

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

Re:	)	EMERGENCY ORDER
Pharmacist License of	)	AND
STEPHEN J. WEISS	)	COMPLAINT AND
License No. 17208	)	STATEMENT OF CHARGES
Respondent	)	AND
	)	NOTICE OF HEARING

NOW on this 4th day of March 1994, the Iowa Board of Pharmacy Examiners has reviewed the following evidence:

1. Respondent was issued a license to practice pharmacy in Iowa on April 11, 1989, by reciprocity.

2. Respondent currently resides at 8226 Plum Drive, Urbandale, Iowa 50322.

3. Respondent is the pharmacist in charge and part owner of the Des Moines Pharmacy, Inc., 717 Lyon Street, Des Moines, Iowa 50309.

4. Respondent's license to practice pharmacy in Iowa is current until June 30, 1994.

5. The Board has received a complaint which alleges that Respondent dispensed medications by mail to "Jane Doe," a Medicaid recipient who had not requested the medications. A subsequent investigation has revealed that, between August

1992 and April 1993, Respondent mailed or delivered sixty (60) prescriptions to "Jane Doe" which "Jane Doe" allegedly did not want or need.

The Board has also received investigative information which alleges that Respondent has delivered unneeded and unwanted prescription drugs to "John Doe," a Medicaid recipient. During January 1994, Respondent delivered fifteen (15) prescriptions to "John Doe." In addition, it is alleged that Respondent has delivered unneeded and unwanted prescriptions to "John Doe" for more than two years. Furthermore, Respondent allegedly has failed to conduct effective prospective drug use review, has failed to prevent drug overutilization, and has failed to provide effective patient consultation.

On March 2, 1994, the Board received a written, sworn statement from Respondent dated March 1, 1994, which included certain admissions of wrongdoing. In the statement, Respondent admitted the following: (1) that he routinely mailed out prescription medications every 28 days to Medicaid recipients unless the recipients notified him that they didn't need the drugs; (2) that he mailed out some prescription medications to Medicaid recipients without prescriber authorization; (3) that he allowed Medicaid recipients to return prescription medications which Respondent had previously dispensed to them; (4) that he allowed a Medicaid recipient with AIDS to return the prescription drug, AZT (Zidovudine), for which Respondent gave the patient \$150; (5) that a physician had notified him that she believed he was sending prescription medications to certain Medicaid recipients which they did not need; and (6) that he had told people if they got business for him he would give them \$20 worth of over-the-counter medications.

In addition to the sworn statement, Respondent also notified the Board on March 2, 1994, that unknown quantities of various controlled substances were missing from his pharmacy, the Des Moines Pharmacy, Inc. The missing controlled substances are

said to include the following: Xanax, Vicodin, Tylenol with Codeine No. 3, and Tylenol with Codeine No. 4. Respondent alleged that on September 3, 1993, a pharmacy technician who was employed at his pharmacy confessed to taking unknown quantities of these drugs during the period of her employment. Respondent failed to report this loss of controlled substances from his pharmacy until March 2, 1994.

6. The information contained in paragraph 5, together with other investigative information in the possession of the Board, indicates that Respondent would pose a threat to the public health and safety if he were allowed to continue to practice pharmacy in Iowa.

Based upon the above evidence, the Iowa Board of Pharmacy Examiners finds that the public health, safety, and welfare would be jeopardized if Stephen J. Weiss were to be allowed to continue in the practice of pharmacy until a hearing can be conducted. Therefore, the Board finds that the public health, safety, and welfare makes emergency summary license suspension imperative, and so directs the Executive Secretary-Director to issue such order. It is the further order of the Board that during the period of the suspension, Respondent shall not enter any pharmacy prescription area and shall not manage any pharmacy, administer any pharmacy, or engage in any pharmacy-related service or activity.

IT IS HEREBY ORDERED, pursuant to the authority of Iowa Code section 17A.18(3), that the license of Stephen J. Weiss to practice pharmacy in Iowa be temporarily suspended until such time as a hearing before the Board of Pharmacy Examiners can be conducted.

With this notice, the Board also directs the Executive Secretary-Director of the Iowa Board of Pharmacy Examiners to file a Complaint and Statement of Charges and Notice of Hearing against Respondent, who is a pharmacist licensed pursuant to Iowa Code Chapter 155A. In filing said Complaint and Statement of Charges and Notice of Hearing, the secretary-director alleges that:

7. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; and Arlan D. Van Norman are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

8. Respondent is guilty of violations of 1993 Iowa Code sections 147.55(2), 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.12(4), 155A.19(1)(g), 155A.23(2), and 155A.23(4) by virtue of the allegations contained in paragraph 5.

1993 Iowa Code section 147.55 provides, in part, the following:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:...

2. Professional incompetency.

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

1993 Iowa Code section 155A.12 provides, in part, the following:

...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.
2. Engaged in unethical conduct as that term is defined by rules of the board.
3. Violated any of the provisions for licensee discipline set forth in section 147.55.
4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.

1993 Iowa Code section 155A.19 provides, in part, the following:

1. A pharmacy shall report in writing to the board, pursuant to its rules, the following:...
 - g. Theft or significant loss of any controlled substance on discovery of the theft or loss.

1993 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.

9. Respondent is guilty of violations of 657 Iowa Administrative Code sections 6.10, 8.5(1), 8.18, 8.19, 8.20, 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(i), 9.1(4)(j), 9.1(4)(t),

9.1(4)(u), and 10.10(5). by virtue of the allegations contained in paragraph 5.

657 Iowa Administrative Code section 6.10 provides the following:

For the protection of the public health and safety, no prescription drugs of any description or items of personal contact nature which have been removed from the original package or container after sale, shall be accepted for return, exchanged, or resold by any pharmacist except as authorized in subrule 8.9(6).

