 2005.

  
\_\_\_\_\_  
Michael J. Seifert, Chairperson  
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

This final decision of the Board can be appealed in accordance with the Iowa administrative procedures Act.

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

Re: Pharmacist License of <b>ZACHARY P. McMAHON</b> License No. 19377, Respondent.	) ) ) ) ) )	Case No. 2004-84  <b>STATEMENT OF CHARGES</b>
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**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 147, 155A and 272C (2003).
3. On July 13, 2000, the Board issued Respondent, after examination, a license to engage in the practice of pharmacy as evidenced by license number 19377, 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, 2008.
5. Respondent's current address is 2500 N. Sixth Avenue East, Newton, Iowa 50208.
6. Respondent was, at all times material, employed as the pharmacist in charge at the Grinnell Regional Medical Center, 210 Fourth Avenue, Grinnell, Iowa 52806.
7. Respondent was issued a Statement of Charges on December 22, 2004, for unlawful possession of prescription drugs, inability to practice pharmacy due to mental impairment, and making a false report to the Board. Respondent also received an Emergency Order on December 22, 2004, which indefinitely restricted his pharmacist license so that he could not have access to prescription medications.
8. On February 23, 2005, the Board issued a Decision and Order in which the Emergency Order of December 22, 2004, was vacated and Respondent's pharmacist license was placed on probation with conditions for three years.

9. Effective March 8, 2006, the Board granted Respondent's request to lift the restriction which prohibited him from owning, managing, or being the pharmacist in charge of a pharmacy.

#### A. CHARGES

##### COUNT I – UNLAWFUL POSSESSION OF PRESCRIPTION DRUGS

The Respondent is charged with unlawful possession and use of prescription drugs in violation of Iowa Code §§ 155A.12(1), 155A.21, and 155A.23 (2005) and 657 Iowa Administrative Code 36.1(4)(h), 36.1(4)(j), and 36.1(4)(u).

##### COUNT II – UNLAWFUL ACQUISITION AND POSSESSION OF CONTROLLED SUBSTANCES

The Respondent is charged with acquiring or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge in violation of Iowa Code § 124.403(1)(c) (2005) and 657 Iowa Administrative Code 36.1(4)(j).

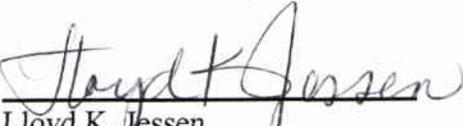
##### COUNT III – VIOLATION OF PROBATION

The Respondent is charged with failing to comply with probation reporting requirements and failing to obey all federal and state laws, rules and regulations substantially related to prescription drugs and controlled substances in violation of Iowa Code §§ 155A.12(1), 155A.12(5), and 272C.3(2) (2005) and 657 Iowa Administrative Code 36.1(4)(i), 36.1(4)(j), and 36.1(4)(u).

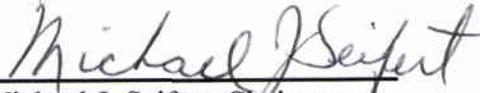
#### B. CIRCUMSTANCES

Circumstances supporting the above charges are set forth in Attachment A.

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

  
Lloyd K. Jessen  
Executive Secretary/Director

On this 13<sup>th</sup> day of September 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

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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RE:	)	CASE NO. 2004-84
Pharmacist License of	)	DIA NO: 06PHB028
ZACHARY P. McMAHON	)	
License No. 19377	)	FINDINGS OF FACT,
Respondent	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER

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TO: Zachary P. McMahon

On September 13, 2006, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges and Notice of Hearing against Zachary P. McMahon (Respondent), alleging the following violations:

Count I: Unlawful possession and use of prescription drugs, in violation of Iowa Code §§ 155A.12(1), 155A.21, and 155A.23 (2005) and 657 IAC 36.1(4)(h), (j), and (u);

Count II: Acquiring or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge, in violation of Iowa Code §124.403(1)(c) (2005) and 657 IAC 36.1(4)(j);

Count III: Failing to comply with probation reporting requirements and failing to obey all federal and state laws, rules and regulations substantially related to prescription drugs and controlled substances, in violation of Iowa Code §§ 155A.12(1), 155A.12(5), and 272C.3(2) (2005) and 657 IAC 36.1(4)(i), (j), and (u).

