

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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In the Matter of the Complaint	:	
and Statement of Charges Against	:	COMPLAINT AND
Richard E. Palmer	:	
Pharmacist	:	STATEMENT OF CHARGES
Respondent	:	

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COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 5th day of January, 1987, and files this Complaint and Statement of Charges against Richard E. Palmer, a pharmacist licensed pursuant to Iowa Code Chapter 155, and alleges that:

1. Margo L. Underwood, Chairperson; Rollin C. Bridge, Vice Chairperson; Jerry M. Hartleip; John F. Rode; Melba L. Scaglione; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued license number 12420 to practice pharmacy in the state of Iowa on July 10, 1958.

3. Respondent's license to practice pharmacy in Iowa is current until June 30, 1987.

4. Respondent is the pharmacist-owner of Palmer Drug, 2600 Dodge Street, Dubuque, Iowa.

5. Respondent has a financial interest in Grandview Drug, Inc., 486 N. Grandview, Dubuque, Iowa; Union Prescription Center, 1428 Osborn, Burlington, Iowa; Union Prescription Center, 1130 Old Marion Road, Cedar Rapids, Iowa; Union Prescription Center, 700 First Avenue N.W., Cedar Rapids, Iowa; and Union Prescription Center, 2541 Central Avenue, Dubuque, Iowa.

6. An inspection of Palmer Drug was begun on April 16, 1986, by Jerome C. Davis, an investigator for the federal Food and Drug Administration, and E. Ray Shelden, an investigator for the Iowa Board of Pharmacy Examiners. The purpose for this investigation was to review procedures used by Palmer Drug to repackage prescription legend drugs for use by Palmer Drug and the other pharmacies in which Mr. Palmer maintained a financial interest.

7. The inspection of April 16, 1986, revealed that repackaging was done at Palmer Drug under the direction of Respondent. The inspection also revealed the following:

a. 4000 Minocin 50 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on December 19, 1985. 3700 of these samples were repackaged in a container which formerly contained Amoxil 250 mg capsules.

b. 3000 Inderal LA 80 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on April 10, 1986. These samples were repackaged in a container that formerly contained Klotrix 10 meq tablets.

c. 950 Inderal LA 80 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on November 15, 1985. These samples were repackaged in a container that formerly contained Klotrix 10 meq tablets.

d. 875 Inderal LA 120 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on November 15, 1985. These samples were repackaged in a container that formerly contained Micro-K 10 Extencaps.

e. 200 Inderal LA 120 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on January 7, 1986. This repackaged product was shipped to Union Prescription Center, 1428 Osborn, Burlington, Iowa.

f. 1500 Inderal LA 160 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on November 8, 1985. These samples were repackaged in a container that formerly contained Ibuprofen 600 mg tablets distributed by H. L. Moore Drug Exchange.

g. 10,000 Inderal 20 mg tablets purchased from Ayerst Laboratories on October 16, 1985, were repackaged by Pharmacist Charles Wiebke on November 23, 1985. At least 1000 of these tablets were repackaged in a container which formerly contained Corgard 80 mg tablets. 2000 of these repackaged tablets were shipped to Grandview Drug on November 23, 1985, and on January 7, 1986. 1000 of these repackaged tablets were shipped to Grandview Drug on March 3, 1986, and on March 12, 1986.

h. 3032 Inderide 40/25 tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on November 16, 1985. These samples were repackaged in a container which formerly contained an unidentifiable, but different drug. 1000 of these tablets were shipped to Union Prescription Center in Burlington on December 7, 1985.

i. 1008 Premarin 1.25 mg tablets obtained as samples were repackaged by Pharmacist Charles Wiebke on November 16, 1985. An additional 2016 Premarin 1.25 mg tablets obtained as samples were repackaged on November 21, 1985, by Pharmacist Charles Wiebke. A portion of these samples were repackaged in a container which formerly contained Ibuprofen tablets 400 mg, distributed by Williams Generics, Inc., of Memphis, Tennessee.

8. The samples referred to in paragraph 7 which were repackaged were purchased by Respondent.

9. Palmer Drug policies and procedures relative to the repackaging of drugs were established by Respondent.

10. Respondent distributed misbranded and adulterated repackaged prescription drugs to Grandview Drug and Union Prescription Center in Dubuque and to Union Prescription Center in Burlington on numerous occasions between November 1985 and March 1986. (See investigative report dated 4-21-86.)

11. Respondent was noncompliant with Title 21, Code of Federal Regulations, Parts 210 and 211.

12. Respondent is guilty of a violation of Iowa Code paragraphs 203A.3(1), (2) and (3) by virtue of the allegations in paragraphs 7, 8, 9, 10 and 11.