657 Iowa Administrative Code section 8.5 provides, in part, the following:

Unethical conduct or practice. The provisions of this section apply to licensed pharmacists and registered pharmacist-interns.

8.5(1) Misrepresentative deeds. A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

657 Iowa Administrative Code section 8.18 provides, in part, the following:

Pharmaceutical care -- patient records.

1. A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify

previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall be responsible for making a reasonable effort to obtain, record, and maintain the following information:

- a. Full name of the patient for whom the drug is intended;
- b. Address and telephone number of the patient;
- c. Patient's age or date of birth;
- d. Patient's gender;
- e. Significant patient information including a list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber; and
- f. Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug. 2.

The pharmacist shall be responsible for making a reasonable effort to obtain for the patient or the patient's caregiver, and shall be responsible for recording any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

657 Iowa Administrative Code section 8.19 provides the following:

Pharmaceutical care -- prospective drug review. A pharmacist shall review the patient record and each

prescription drug order presented for initial dispensing or refilling for purposes of promoting therapeutic appropriateness by identifying:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants other than pharmacist interns.

657 Iowa Administrative Code section 8.20 provides, in part, the following:

Pharmaceutical care -- patient counseling.

1. Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist shall counsel each patient or patient's caregiver. The counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

- a. The name and description of the drug;
- b. The dosage form, dose, route of administration, and duration of drug therapy;
- c. Intended use of the drug, if known, and expected action;

- d. Special directions and precautions for preparation, administration, and use by the patient;
- e. Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- f. Techniques for self-monitoring drug therapy;
- g. Proper storage;
- h. Prescription refill information;
- i. Action to be taken in the event of a missed dose;
- j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

2. When the patient or the patient's caregiver is present, counseling shall be in person.

3. When the patient or patient's caregiver is not present, the pharmacist shall counsel the patient or patient's caregiver either by initiating telephone discussion or by sending with the medication or device legible written notice including all of the following:

- a. patient-specific information satisfying all elements identified in subrule 8.20(1) and shall include the statement: "If any of this information is unclear or contrary to the instructions of the prescriber, contact the pharmacist at [insert toll-free telephone number]."

- b. a statement of the patient's right to request consultation; and

- c. a toll-free telephone number at which the patient may obtain oral consultation from a pharmacist who has ready access to the patient's record.

657 Iowa Administrative Code section 9.1(4) provides, in part, the following:

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:...

(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.

....

(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.

....

i. Willful or repeated violations of the provisions of Iowa Code chapter 147. Willful or repeated violations of this Act include but are not limited to a pharmacist intentionally or repeatedly violating a lawful rule or regulations promulgated by the board of pharmacy examiners or the state department of health or violating the provisions of Title VII (Public Health) or Title VIII (Practice Acts), Code of Iowa, as amended.

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.

....

t. Obtaining any fee by fraud or misrepresentation.

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.

657 Iowa Administrative Code section 10.10(5) provides the following:

A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance upon discovery of the theft or loss. The report shall be submitted to the board office within two weeks of discovery of the occurrence.

441 Iowa Administrative Code section 78.2(6) provides the following:

Consultation. In accordance with Public Law 101-508 (Omnibus Budget Reconciliation Act of 1990), a pharmacist shall offer to discuss with each Medicaid recipient or the caregiver of a recipient presenting a prescription, information regarding the use of the medication. The consultation is not required if the person refuses the consultation. Standards for the content of the consultation shall be found in rules of the Iowa board of pharmacy examiners.

441 Iowa Administrative Code section 79.2(2) provides, in part, the following grounds for sanctioning Medicaid providers:

Sanctions may be imposed by the department [of human services] against a provider for any one (1) or more of the following reasons:...

h. Overutilization of the medical assistance program by inducing, furnishing or otherwise causing the recipient to receive services or merchandise not required or requested by the recipient.

The Iowa Board of Pharmacy Examiners finds that paragraphs 8 and 9 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent has violated 1993 Iowa Code sections 147.55(2), 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.12(4), 155A.19(1)(g), 155A.23(2), and 155A.23(4) and 657 Iowa Administrative Code sections 6.10, 8.5(1), 8.18, 8.19, 8.20, 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(i), 9.1(4)(j), 9.1(4)(t), 9.1(4)(u), and 10.10(5).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2, that Stephen J. Weiss appear before the Iowa Board of Pharmacy Examiners on Tuesday, April 19, 1994, at 10:00 a.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to discipline the license to practice pharmacy issued to Stephen J. Weiss on April 11, 1989, 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 disciplinary action, including 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 representing the public interest in these proceedings. Information regarding the hearing may be obtained from Theresa O'Connell Weeg, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-6858). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen
Executive Secretary/Director

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

Re: Pharmacist License of STEPHEN J. WEISS License No. 17208 Respondent	} } } } } }	AMENDMENT TO EMERGENCY ORDER AND COMPLAINT AND STATEMENT OF CHARGES AND NOTICE OF HEARING
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COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 22nd day of March, 1994, and files this Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, to Stephen J. Weiss, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; 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 April 11, 1989, by reciprocity.
3. Respondent is self-employed as part owner and pharmacist in charge of the Des Moines Pharmacy, Inc., located at 717 Lyon Street in Des Moines, Iowa 50309.
4. Respondent currently resides at 8226 Plum Drive, Urbandale, Iowa 50322.
5. Respondent's license to practice pharmacy in Iowa is current until June 30, 1994.
6. An Emergency Order and Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on March 4, 1994. That Emergency Order and Complaint and Statement of Charges and Notice of Hearing is incorporated by reference into this Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing as if fully set forth herein.

