

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

Re:	)	Case No. 2004-83
Pharmacy License of	)	
<b>MEDICAL PARK PHARMACY</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 58,	)	
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 (2003).
3. Effective December 31, 2003, the Board renewed Respondent's general pharmacy license number 58 with Jack W. Bieber as pharmacist in charge, allowing Respondent to engage in the operation of pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. General pharmacy license number 58 is current until December 31, 2004.
5. Respondent is currently operating a general pharmacy at 430 West 35<sup>th</sup> Street, Davenport, Iowa 52806.

**A. CHARGES**

**COUNT I – LACK OF PROFESSIONAL COMPETENCY**

Respondent is charged under Iowa Code § 155A.15(2)(c) (2003) and 657 Iowa Administrative Code § 36.1(4) with a lack of professional competency, including a failure to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacy in the state of Iowa acting under the same or similar circumstances.

**COUNT II – ILLEGAL DISTRIBUTION OF DRUGS**

Respondent is charged with distribution of drugs for other than lawful purposes in violation of Iowa Code § 155A.15(2)(d) (2003) and 657 Iowa Administrative Code § 36.1(4)(h), including diversion of prescription drugs and controlled substances, and distribution of drugs to an employee's wife in the absence of a prescription.

### COUNT III – VIOLATION OF CONTROLLED SUBSTANCES LAWS

Respondent is charged with violation of controlled substances laws in violation of Iowa Code § 155A.15(2)(c) (2003) and 657 Iowa Administrative Code § 36.1(j).

### COUNT IV – INADEQUATE RECORD KEEPING

Respondent is charged under Iowa Code §§ 124.308(3), 155A.15(2)(h), 155A.27 (2003) and 657 Iowa Administrative Code §§ 6.2, 6.8, 8.15 & 36.1(4)(ac) and 21 CFR 1304.11 & 1306.22(a) with inadequate record keeping, including but not limited to failure to maintain records of prescriptions in a readily retrievable manner.

### COUNT V – INADEQUATE CONTROLS OVER CONTROLLED SUBSTANCES

The Respondent is charged under Iowa Code §§ 124.308(3), 124.402(1)(a), 155A.15(2)(i) (2003) and 657 Iowa Administrative Code § 6.7 with failing to maintain accurate control over and accountability for drugs, including controlled substances.

### COUNT VI – UNETHICAL CONDUCT; FRAUD

Respondent is charged with engaging in unethical conduct in violation of Iowa Code § 155A.15(2) and 155A.12(2) (2003), and 657 Iowa Administrative Code § 36.1(4)(c) by, among other things, falsifying pharmacy records and falsifying medical insurance claims.

### COUNT VII – UNETHICAL CONDUCT; MISBRANDING DRUGS

Respondent is charged with engaging in unethical conduct in the operation of a pharmacy in violation of Iowa Code § 155A.15(2)(f) (2003) and 657 Iowa Administrative Code § 36.1(4)(c), including delivery of mislabeled prescription drugs, and tampering with and adulteration of drugs in violation of Iowa Code §§ 126.3, 126.9, and 126.10 (2003).

## B. FACTUAL CIRCUMSTANCES

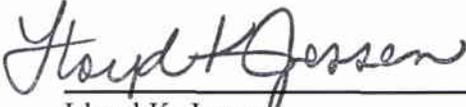
On or about October 14, 2004 an investigation was commenced, revealing the following:

1. Respondent's pharmacist in charge is Jack W. Bieber. With the exception of one week per year, Bieber is the only pharmacist to work at Medical Park Pharmacy. No technicians work at the pharmacy.
2. An examination of Medical Park Pharmacy revealed that the prescription-filling area and drug storage areas are not secure from the remaining portion of the pharmacy, and the

pharmacy is at times left unlocked and unattended. The pharmacy was dusty and the refrigerator unclean.