Paragraphs 203A.3(1), (2) and (3) read as follows:

"203A.3 Prohibited Acts. The following acts and the causing thereof within the state of Iowa are hereby prohibited:

1. The manufacture, sale or delivery, holding or offering for sale of any drug...that is adulterated or misbranded.
2. The adulteration or misbranding of any drug....
3. The receipt in commerce of any drug...that is adulterated or misbranded, and the delivery, or proffered delivery thereof for pay or otherwise."

13. Respondent is guilty of a violation of Board Rule §620--10.1(4) "b"(4), "h" and "j" by virtue of the allegation in paragraph 12.

Rule 10.1(4) reads as follows:

"The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1000.00, when the board determines that the licensee or registrant is guilty of the following acts or offenses:

b. Professional incompetency. Professional incompetency includes but is not limited to...(4) a willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

h. ...The distribution of drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of chapters 155, 203, 203A and 204 of the Code.

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."

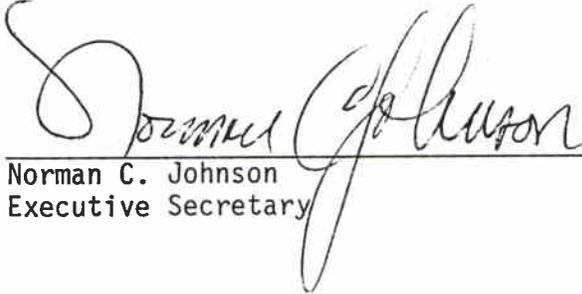
14. Paragraphs 12 and 13 constitute grounds for which Respondent's license to practice pharmacy can be suspended or revoked.

WHEREFORE, the undersigned charges that Richard E. Palmer has violated paragraph 203A.3(1); 203A.3(2) and 203A.3(3) of the Code of Iowa, and Rule §620--10.1(4)"b"(4), "h" and "j" of the Iowa Administrative Code.

IT IS HEREBY ORDERED that Richard E. Palmer appear before the Iowa Board of Pharmacy Examiners on February 17, 1987, at 10:00 a.m. in the second floor conference room, 1209 E. Court, Executive Hill West, 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 license to practice pharmacy issued to Richard E. Palmer on July 10, 1958, or take whatever additional steps they deem necessary.

IOWA BOARD OF PHARMACY EXAMINERS

  
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Norman C. Johnson  
Executive Secretary

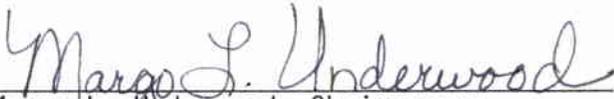


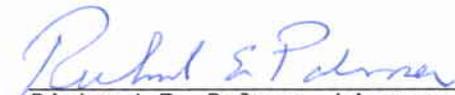
- c. Licensee is fined \$1000 payable within 30 days of the signing of this Order.
- d. Licensee shall adopt written policy and procedures relating to the repackaging and distribution of prescription and nonprescription drugs for Palmer Drug, 2600 Dodge, Dubuque, Iowa. These policies and procedures shall follow federal Food and Drug Administration's Good Manufacturing Practices for Finished Pharmaceuticals, Code of Federal Regulations (CFR) Title 21, Part 211. These written policies and procedures shall be submitted to the Board for approval prior to their adoption by Licensee.
- e. Licensee shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
- f. Licensee shall report in writing to the Board office no later than the tenth of each month his residency and employment status during the period of suspension and probation. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.
- g. Licensee shall submit to peer review as deemed necessary by the Board.
- h. Licensee shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
- i. Licensee shall notify all present and prospective employers of the terms, conditions, and restrictions imposed on Licensee by this agreement. Within 30 days of the effective date of this decision, and within 15 days of Licensee undertaking new employment, Licensee shall cause his employer to report to the Board in writing acknowledging that the employer has read the conditions of this agreement.
- j. Licensee shall not supervise any registered intern and shall not perform any of the duties of a preceptor.
- k. Should Licensee leave Iowa to reside or practice outside this state, Licensee 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.
- l. Should Licensee violate probation in any respect, the Board, after giving Licensee notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against

Licensee during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

- m. Upon successful completion of probation, Licensee's certificate will be fully restored.

THE ABOVE AND FOREGOING CONSTITUTE THE FULL AND COMPLETE STIPULATION AND AGREEMENT OF THE PARTIES HERETO.

  
Margo L. Underwood, Chairperson  
Iowa Board of Pharmacy Examiners

  
Richard E. Palmer, Licensee

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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In the Matter of :  
RICHARD E. PALMER, Pharmacist : ORDER AND CONSENT TO ORDER  
License No. 12420 :

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The Iowa Board of Pharmacy Examiners, having been advised of the allegations and charges made against Richard E. Palmer, which could cause action to be taken against his license, and Licensee, having entered into a Stipulation representing their mutual informed consent as to the waiver of provisions found in Sections 17A.12 and 17A.18, Code of Iowa 1987, in regards to notice and hearing, the parties to this action agree to an informal settlement of the matter, namely that the license of Richard E. Palmer disciplined according to the conditions attached hereto.