7. Since March 4, 1994, the Board has received additional information which alleges the following:

a. On November 22, 1993, the Iowa Medicaid Drug Utilization Review Commission sent a letter to the Iowa Department of Human Services, Medical Services Division, which expressed a concern about Respondent's pharmacy, the Des Moines Pharmacy, Inc. The letter included the following comments:

In my initial review of the utilization reports...I was struck by several figures. All of my questions are in regard to the volume of paid claims to an area clinic pharmacy, Des Moines Pharmacy...

It seems unusual that all of the other top 5 providers have a significant long term care population or are exclusive nursing home providers. Des Moines Pharmacy is in a clinic setting which is open 9 a.m. to 5 p.m. Monday through Friday only. In contrast, three area Walgreens stores with considerably longer hours of operation (some are open 24 hours) and weekend pharmacy staffing posted less than half of the number of claims paid to Des Moines Pharmacy in the same period of time.

Des Moines Pharmacy received payment for around 11,000 claims in the three month time period shown. This is 3,600 paid claims per month. The pharmacy is open approximately 20 days each month which implies they are filling around 180 Medicaid prescriptions daily with one staff pharmacist.

I am also concerned about the unusually low percentage of generic utilization. The 60% generic utilization runs nearly 20% below the average of the top 45 pharmacy providers shown on the enclosed report.

Again, I feel these statistics are striking and are grounds for further inquiry...

b. Records of the Iowa Medicaid program reveal that Respondent's pharmacy, the Des Moines Pharmacy, Inc., has had the following prescription claim activity:

<u>Time Period</u>	<u>Number of claims</u>	<u>Dollar Total</u>
11-10-89 to 06-30-90	4,371	\$ 77,354
07-01-90 to 06-30-91	17,685	\$352,633
07-01-91 to 06-30-92	29,693	\$629,103
07-01-92 to 06-30-93	23,170	\$504,326
07-01-93 to 12-31-93	11,990*	\$261,709*

*Six month time period

c. On February 15, 1994, it was alleged that Respondent has dispensed prescriptions via the mail to Medicaid recipient "J.P." and other members of her family (J.P.'s children, husband, mother, and sister) which have not been wanted or needed. "J.P." has indicated that she recently ordered a refill of her Ibuprofen from Respondent's pharmacy, the Des Moines Pharmacy, Inc. When she received the order in the mail, the package contained several other medications which she did not order and did not want. "J.P." has indicated that Respondent has sent her similar unwanted and unneeded medications continuously for several years. "J.P." fears that the Iowa Medicaid program may terminate her prescription drug benefit because of the excessive drugs which Respondent has mailed to her. "J.P." claims that she has asked Respondent many times to stop sending her the unnecessary drugs, but that he continues to send them anyway. "J.P." also claims that Respondent told her that if she would return unused medications to him, he would "forgive" her unpaid bill (about \$200 in uncollected "co-pays"). "J.P." has indicated that many of the drugs which Respondent sends her and other members of her family are drugs which they no longer need. In some instances, if a drug had been prescribed for one of J.P.'s children, Respondent would also dispense the same drug to J.P.'s other children.

d. On February 16, 1994, Medicaid recipients "B.B." and "R.B." indicated that Respondent has sent them unwanted and unneeded prescription medications continuously since 1991. The unneeded medications include the following: various antibiotics, various cough syrups, Vancenase AQ, Vasocon Ophthalmic, Entex LA, Deconamine SR, Ibuprofen, and Topicort Cream. "R.B." claims that Respondent told him that if he would return unused inhalers to Respondent, Respondent would "forgive" his unpaid bill (about \$217 in uncollected "co-pays"). "R.B." claims that he returned four prescription inhalers and two bottles of Diphenhydramine (60 tablets each) to Respondent who then "forgave" R.B.'s unpaid bill. Both "B.B." and "R.B." indicated that on several occasions they had asked Respondent to stop sending them certain medications because they were no longer taking them. Respondent continued to send them, however.

e. On February 18, 1994, Medicaid recipient "M.W." indicated that she had telephoned Respondent on several occasions and told him to stop sending her certain medications because she was no longer taking them. "M.W." indicated that on February 17, 1994, a delivery driver for the Des Moines Pharmacy, Inc., presented her with a handwritten note from Respondent which instructed "M.W." to return prescription items sent out by the Des Moines Pharmacy, Inc., on January 17, 1994, and on January 19, 1994.

Approximately two weeks prior to February 17, 1994, "M.W." visited her doctor questioning the amounts and variety of different drugs which she had received from the Des Moines Pharmacy, Inc. "M.W." stated that her doctor was unaware of the amounts of drugs being dispensed by the Des Moines Pharmacy, Inc., and that the doctor required "M.W." to speak with her (the doctor) or her staff directly before any further drugs would be issued to "M.W."

f. On or about January 10, 1994, Respondent received a shipment of prescription drugs (the entire shipment or part of it) from the McKesson Drug Company of Cedar Rapids, Iowa, which was intended for the Hy-Vee Pharmacy located at 1111 East Army Post Road in Des Moines, Iowa. This shipment of drugs was retained by Respondent and incorporated into the drug inventory of the Des Moines Pharmacy, Inc. Respondent did **not** pay for these drugs.

g. On or about February 11, 1994, Respondent received a partial shipment of prescription drugs from Alco Health Services of Minneapolis, Minnesota, which was intended for the Drug Mart Pharmacy located at 3615 Beaver Avenue in Des Moines, Iowa. This partial shipment of drugs was retained by Respondent and incorporated into the drug inventory of the Des Moines Pharmacy, Inc. Respondent did **not** pay for these drugs. It is alleged that Respondent received all of the legend prescription drugs (non-controlled substances) that were intended for the Drug Mart Pharmacy.

h. On March 1, 1994, a search warrant was issued by the U.S. District Court of the Southern District of Iowa which authorized a search of Respondent's pharmacy, the Des Moines Pharmacy, Inc. The application and affidavit for the search warrant was made by an inspector of the U.S. Postal Inspection Service at Des Moines, Iowa. The affiant alleged violation of Title 18, United States Code, Section 1341, Mail Fraud.