3. On the pharmacy dispensing shelves were located 195 bottles of outdated drugs (approximately 40% of the total inventory), empty stock bottles and ointment boxes, and 152 empty patient prescription bottles – some dating back 2 to 3 years). Two patient prescription bottles were filled with prescription medications which apparently were filled at CVC and Walgreens pharmacies.
4. Manufacturer's sample packages were also found on the dispensing shelves.
5. Respondent's employee Jack W. Bieber admitted that he provides his wife with prescription medications, in the absence of a prescription.
6. Bringing current the biennial inventory (beginning on May 1, 2003) for Medical Park Pharmacy revealed substantial shortages of controlled substances, including shortages of Dextroamphetamine Sul., 10 mg. (2, 877 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate ER 30 mg. (3800 tablets), Oxycondone/APAP 5/525 (2740 tablets), Ambien 10 mg. (2164 tablets), APAP with Codeine Phos 60/300 (2895 tablets), HDCD/APAP 10/325 (QT) (3690 tablets). The current inventory also revealed a shortage of 57 pints of Hydrocodone BT/Guaifenesin liquid.
7. Respondent's employee Jack W. Bieber identified a box containing 28 bottles of substances which he asserted were controlled substances awaiting destruction. Examination of the bottles revealed that all but one of the 28 bottles contained not the drug identified on the label, but a look-alike drug.
8. Six bottles located on the dispensing shelves had labels indicating their contents as Methylin 20 mg. All of the bottles contained look-alike drugs, but not Methylin 20 mg.
9. A review of prescription records revealed a general lack of prescription information.
10. Where prescription records do exist, they are often incomplete. For some prescriptions, only a number (without name, address, etc.) was recorded. In other cases, hand-written prescriptions were filed. Moreover, some controlled substance prescriptions were refilled more than 5 times, or filled outside the 6 month period following issuance of the prescription.
11. A sample of 7 original prescriptions was checked for authenticity by calling the purported issuing physician. Each of the 7 prescriptions was declared by a physician or physician's office to be invalid.
12. Respondent's records reveal Medicare claims were made on the basis of the invalid physician prescriptions.

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.

  
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Lloyd K. Jessen  
Executive Secretary/Director

On this 2<sup>ND</sup> day of November 2004, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.

  
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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

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

Re:	)	Case No. 2004-83
Pharmacist License of	)	
<b>MEDICAL PARK PHARMACY</b>	)	<b>EMERGENCY ORDER</b>
License No. 58,	)	
Respondent.	)	

**I. JURISDICTION**

The Iowa Board of Pharmacy Examiners (hereinafter, "Board") has jurisdiction over pharmacy licensees pursuant to Iowa Code Chapters 155A and 272C (2003). Respondent Medical Park Pharmacy possesses pharmacy license number 58 issued by the Board. A Statement of Charges was filed against Respondent on November 2, 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 December 31, 2003, the Board renewed Respondent's license to engage in the practice of pharmacy as evidenced by license number 58, subject to the laws of the State of Iowa and the rules of the Board.
2. Respondent operates a pharmacy at 430 West 35<sup>th</sup> Street, Davenport, Iowa 52806.
3. On October 14, 2004, the board commenced an investigation of Respondent which revealed the following, which the Board hereby finds:
  - a. Respondent's pharmacist in charge is Jack W. Bieber. With the exception of one week per year, Bieber is the only pharmacist to work at Medical Park Pharmacy. No technicians work at the pharmacy.