The hearing was held on November 15, 2006 at 9:00 a.m. The following members of the Board presided at the hearing: Michael J. Seifert, Chairperson; Susan Frey; Lemar Olson; Vernon Benjamin; and Kathleen Halloran. Respondent appeared for the hearing and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1) (2005).

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 their decision. The administrative law judge was instructed to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

#### THE RECORD

State Exhibit A: Statement of Charges, 9/13/06  
State Exhibit B: Notice of Hearing, 9/13/06  
State Exhibit C: Return Receipt  
State Exhibit D: Findings of Fact, Conclusions of Law, Decision and Order, 2/23/05  
State Exhibit E: Northwest Toxicology urinalysis report, 8/21/06  
State Exhibit F: Investigative Notes of 8/25/06 (Jennifer Tiffany)

Respondent Exhibit 1: Letter, 11/14/06 (Cooner to Board); Letter (Dykstra to Board); IPRN Release; IPRN Contract Addendum; Letter, 10/17/06 (Schorer, ACADC, LBSW to Board); Treatment records and certificate.

#### FINDINGS OF FACT

1. On July 13, 2000, Respondent was issued license number 19377 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. At all times relevant to the Statement of Charges, Respondent was employed as the Director and pharmacist in charge of the Grinnell Regional Medical Center Pharmacy Department.

On December 22, 2004, the Board issued an Emergency Order indefinitely restricting Respondent's pharmacist license. The Board also issued a Statement of Charges alleging unlawful possession of prescription drugs, inability to practice pharmacy due to mental impairment, and making a false report to the Board. On February 23, 2005, the Board issued a Decision and Order placing Respondent's pharmacist license on probation for a period of three years, subject to numerous conditions. The probation conditions included, in part, written quarterly reports to be filed no later than March 5, June 5, September 5, and December 5 of each year of probation and compliance with all federal and state laws, rules, and regulations substantially related to prescription drugs, controlled substances or nonprescription drugs. Effective March 8, 2006, the Board

lifted the restriction prohibiting Respondent from owning, managing, or being the pharmacist in charge of a pharmacy. (State Exhibits A, D; Testimony of Respondent)

2. On May 5, 2006, the Board notified Respondent that he had not yet submitted his quarterly report, which was due no later than March 5, 2006. (State Exhibit A; Testimony of Respondent)

3. Respondent admits that on March 1, 2006 and June 16, 2006, he obtained the controlled substance phentermine 37.5 mg through an illegal Internet source. Respondent did not have a prescription for the phentermine, which is a diet pill. Respondent received and used the phentermine. (State Exhibit A; Testimony of Respondent)

4. On August 21, 2006, the Board received the results of Respondent's urinalysis (UA), based on a sample obtained on August 15, 2006. The toxicology test indicated the presence of the drug phentermine at a level of 3729 ng/mL (confirmation cut-off level equals 500 ng/mL). The UA result also indicated the presence of amphetamines at a level of 5404 ng/mL and alprazolam at a level of 307 ng/mL. Respondent produced prescriptions for alprazolam and Adderall. Respondent testified that he had a ruptured disc from a car accident two years earlier, and a pain specialist has prescribed hydrocodone for him. (Testimony of Respondent; State Exhibit E)

5. Emily Dykstra has been Respondent's monitor through the Iowa Pharmacists Recovery Network (IPRN). IPRN had previously been monitoring Respondent for mental health issues but had not monitored him for chemical dependency. Respondent readily admitted obtaining and using the phentermine after Dykstra confronted him with the positive UA results. Respondent agreed to sign an Addendum to his IPRN Client Recovery Contract for chemical dependency monitoring. Respondent also entered an intensive outpatient chemical dependency treatment program at Powell Chemical Dependency Center, which he completed on October 18, 2006. Respondent attended outpatient treatment in the evenings and continued to work at the Grinnell Regional Medical Center. Powell recommends that Respondent continue to attend at least three 12-step meetings each week for an indefinite period of time. Respondent is currently attending the aftercare program through Powell, a weekly Caduceus meeting for recovering professionals, and two AA meetings each week. He continues to have daily contact with Emily Dykstra, his IPRN monitor. (Testimony of Emily Dykstra; Respondent; Respondent Exhibit 1)