The affiant also alleged that Respondent, Stephen J. Weiss, had approached two Medicaid recipients, "B.B." and "R.B.," and had offered them \$10.00 for each new Medicaid patient that they brought to his pharmacy, the Des Moines Pharmacy, Inc.

i. On March 1, 1994, Respondent made the following admissions to state and federal investigators: (1) that he filled approximately 200 to 250 prescriptions daily at the Des Moines Pharmacy, Inc.; (2) that he mailed out approximately 150 prescriptions every week; (3) that approximately 70% to 80% of his customers are Medicaid recipients; (4) that his mailing service is set up on a 28-day cycle and that he does his mailings weekly; (5) that on some occasions he would mail out prescriptions marked "no-refill" without the prescriber's authorization or prior to receiving authorization; (6) that many packages of prescription drugs had been returned to Respondent's pharmacy by the U.S. Postal Service for various reasons (no forwarding address, refusal to accept, etc.) and that these prescriptions had been paid for by the Iowa Medicaid program; (7) that on some occasions he gave money to some of his Medicaid customers in exchange for "returned medications" (Respondent admitted giving \$150 to Medicaid recipient "S.W." who returned 100 AZT tablets to Respondent--Respondent then returned the AZT tablets to his pharmacy stock); (8) that he re-used (re-cycled) some of the returned medications for other customers of the Des Moines Pharmacy, Inc.; and (9) that Nancy Aquadro, D.O., had warned Respondent about dispensing medications to her patients without her authorization.

j. The prescription files of the Des Moines Pharmacy, Inc., are inconsistent and inaccurate. Numerous hard copy prescriptions contain multiple prescription information labels which do not correspond to the face of the hard copies (different prescription numbers, different patient names, different medications, etc.).

k. Many of the bulk pharmaceuticals (tablets, capsules, etc.) stocked at the Des Moines Pharmacy, Inc., appear to be adulterated, misbranded, or commingled. Many bulk containers have *no* sticker which would identify the original source of the product. Some bulk containers contain *more* than the number of dosage units indicated on the original manufacturer's label. Many prescription drugs had expired but were still kept in the active dispensing area of the prescription department. Some of these drugs had been expired for one, two, or three years. Many "filled prescriptions" were found commingled on the pharmacy shelves with bulk containers of drugs. In some instances, the labels which Respondent placed on "filled prescriptions" indicated one generic manufacturer, but the vials actually contained a different manufacturer's generic product. A notebook was kept in the pharmacy which indicated a transfer of drugs between the Des Moines Pharmacy, Inc., and an Illinois pharmacy owned by other members of Respondent's family.

l. On March 1, 1994, four prescriptions which were being filled and prepared for mailing by Respondent at the Des Moines Pharmacy, Inc., were examined. Three prescriptions were for patient "F.M." Upon contacting the indicated prescriber, Dr. Darwin Schossow, it was learned that these prescriptions had *not* been authorized by Dr. Schossow. The prescriptions were for Theo-Dur 200mg #60, Proventil 4mg #30, and Proventil Inhaler 17gm.

The other prescription was for patient "P.T." Upon contacting the indicated prescriber, Dr. Nancy Aquadro, it was learned that this prescription had *not* been authorized by Dr. Aquadro. The prescription was for a Proventil Inhaler 17gm.

m. On March 1, 1994, a search warrant was issued by the U.S. District Court of the Southern District of Iowa which authorized a search of Respondent's home located at 8226 Plum Drive in Urbandale, Iowa. Upon execution of the search warrant on March 1, 1994, a total of **7,325** dosage units of "drug samples" were found on the premises. Respondent was found to be in illegal possession of various quantities of the following prescription drugs: Acular, Adalat 30mg, Altace 2.5mg, Amoxil 250mg, Ansaid 100mg, Augmentin 125mg/5ml, Augmentin 250mg, Augmentin 250mg/5ml, Augmentin 500mg, Axid 300mg, Biaxin 500mg, Calan SR 240mg, Calan 180mg, Calan 240mg, Carafate 1gm, Cardene SR 30mg, Cardizem CD 120mg, Cardizem 180mg, Cardizem 240mg, Ceclor 187mg/5ml, Ceclor 250mg, Ceclor 375mg, Cefitin 250mg, Cefzil 500mg, Cipro 250mg, Cipro 500mg, Claratin 10mg, Colestid 5mg, Daypro 600mg, Diflucan 100mg, Dilacor 180mg, Dilacor 240mg, Dynacirc 5mg, Entex 120mg, Estrace 1mg, Feldene 20mg, Floxin 300mg, Floxin 400mg, Glucotrol 5mg, Glynase 3mg, Hismanal 10mg, Ismo 20mg, Isoptin 180mg, Isoptin 240mg, Lodine 300mg, Lopid 600mg, Lorabid 200mg, Lotrisone, Lozol 1.25mg, Maxaquin 400mg, Monopril 10mg, Nicorette, Norvasc 5mg, Ogen 0.75mg, Orthoest 0.625mg, Oruvail 200mg, Paxil 20mg, Plendil 5mg, Plendil 5mg SR, Prinivil 5mg, Prinivil 10mg, Prinivil 20mg, Prinzide 25, Procardia XL 60mg, Procardia 30mg, Proscar 5mg, Proventil 6.8gm, Prozac 20mg, Questran, Relafen 500mg, Relafen 750mg, Seldane-D, Seldane 60mg, Tagamet 400mg, Tagamet 800mg, Tenoretic 50mg, Vancenase 25gm, Vanceril Inhaler, Vantin 200mg, Vasotec 5mg, Verelan 180mg,

Volmax 4mg, Volmax 8mg, Voltaren 75mg, Wellbutrin 75mg, Zantac 150mg, Zocor 20mg, and Zoloft 50mg.