- b. An examination of Medical Park Pharmacy revealed that the prescription-filling area and drug storage areas are not secure from the remaining portion of the pharmacy, and the pharmacy is at times left unlocked and unattended. The pharmacy was dusty and the refrigerator unclean.
- c. On the pharmacy dispensing shelves were located 195 bottles of outdated drugs (approximately 40% of the total inventory), empty stock bottles and ointment boxes, and 152 empty patient prescription bottles – some dating back 2 to 3 years. Two patient prescription bottles were filled with prescription medications which apparently were filled at CVC and Walgreens pharmacies.
- d. Manufacturer's sample packages were also found on the dispensing shelves.
- e. Respondent's employee Jack W. Bieber admitted that he provides his wife with prescription medications, in the absence of a prescription.
- f. Bringing current the biennial inventory (beginning on May 1, 2003) for Medical Park Pharmacy revealed substantial shortages of controlled substances, including shortages of Dextroamphetamine Sul., 10 mg. (2, 877 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate 20 mg. (3800 tablets), Methylphenidate ER 30 mg. (3800 tablets), Oxycodone/APAP 5/525 (2740 tablets), Ambien 10 mg. (2164 tablets), APAP with Codeine Phos. 60/300 (2895 tablets), HDCD/APAP 10/325 (QT) (3690 tablets). The current inventory also revealed a shortage of 57 pints of Hydrocodone BT/Guaifenesin liquid.
- g. Respondent's employee Jack W. Bieber identified a box containing 28 bottles of substances which he asserted were controlled substances awaiting destruction. Examination of the bottles revealed that all but one of the 28 bottles contained not the drug identified on the label, but a look-alike drug.
- h. Six bottles located on the dispensing shelves had labels indicating their contents as Methylin 20 mg. All of the bottles contained look-alike drugs, but not Methylin 20 mg.
- i. A review of prescription records revealed a general lack of prescription information.
- j. Where prescription records did exist, they were often incomplete. For some prescriptions, only a number (without name, address, etc.) was recorded. In other cases, hand-written prescriptions were filed. Moreover, some controlled substance prescriptions were refilled more than 5 times, or filled outside the 6 month period following issuance of the prescription.
- k. A sample of 7 original prescriptions was checked for authenticity by calling the purported issuing physician. Each of the 7 prescriptions was declared by a physician or physician's office to be invalid.

1. Respondent's records reveal Medicare claims were made on the basis of the invalid physician prescriptions.
4. The Board finds that the evidence assembled during the investigation of Respondent supports the November 2, 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-pharmacy appears to have been dispensing outdated prescription medications along with medications repurchased from clients and consumers, all in an unclean environment. These practices represent an immediate and continuing danger to the public health, safety and welfare because the public is likely, under the described circumstances, to receive outdated or incorrect – and possibly unclean – medications.
  - b. Large quantities of controlled substances appear to have been dispensed from Respondent-pharmacy. Prescription records to support the dispensed controlled substances are missing or never existed. Because of the amount of controlled substances unaccounted for, it is likely the drugs are being diverted to "street" sale and use, constituting an immediate and continuing danger to the public health, safety and welfare.
  - c. Respondent-pharmacy has engaged in a practice of dispensing prescription medication without requiring a prescription or current prescription. This practice results in prescriptions being dispensed without the usual and requisite involvement of a physician/prescriber. In this circumstance, there is a substantial possibility of misuse or incorrect use of prescription medications which might adversely affect the health of members of the public. Respondent-pharmacy's practices constitute an immediate and continuing threat to the public health, safety and welfare.
  - d. There is no evidence to indicate that the manner of operation of Medical Park Pharmacy is short-term, accidental, the result of a misunderstanding as to appropriate pharmacy practices or other mistake. For example, the failure to maintain dispensing records relating to large volumes of controlled substances suggests either total disregard for controlled substances law or illegal diversion and distribution of drugs.

6. The Board finds that immediate, emergency action must be taken for the reason that if Respondent is allowed to continue to operate as a pharmacy, the public health, safety and welfare will be threatened by improper and unlawful practices related to dispensing medications to members of the public.
7. The Board finds that the minimum emergency action needed to protect the public health, safety and welfare is as follows:
  - a. Immediate suspension of Respondent's pharmacy license.
  - b. Issuance of an order directing that Respondent's pharmacy license shall remain suspended until satisfactory evidence of Respondent's ability to resume pharmacy operations has been provided to the Board.