6. Respondent's employer is willing to give him just one more opportunity to remain employed as the Director of Pharmacy for Grinnell Regional Medical Center, so long as he complies with their conditions, including ongoing involvement with IPRN, aftercare, Caduceus, and AA and limits his work hours to 40-45 hours per week. (Testimony of Respondent; Exhibit 1)

#### CONCLUSIONS OF LAW

##### *I. Applicable Statutes and Rules.*

Iowa Code section 155A.12 (2005) provides, in relevant part:

**155A.12 Pharmacist license-grounds for discipline.**

...The board may...impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

...

5. Violated any provision of the controlled substances Act or rules relating to that Act.

Iowa Code section 155A.21(2005) provides, in relevant part:

**155A.21. 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 (2005) provides, in relevant part:

**155A.23 Prohibited 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.

...

Iowa Code chapter 124 is the Controlled Substances Act. Iowa Code section 124.403(1)(c)(2005) provides that it is unlawful

for any person knowingly or intentionally to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

Iowa Code section 272C.3(2)(a)(2005) authorizes a licensing board to revoke or suspend a license upon failure of a licensee to comply with a decision of the board imposing licensee discipline.

657 IAC 36.1(4) provides, in relevant part:

**36.1(4) Grounds for discipline.** The board may impose any of the disciplinary sanctions set out in rule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

...

h. Distribution of drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C...

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

...

u. 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.

## II. The Violations

### A. Counts I, II

The preponderance of the evidence established that Respondent unlawfully possessed and used the controlled substance phentermine, which he obtained without prescriber authorization through an illegal Internet source. Respondent has violated Iowa Code sections 155A.12(1), 155A.21, 155A.23, 124.403(1)(c)(2005) and 657 IAC 36.1(4) "h", "j", and "u."

*B. Count III*

The preponderance of the evidence established that Respondent failed to comply with his probation reporting requirements and failed to obey all federal and state laws, rules and regulations related to prescription drugs and controlled substances, in violation of Iowa Code sections 155A.12(1), (5), 272C.3(2) (2005) and 657 IAC 36.1(4)"i", "j", and "u." The Board issued a Decision and Order on February 23, 2005, which placed Respondent's pharmacy license on probation for a period of three years, subject to numerous terms of probation. Respondent violated the terms of probation when he failed to file all quarterly reports in a timely manner and when he failed to comply with all statutes and rules relating to prescription drugs and controlled substances.

*III. Sanction*

Respondent has successfully completed chemical dependency treatment and is participating in a structured aftercare program. Both his IPRN monitor and his employer believe that he is in successful recovery and is capable of practicing pharmacy in a competent and ethical manner, subject to appropriate monitoring for his mental health condition and his chemical dependency. There is no evidence that Respondent's violations adversely affected patient care at the pharmacy. Based on its review of the entire record, the Board concluded that Respondent would be allowed one final opportunity to establish that he will comply with all legal and ethical requirements imposed on him by state and federal law and by the Board. However, Respondent's pharmacy practice must be closely monitored to protect the public safety and welfare.

DECISION AND ORDER

IT IS THEREFORE ORDERED that pharmacist license no. 19377, issued to Zachary P. McMahon, shall be placed on probation for a period of five (5) years, effective upon service of this Decision and Order, and subject to the following conditions:

1. Respondent shall completely abstain from the personal use of alcohol. Respondent shall completely abstain from the personal use of all controlled substances or drugs in any form unless prescribed by a duly licensed treating physician. Respondent shall have one primary care physician and shall advise any treating physician of his chemical dependency prior to accepting any prescription

drug. Respondent shall report to the Board within fourteen days any use of controlled substances prescribed by physicians to Respondent. The report shall include a copy of the prescription and the name of the pharmacy where the prescription was filled. Respondent shall not obtain any drugs through Internet sources.