ORDER

IT IS THEREFORE ORDERED, subject to the consent of Richard E. Palmer, to be contained herein to this Order that the license of Richard E. Palmer to practice pharmacy be disciplined according to the conditions outlined in the Stipulation attached hereto and made part of this Order.

Date March 23, 1987

Margo L. Underwood  
Margo L. Underwood, Chairperson  
Iowa Board of Pharmacy Examiners

CONSENT TO ORDER

I, Richard E. Palmer, hereby consent to the Order set forth above, waive my right to a hearing on this matter, and thereby specifically waive a right to confrontation, cross-examination of witnesses, production of evidence, making of a record, and judicial review.

Date 4-15-87

Richard E. Palmer  
Richard E. Palmer, Licensee

BEFORE THE BOARD OF PHARMACY EXAMINERS  
OF THE STATE OF IOWA

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Re: Pharmacist License of <b>RICHARD E. PALMER</b> License No. 12420 Respondent	} } } } } }	<b>COMPLAINT AND STATEMENT OF CHARGES AND NOTICE OF HEARING</b>
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**COMES NOW**, Lloyd K. Jessen, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 5th day of September, 1991, and files this Complaint and Statement of Charges against Richard E. Palmer, a pharmacist licensed 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 issued a license to practice pharmacy in Iowa on July 10, 1958, by examination.

3. Respondent's license to practice pharmacy in Iowa is current until June 30, 1993.

4. Respondent was a self-employed pharmacist and part-owner of Palmer Drug located at 2600 Dodge Street, Dubuque, Iowa, during all times relevant to this complaint and statement of charges. Prior to 1983 Respondent was the pharmacist in charge of Palmer Drug.

5. Respondent currently resides at 3107 Spring Valley Road, Dubuque, Iowa 52001.

6. On January 28, 1991, a consumer complaint was received at the Board office which alleged that pharmacists employed at Palmer Drug had repeatedly dispensed two prescription medications, chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg), to a female patient without prescriber authorization between 1972 and 1986. It was further alleged that Richard H. Lee, M.D., had issued the original prescriptions for both medications but had not authorized continuous refills. The complaint was referred to Pharmacy Investigator E. Ray Shelden for investigation.

7. On April 3, 1991, the Board received a written statement and a copy of a patient medical record from Richard H. Lee, M.D. Dr. Lee stated that he had first seen the patient around 1971. The patient medical record indicated that Dr. Lee did not see the patient between 1976 and 1986. The patient medical record also indicated that Dr. Lee did not authorize prescriptions for the patient for chlorpromazine 50mg (Thorazine 50mg) or doxepin hydrochloride 50mg (Sinequan 50mg) between approximately 1976 and September 19, 1986.

8. On April 11, 1991, the Board received an investigative report from Pharmacy Investigator E. Ray Sheldon which indicates that Respondent and other pharmacists employed at Palmer Drug dispensed the prescription drugs chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg) in the following manner and during the following time period:

a. The patient alleges that on April 3, 1972, Richard H. Lee, M.D., issued her a prescription for chlorpromazine 50mg (Thorazine 50mg). The patient also alleges that on April 17, 1972, Richard H. Lee, M.D., issued her a prescription for doxepin hydrochloride 50mg (Sinequan 50mg). The patient states that after seeing Dr. Lee in April 1972 she did not see him again until 1986.

b. The patient alleges that the prescriptions for chlorpromazine 50mg (Thorazine 50mg) and doxepin hydrochloride 50mg (Sinequan 50mg) were repeatedly and continuously refilled by Respondent and other pharmacists employed at Palmer Drug from 1972 to 1986 without authorization from Richard H. Lee, M.D., or any other authorized prescriber.

c. Evidence produced by the patient indicates that Respondent and other pharmacists employed at Palmer Drug dispensed either doxepin hydrochloride 50mg (Sinequan 50mg) or chlorpromazine 50mg (Thorazine 50mg) on sixteen occasions in 1981, seventeen occasions in 1982, and ten occasions in 1984. The records purport that all of the prescriptions were issued by Richard H. Lee, M.D.

d. Prescription number 657154 obtained from Palmer Drug indicates that a prescription for 100 capsules of doxepin hydrochloride 50mg (Sinequan 50mg) was filled and dispensed to the patient on July 24, 1986. In addition, prescription number 657156 obtained from Palmer Drug indicates that a prescription for 120 tablets of chlorpromazine 50mg (Thorazine 50mg) was filled and dispensed to the patient on July 24, 1986. Pharmacy records from Palmer Drug indicate that prescription numbers 657154 and 657156 were purportedly issued by Richard H. Lee, M.D.