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

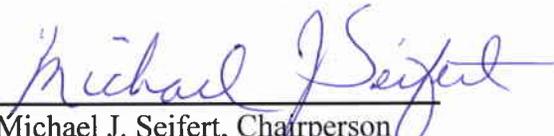
1. Respondent's disregard for the provisions of Iowa Code chapter 155A.15 and chapter 657 of the Iowa Administrative Code, as well as the provisions of state and federal law relating to controlled substances, prevent Respondent from operating safely as a pharmacy.
2. The provisions of Iowa Code § 17A.18A (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 pharmacy license of Medical Park Pharmacy is suspended indefinitely.  
This suspension is effective immediately upon issuance of this order.
- 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 December December 16, 2004. The hearing will commence at 1:00 P.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 2<sup>nd</sup> day of November 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

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

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Re:	)	<b>ORDER</b>
Pharmacy License of	)	<b>ACCEPTING</b>
<b>MEDICAL PARK PHARMACY</b>	)	<b>SURRENDER OF</b>
License No. 58	)	<b>PHARMACY LICENSE</b>

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**COMES NOW**, Michael J. Seifert, Chairperson of the Iowa Board of Pharmacy Examiners, on the 16<sup>th</sup> day of December, 2004, and declares that:

1. On November 2, 2004, the Board issued a Statement of Charges and Emergency Order to the Respondent.
2. On November 5, 2004, Respondent executed a voluntary surrender of pharmacy license number 58, pursuant to 657 Iowa Administrative Code § 36.15. In so doing, Respondent waived its right to a formal hearing before the Iowa Board of Pharmacy Examiners.
3. On December 16, 2004, the Board reviewed Respondent's voluntary surrender of its pharmacy license and agreed to accept it.

**WHEREFORE**, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacy license number 58 is hereby accepted and, pursuant to 657 Iowa Administrative Code § 36.13, said surrender shall be considered a revocation of registration with respect to any future request for reinstatement.

IOWA BOARD OF PHARMACY EXAMINERS

  
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MICHAEL J. SEIFERT, Chairperson

**VOLUNTARY SURRENDER OF PHARMACY LICENSE**

I, Jack W. Bieber, a resident of Scott County, Iowa, and pharmacist in charge for Medical Park Pharmacy, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat on the part of anyone, do hereby voluntarily surrender to the Iowa Board of Pharmacy Examiners for the State of Iowa, for an indefinite period of time, pharmacy license number 58, held by Medical Park Pharmacy, 430 W. 35<sup>th</sup> Street, Davenport Iowa 52806. This surrender of license shall become effective upon my notarized signature being affixed to this voluntary surrender document.

I, Jack W. Bieber, of my own free will and without any mental reservation and not as a result of any inducement, promise or threat by any representative, officer, or employee of the Iowa Board of Pharmacy Examiners, or by any other state official, do hereby further acknowledge that by signing this voluntary surrender document I am knowingly and willingly giving up the right of Medical Park Pharmacy to exercise the following legal rights relating to proceedings pending before the Iowa Board of Pharmacy Examiners:

- (1) The right to a formal hearing before the Iowa Board of Pharmacy Examiners regarding potential discipline or discontinuance of a pharmacy license, issued pursuant to Iowa Code Chapter 155A (2003).
- (2) The right of Medical Park Pharmacy to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) The right of Medical Park Pharmacy to submit evidence and to have witnesses called on its behalf at a formal hearing.

I, Jack W. Bieber, hereby further give my assurance that I shall not engage in any activities on behalf of Medical Park Pharmacy, as pharmacist in charge or in any other manner, for which a pharmacy license is required.

November 10, 2004  
Date of signature

Jack W. Bieber  
Jack W. Bieber  
Pharmacist in charge  
Medical Park Pharmacy

State of Illinois :  
: SS  
County of Rock Island :

Subscribed and sworn to before me by Jack W. Bieber on this 10<sup>th</sup> day of  
November 2004.



*Shelley J. Weih*  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF ILLINOIS

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