2. Within sixty (60) days of the date of this Decision and Order, Respondent must be evaluated by a pain specialist and must ensure that the pain specialist provides a written report to the Board. In the written report, the pain specialist shall verify having read this Decision and Order of the Board and shall provide an opinion as to whether or not controlled substances are the only reasonable treatment for Respondent's condition.

3. Respondent shall participate in and shall fully comply with a Board approved urine screening program through First Lab. In addition, Respondent shall immediately submit a witnessed blood or urine sample whenever requested by the Board or its designee. All costs of biological fluid testing shall be borne by the Respondent.

4. Respondent shall participate in the Iowa Pharmacy Recovery Network (IPRN) program under the direct support of an IPRN advocate and shall fully comply with all IPRN requirements.

5. Respondent shall successfully complete the Powell aftercare program and shall direct the aftercare program to send a discharge report to the Board when the program has been successfully completed. Respondent shall comply with all recommendations of the aftercare program.

6. Respondent shall attend at least two structured recovery support group meetings each week, such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). One of the meetings shall be the Caduceus meeting for professionals in recovery. Respondent shall maintain documentation verifying his attendance at the required meetings and shall submit the documentation to the Board with his quarterly written reports.

7. Respondent shall continue to receive regular psychiatric care and medication management by his treating psychiatrist. Respondent shall also continue to participate in regular psychotherapy with his treating licensed social worker or with another mental health professional approved by the Board. Respondent shall continue under psychiatric care and in psychotherapy at the frequency recommended by the healthcare professionals until he is discharged from treatment and a written copy of the discharge summary(s) is provided to the Board.

Respondent shall ensure that his treating psychiatrist and social worker provide quarterly written reports to the Board documenting Respondent's compliance with their treatment recommendations and his progress in treatment. The reports shall be filed no later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation.

8. During the period of probation, Respondent shall obtain Board approval of any work environment and shall work no more than 45 hours each week. Respondent shall provide all employers and all of his co-employees in the pharmacy with a copy of this Decision and Order within 15 days of its receipt or within 15 days of beginning any new employment. All employers and all pharmacy co-employees shall read the Decision and Order and shall sign a verification that they understand the terms, conditions and restrictions imposed on Respondent by this decision. These written verifications shall be provided to the Board when signed. Respondent's employer shall provide quarterly written reports to the Board describing his work performance and attendance. The reports shall be filed no later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation.

9. During the period of probation, Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

10. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his 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 place of

employment, current home address, home telephone number, or work telephone number, progress in treatment, verification of AA/NA attendance, and any further information deemed necessary by the Board from time to time.

11. Respondent shall make personal appearances before the Board or a Board Committee upon request. Respondent shall be given reasonable notice of the date, time and location for such appearances.

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

13. Respondent shall release his medical records to the Board upon request, including all medical recordings pertaining to treatment for mental conditions and for alcohol and substance abuse, if any, and shall sign all necessary releases of information to allow the free flow of information between the Board and Respondent's physician(s) and treatment provider(s) and to ensure that the Board receives all necessary information if further evaluation or treatment of Respondent is requested or required.

14. Respondent shall obey all federal and state laws, rules, and regulations substantially related to prescription drugs, controlled substances, or nonprescription drugs; with Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, and 205; and shall comply with the Board's rules.

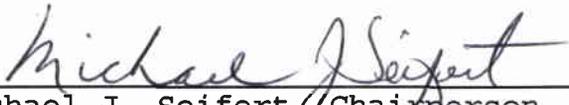
15. Should Respondent leave Iowa to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

16. Should the Respondent violate or fail to comply with any of the terms and conditions of probation, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Respondent 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 16<sup>th</sup> day of January, 2007.

  
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Michael J. Seifert, Chairperson  
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General

This final decision of the Board can be appealed in accordance with the Iowa administrative procedures Act.