9. Respondent is guilty of violations of Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), and 155A.29 by virtue of the information and allegations contained in paragraphs 6, 7, and 8.

Iowa Code section 155A.12 provides, in part, the following:

...The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or 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.

Iowa Code section 155A.23 provides, in part, the following:

A person shall not:...

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

....

4. Make or utter any false or forged prescription or written order.

Iowa Code section 155A.29 provides the following:

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than eleven times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

- a. The pharmacist is unable to contact the prescriber after reasonable effort.

- b. Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.

- c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

10. Respondent is guilty of violations of 657 Iowa Administrative Code sections 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) by virtue of the information and allegations contained in paragraphs 6, 7, and 8.

657 Iowa Administrative Code section 9.1 provides, in part, the following:

4. The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:...

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

....

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.

....

u. Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55, 155A.12 and 155A.15.

The Iowa Board of Pharmacy Examiners finds that paragraphs 9 and 10 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

**WHEREFORE,** the undersigned charges that Respondent has violated Iowa Code sections 155A.12(1), 155A.23(2), 155A.23(4), and 155A.29 and 657 Iowa Administrative Code sections 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u).

**IT IS HEREBY ORDERED,** pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Richard E. Palmer appear before the Iowa Board of Pharmacy Examiners on Wednesday, November 20, 1991, at 2:00 p.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 license to practice pharmacy issued to Richard E. Palmer on July 10, 1958, 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 license.

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



for a period of thirty (30) days. The suspension is stayed however, and the Respondent's license is placed on probation for a period of one (1) year from the approval of this Stipulation and Informal Settlement. During the probationary period the Respondent shall:

a. Obey all federal and state laws and regulations substantially related to the practice of pharmacy.

b. Report to the Board or its designee quarterly. Said report shall be in person or in writing, as directed. The report shall include the Respondent's place of employment, current address, and any further information deemed necessary by the Board from time to time.

c. Provide evidence of efforts to maintain skill and knowledge as a pharmacist through continuing education (CE) as directed by the Board.

d. Should Respondent cease to be self-employed, within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read this document.

e. Not supervise any registered intern and shall not perform any of the duties of a preceptor.

8. Should Respondent leave Iowa to reside or practice outside this State, Respondent shall 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.

9. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the stayed suspension. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Respondent shall take and successfully pass the Iowa Drug Law Exam (IDLE) with a score of 75 percent, and the Federal Drug Law Exam (FDLE) with a score of 75, within the one (1) year probationary period after approval of this Stipulation and Informal Settlement. Respondent may take the exams a maximum of three (3) times each in the one year period. Failure to pass IDLE or FDLE within the one year period will be grounds to revoke probation and carry out the stayed suspension.

11. On or before January 1, 1993, Respondent shall pay a civil penalty in the amount of \$1000 by delivering a check made payable to the Treasurer of Iowa to the Executive Secretary of the Board. The check shall be deposited into the general fund.

12. Upon successful completion of probation, Respondent's certificate will be fully restored.

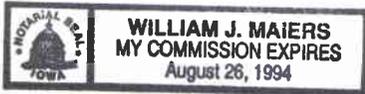
13. This Stipulation and Informal Settlement is subject to approval of the Board. If the Board approves this Stipulation and Informal Settlement, it becomes the final disposition of this matter. If the Board fails to approve this Stipulation and Informal Settlement, it shall be of no force or effect to either

party.

14. This Informal Settlement is voluntarily submitted by the Respondent to the Board for its consideration on the 3<sup>RD</sup> day of JANUARY, 1992.

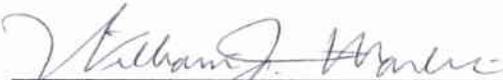
  
RICHARD E. PALMER  
Respondent

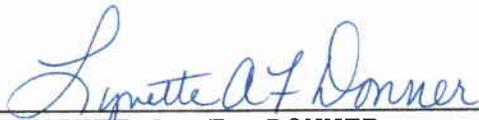
Signed and sworn to before me this 3<sup>RD</sup> day of JANUARY, 1992.



  
NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA

Approved as to form:

  
WILLIAM J. MAIERS  
Reynolds & Kenline  
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ATTORNEY FOR RESPONDENT

  
LYNETTE A. F. DONNER  
Assistant Attorney General  
Iowa Department of Justice  
Second Floor, Hoover Bldg.  
Des Moines, Iowa 50319  
ATTORNEY FOR THE  
PUBLIC INTEREST

15. This Informal Settlement is accepted by the Iowa Board of Pharmacy Examiners on the 14<sup>th</sup> day of January, 1992.

  
MELBA L. SCAGLIONE, Chairperson  
Iowa Board of Pharmacy Examiners