In addition, the search of Respondent's home on March 1, 1994, also produced the following items:

(1) Fifty-eight prescriptions (labeled vials or packages containing prescription drugs) which Respondent had dispensed to Medicaid recipient "H.D." between May 11, 1992, and November 29, 1993, and which had been paid for by the Iowa Medicaid program. These vials or packages contained the following prescription drugs: Alupent Inhalers (3 packages); Alupent 0.6% (5 packages); Atrovent Inhalers 14gm (3 packages); Cyclobenzaprine 10mg (12 vials of 50 tablets each); Duphulac Syrup (15 bottles containing 240ml each); Elocon Cream 0.1% (3 tubes); Fero-Folic-500 (7 vials of 30 tablets each); Quinine Sulfate 260mg (9 vials of 30 tablets each), and Temazepam 30mg (one vial of 30 capsules). Temazepam 30mg is a Schedule IV controlled substance. The total number of solid oral dosage units and containers of oral liquid or inhalation medications labeled for Medicaid recipient "H.D." which were found in Respondent's home on March 1, 1994, was **1,139**. Forty-seven of the 58 vials were labeled by the Respondent as "no refill" even though Respondent dispensed continuous refills of the medications.

(2) Twenty-eight prescriptions (labeled vials or packages containing prescription drugs) which Respondent had dispensed to Medicaid recipient "D.W." between April 10, 1992, and November 29, 1993, and which had been paid for by the Iowa Medicaid program. These vials or packages contained the following prescription drugs: Entex LA (5 vials of 20 tablets each); Fioricet (4 vials of 30 tablets each); Ibuprofen 600mg (10 vials of 30 tablets each); Seldane 60mg (2 vials of 20 tablets each); Tavist 2.68mg (4 vials of 20 tablets each); and Vancenase 25mg (3 packages). The total number of solid oral dosage units and containers of oral liquid or inhalation medications labeled for Medicaid recipient "D.W." which were found in Respondent's home on March 1, 1994, was **643**. Twenty-three of the 28 vials were labeled by the Respondent as "no refill" even though Respondent dispensed continuous refills of the medications.

(3) Fifty-five prescriptions (labeled vials or packages containing prescription drugs) which Respondent had dispensed to Medicaid recipient "G.W." between October 12, 1992, and December 6, 1993, and which had been paid for by the Iowa Medicaid program. These vials or packages contained the following prescription drugs: Anaprox DS 550mg (3 vials of 50 tablets each); Cyclobenzaprine 10mg (one vial of 60 tablets); Entex LA (5 vials of 14 tablets each); Fioricet (one vial of 30 tablets); Ibuprofen 600mg (one vial of 30 tablets); Isosorbide 40mg (4 vials of 60 tablets each); Nitro-Dur 5mg (3 vials of 30 tablets each); Prednisone 5mg (5 vials of 50 tablets each); Salsalate 750mg (5 vials of 100 tablets each); Spironolactone 25mg (5 vials of 60 tablets each); Theo-Dur 300mg (2 vials of 60 tablets each); Vancenase 25mg (5 packages); and Yohimbine 5.4mg (14 vials of 50 tablets each). The total number of solid oral dosage units and containers of oral liquid or inhalation medications labeled for Medicaid recipient "G.W." which were found in Respondent's home on March 1, 1994, was **2,545**. Thirty-three of the 55 vials were labeled by the Respondent as "no refill" even though Respondent dispensed continuous refills of the medications.

n. An accountability audit of all Schedule II controlled substances purchased and dispensed by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between May 1, 1991, and March 4, 1994, reveals the following significant shortages of Schedule II controlled substances:

<u>Drug Name and Strength</u>	<u>Shortage (# of tablets/capsules)</u>
Seconal 100mg	100
Oxycodone w/APAP	825
Oxycodone w/ASA	10
Ritalin 10mg	673
Methylphenidate 5mg	361
Methadone 5mg	100
Ritalin SR 20mg	170
Percodan	40

o. An accountability audit of all Schedule II controlled substances purchased and dispensed by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between May 1, 1991, and March 4, 1994, reveals the following significant overages of Schedule II controlled substances:

<u>Drug Name and Strength</u>	<u>Overage (# of tablets/capsules)</u>
Dexedrine 15mg	50
Methylphenidate 10mg	23
Percocet	45
Tylox	105
Codeine Sulfate 15mg	120
Cocaine Powder	11.1 grams
Ritalin 5mg	295

p. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "C.B." on February 11, 1994, because of "drug - drug interactions" occurring between July 1, 1993, and December 31, 1993, for medications allegedly prescribed for "C.B." by various practitioners and dispensed to "C.B." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Theo-Dur 300mg, (2) Procardia XL 30mg, (3) K-Dur 20 mEq, (4) Zantac 150mg, (5) Premarin 1.25mg, (6) Humulin-R 100 units/ml, (7) Humulin-N 100 units/ml, (8) Xanax 0.25mg, (9) Doxepin HCl 100mg, (10) Doxepin HCl 50mg, (11) Alupent 650mcg, (12) Metoclopramide HCl 10mg, (13) Prednisone 10mg, (14) Lidex 0.05%, (15) Psorcon 0.05%, (16) Zaroxolyn 5mg, (17) Atrovent 18mcg, (18) Proventil 4mg, (19) Ceftin 500mg, (20) Bactroban 2%, (21) Terazol-7 0.4%, and (22) Entex-LA 400/75. One hundred twenty prescriptions were included in the "drug - drug interaction" report.

q. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "F.H." on February 11, 1994, because of "drug - diagnosis exceptions" occurring between July 1, 1993, and December 31, 1993, for medications allegedly prescribed for "F.H." by various practitioners and dispensed to "F.H." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - diagnosis exception" report included the following: (1) Vasotec 10mg, (2) Actigall 300mg, (3) Nitrostat 0.4mg, (4) Isosorbide Dinitrate 20mg, (5) Loprox 1%, (6) Loperamide HCl 2mg, (7) Zantac 150mg, (8) Estrace 1mg, (9) Cycrin 10mg, (10) Non-Aspirin 500mg, (11) Wellbutrin 100mg, (12) Alupent 650mcg, (13) Metoclopramide HCl 10mg, (14) Tessalon Perle 100mg, (15) Topicort 0.25%, (16) Verapamil HCl 240mg, (17) Furosemide 20mg, (18) Sulindac 200mg, (19) Wymox 500mg, (20) Pyridiate 200mg, (21) Elimite 5%, (22) Nix 1%, (23) Seldane 60mg, (24) Tavist 2.68mg, (25) Vancenase AQ 0.042%, (26) Anaprox DS 550mg, (27) Entex LA 400/75, (28) Augmentin 500mg, (29) Acetaminophen with Codeine 30/300, (30) Propoxyphene Napsylate with acetaminophen 100-650, (31) Neosporin, and (32) Sulfamethoxazole/Trimetho 800-160mg. One hundred fifty-two prescriptions were included in the "drug - diagnosis exception" report. The report also included the following handwritten note: "were all of these refills authorized?"

r. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "L.G." on December 16, 1993, because of "drug - diagnosis exceptions" occurring between May 1, 1993, and October 31, 1993, for medications allegedly prescribed for "L.G." by various practitioners and dispensed to "L.G." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - diagnosis exception" report included the following: (1) Norvasc 5mg, (2) K-Dur 10mEq, (3) Acetaminophen 325mg, (4) Cyclobenzaprine HCl 10mg, (5) Lopressor 50mg, (6) Hydrochlorothiazide 50mg, (7) Indomethacin 75mg, (8) Sulindac 200mg, (9) Wymox 500mg, (10) Tavist 2.68mg, (11) Nolex LA 400/75, (12) Zephrex LA 600/120, (13) Hydrocodone with Acetaminophen 5/500, (14) Seldane-D 120mg/60mg, and (15) Tussi-Organidin Liquid. Fifty-six prescriptions were included in the "drug - diagnosis exception" report.

s. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "L.F." on October 12, 1993, because of "drug - drug interactions" occurring between February 1, 1993, and August 31, 1993, for medications allegedly prescribed for "L.F." by one practitioner and dispensed to "L.F." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Cytotec 100mcg, (2) Lidocaine HCl Viscous 2%, (3) Amitriptyline HCl 10mg, (4) Amitriptyline HCl 50mg, (5) Diflunisal 500mg, (6) Cyclobenzaprine HCl 10mg, (7) Selenium Sulfide 2.5%, (8) Buspar 10mg, (9) Ibuprofen 400mg, (10) Ibuprofen 800mg, (11) Cephalexin 250mg, (12) Elimite 5%, (13) Elocon 0.1%, and (14) Entex LA 400/75. Seventy-two prescriptions were included in the "drug - drug interaction" report. Attached to the report was "initial dictation" from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted: (1) the long term use of the drug Cyclobenzaprine and (2) the need for less expensive therapeutic alternatives for the drugs Buspar and Entex LA.

t. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "M.S." on December 16, 1993, because of "drug - drug interactions" occurring between May 1, 1993, and October 31, 1993, for medications allegedly prescribed for "M.S." by various practitioners and dispensed to "M.S." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Azmacort 100mcg, (2) Klor-Con 10 mEq, (3) K-Dur, (4) Prilosec 20mg, (5) Zantac 150mg, (6) Proventil 90mcg, (7) Peridex 0.12%, (8) Cephalexin 500mg, (9) E.E.S. 400mg, (10) Ery-Tab 333mg, (11) Diphenhydramine HCl 25mg, (12) Nasalcrom 4%, (13) Vancenase AQ 0.042%, (14) Ceftin 250mg, (15) Terazol-7 0.4% , (16) Terazol-3 0.8%, (17) Biaxin 500mg, (18) Acular 0.5%, (19) Entex LA 400/75, (20) Quintex PSE 600/120, (21) Triamterene w/HCTZ 50/75, (22) Maxzide 50/75, and (23) Deconamine SR 120/8. Forty-eight prescriptions were included in the "drug - drug interaction" report. Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission which stated that "significant cost savings could be realized by the use of a generic equivalent for Maxzide."

u. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "R.C." on December 16, 1993, because of "drug - drug interactions" occurring between May 1, 1993, and October 31, 1993, for medications allegedly prescribed for "R.C." by various practitioners and dispensed to "R.C." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Premarin 0.625mg, (2) Lorazepam 1mg, (3) Aspirin 325mg, (4) Chlorzoxazone 500mg, (5) Skelaxin 400mg, (6) Proventil 90mcg, (7) Tessalon Perle 100mg, (8) Ibuprofen 800mg, (9) Tolmetin Sodium 600mg, (10) Sulindac 200mg, (11) Elimite 5%, (12) Elocon 0.1%, (13) Zephrex LA 600/120, and (14) Niferex-150 Forte. Fifty-seven prescriptions were included in the "drug - drug interaction" report. Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission which stated that "significant cost savings could be realized by the use of a generic equivalent for Tessalon Perles."

v. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "N.C." on February 1, 1993, because of "drug - drug interactions" occurring between June 1, 1992, and November 30, 1992, for medications allegedly prescribed for "N.C." by various practitioners and dispensed to "N.C." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) "Compound," (2) Disulfiram 250mg, (3) Antabuse 250mg, (4) Amitriptyline HCl 50mg, (5) Proventil 90mcg, (6) Verapamil HCl 240mg, (7) Amoxil 250mg, (8) Ceclor 250mg, (9) Keftab 500mg, (10) Codiclear-DH, (11) Tussi-Organidin DM, (12) Augmentin 250mg, (13) Propoxyphene Napsylate with acetaminophen 100-650, (14) Tussi-Organidin, (15) Codimal DH, (16) Novahistine DH, and (17) Poly-Histine DM. Forty-two prescriptions were included in the "drug - drug interaction" report.

The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "N.C." on October 12, 1993, because of "drug - drug interactions" occurring between February 1, 1993, and August 31, 1993, for medications allegedly prescribed for "N.C." by various practitioners and dispensed to "N.C." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in this "drug - drug interaction" report included the following: (1) Antabuse 250mg, (2) Amitriptyline HCl 50mg, (3) Cleocin 2%, (4) Verapamil HCl 240mg, (5) Amoxicillin 250mg, (6) Vancenase AQ 0.042%, (7) Promethazine w/codeine, (8) Codimal DH, and (9) Poly-Histine DM. Twenty-nine prescriptions were included in this "drug - drug interaction" report.

An attachment to these reports indicates that Medicaid recipient "N.C." was diagnosed with "drug dependence" on September 27, 1992. Respondent's pharmacy, the Des Moines Pharmacy, Inc., dispensed the following controlled substances to "N.C." on the following dates:

<u>Drug</u>	<u>Quantity</u>	<u>Date Dispensed</u>
Codimal DH	180ml	09/03/92
Codimal DH	180ml	09/10/92
Propoxyphene Napsy 100mg	30 tablets	09/16/92
Codimal DH	180ml	09/19/92
Codimal DH	180ml	09/25/92

Drug Dependence diagnosis		09/27/92

Codimal DH	180ml	09/30/92
Propoxyphene Napsy 100mg	30 tablets	10/06/92
Novahistine DH	180ml	10/09/92
Propoxyphene Napsy 100mg	30 tablets	10/20/92
Propoxyphene Napsy 100mg	30 tablets	10/29/92
Codimal DH	180ml	04/20/93

Attached to these reports was a letter dated May 20, 1993, in which the Iowa Medicaid Drug Utilization Review Commission expressed concerns to Respondent regarding the medication regimen of Medicaid recipient "N.C." That letter included the following comment: "In earlier correspondence you [Respondent] indicated that Leatrice Olson, D.O., was responsible for prescribing certain medications for this patient. Dr. Olson has indicated that she has never prescribed for this patient."

w. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "P.M." on November 14, 1993, because of "drug - drug interactions" occurring between March 1, 1993, and September 30, 1993, for medications allegedly prescribed for "P.M." by various practitioners and dispensed to "P.M." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Genora 1/0.035, (2) Anaspaz 0.125mg, (3) Ibuprofen 600mg, (4) Naprosyn 500mg, (5)

Vancenase AQ 0.042%, (6) Tylenol with Codeine No. 3, and (7) Codimal LA 120/8. Fifty-five prescriptions were included in the "drug - drug interaction" report.

Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission which included the following concerns:

(1) According to the profile, this patient [P.M.] has received multiple refills of Naprosyn during a short time period. The pharmacist [Respondent] should dispense in accordance with requirements established by state law. In filling prescriptions the pharmacist shall fill a 30-day supply. Filling in lesser amounts imposes unnecessary administrative costs. Since this practice shows **no therapeutic benefit**, is it possible that these billings could be combined and submitted as a single claim to comply with Iowa law?

(2) Long-term use of Codimal LA. According to the profile, this patient [P.M.] has received this medication over the time period shown. What is the clinical situation that has required the long-term use of this medication?

(3) Significant cost savings could be realized by the use of a generic equivalent for Tylenol w/Codeine.

Also attached to the report was an *Iowa Medicaid Drug Utilization Review Comment and Question Form* in which Nancy Aquadro, D.O., wrote the following comment: "Patient [P.M.] has **not** had refills on any of these medications since August [1993] according to my records." Yet the Medicaid report indicates that Respondent submitted Medicaid claims for Medicaid recipient "P.M." for the following drugs which Respondent claimed were authorized by Dr. Aquadro after August 1993:

<u>Drug</u>	<u>Quantity</u>	<u>Date Dispensed</u>
Anaspaz 0.125mg	30	09/01/93
Vancenase AQ 0.042%	25	09/01/93
Codimal LA 120/8	30	09/01/93
Codimal LA 120/8	30	09/15/93
Anaspaz 0.125mg	30	09/29/93
Vancenase AQ 0.042%	25	09/29/93
Codimal LA 120/8	30	09/29/93

x. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "C.B." on November 14, 1993, because of "drug - drug interactions" occurring between March 1, 1993, and September 30, 1993, for medications allegedly prescribed for "C.B." by various practitioners and dispensed to "C.B." by Respondent's pharmacy, the Des Moines Pharmacy, Inc. The drugs noted in the "drug - drug interaction" report included the following: (1) Lanoxin 0.25mg, (2) Vasotec 5mg, (3) Potassium Chloride 10%, (4) K-Dur 20 mEq, (5) Glucotrol 10mg, (6)

Amitriptyline HCl 25mg, (7) Trazodone HCl 50mg, (8) Coumadin 2mg, (9) Coumadin 5mg, (10) Aristocort LP 0.025%, (11) Furosemide 80mg, (12) Lasix 80mg, (13) Zaroxolyn 2.5mg, (14) Yohimbine HCl 5.4mg, (15) Ceclor 250mg, (16) Novolin 70/30 100u/ml, (17) Acetaminophen with codeine 30/300, and (18) Sulfamethoxazole/trimetho 800-160mg. Fifty-eight prescriptions were included in the "drug - drug interaction" report.

Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission which included the following concerns:

(1) Potential for cost savings could be realized by the use of a generic equivalent for Lasix.

(2) Please note the cost of Ceclor. According to the profile, this patient was treated with Ceclor as the antibiotic of first choice. Was the infection or risk of complications great enough to warrant use of this antibiotic over a first generation cephalosporin, erythromycin, amoxicillin or sulfa?

(3) According to the profile, this patient is receiving 200 meq of potassium daily. There is evidence that unrecognized magnesium deficiency may be associated with hypokalemia in persons resistant to potassium replacement therapy. Resistant Hypokalemia may be corrected with the concurrent administration of magnesium. If this patient is not already taking magnesium would its addition be beneficial for this patient?

y. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "J.C." on December 16, 1993, because of "drug - diagnosis exceptions" occurring between May 1, 1993, and October 31, 1993, for medications allegedly prescribed for "J.C." by various practitioners and dispensed to "J.C." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., and other pharmacies. Thirty-one prescriptions were included in the "drug - diagnosis exception" report. According to the report, Respondent's pharmacy, the Des Moines Pharmacy, Inc., had dispensed a 30-day supply of Fero-Folic-500 tablets to Medicaid recipient "J.C." on August 13, 1993, and on October 12, 1993. Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission which included the following concern:

Compliance: According to the profile, this patient [J.C.] appears to be *underutilizing* Fero-Folic. Is this patient taking this medication as directed, or is the patient taking less than was intended?

z. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a profile for Medicaid recipient "K.C." on December 16, 1993, because of "drug - diagnosis exceptions" occurring between May 1, 1993, and October 31, 1993,

for medications allegedly prescribed for "K.C." by various practitioners and dispensed to "K.C." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., and other pharmacies. The drugs noted in the "drug - diagnosis exception" report included the following: (1) Nasacort 55mcg, (2) Hydroxyzine HCl 25mg, (3) Lorazepam 0.5mg, (4) Lorazepam 1mg, (5) Cyclobenzaprine HCl 10mg, (6) Ibuprofen 800mg, (7) Tavist 2.68mg, (8) Prozac 20mg, (9) Zephrex LA 600/120, (10) Propoxyphene Napsylate with Acetaminophen 100-650, and (11) Seldane-D. Thirty-three prescriptions were included in the "drug - diagnosis exception" report.

Attached to the report was a letter dated February 9, 1994, in which the Iowa Medicaid Drug Utilization Review Commission expressed concerns to Respondent regarding the medication regimen of Medicaid recipient "K.C."

Also attached to the report was an *Iowa Medicaid Drug Utilization Review Comment and Question Form* in which W. Hadley Hoyt III, D.O., wrote the following comment: "I have instructed the pharmacy [Respondent's pharmacy] and my office **not** to honor any further medication refills until I have been able to discuss treatment strategy with the patient and possible alternatives."

aa. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "D.H." on August 18, 1993, for medications allegedly prescribed for "D.H." by one practitioner and dispensed to "D.H." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between January 1, 1993, and June 30, 1993. The drugs listed in the report included the following: (1) Dilantin 100mg, (2) Bentyl Liquid 10mg/5ml, (3) Naprosyn 500mg, (4) Wymox 250mg, (5) Pepcid 20mg, (6) Bactroban 2%, (7) Entex LA 400/75, (8) Niferex-150 Forte, (9) Niferex PN, and (10) Codimal DH. Forty-two prescriptions were included in the report.

Attached to the report was "re-review dictation" from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted:

(1) According to the profile, this patient receives Bentyl 10mg per 5ml. If the patient is able to tolerate other tablets/capsules, i.e. Naprosyn, Pepcid and Dilantin, would she also be able to take Bentyl in the capsule form? A generic capsule and liquid is available for Bentyl which would also decrease the cost of therapy substantially.

(2) Long-term use of Pepcid in full therapeutic, indeterminate or prophylactic doses with NSAID, Naprosyn. The Commission would request that, if the patient is still receiving Pepcid in either full therapeutic or prophylactic dosages, its ongoing use be re-evaluated and (if possible) that this medication be tapered down and/or discontinued.

(3) Please note the cost of Entex LA. Although there is not a generic substitute for this product, there are many less expensive therapeutic alternatives. Would you

consider changing this patient to a less costly medication which would provide equivalent therapeutic results?

bb. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "D.W." on September 10, 1993, for medications allegedly prescribed for "D.W." by one practitioner and dispensed to "D.W." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between February 1, 1993, and July 31, 1993. The drugs listed in the report included the following: (1) Theo-Dur 200mg, (2) Premarin 0.625mg, (3) Premarin 1.25mg, (4) Xanax 0.5mg, (5) Carisoprodol 350mg, (6) Ovide 0.5%, (7) Ibuprofen 600mg, (8) Wymox 250mg, (9) Amoxil 500mg, (10) Trimox 500mg, (11) Doxycycline Hyclate 100mg, (12) Seldane 60mg, (13) Tagamet 400mg, (14) Vancenase AQ 0.042%, (15) Entex LA 400/75, (16) Acetaminophen with Codeine 30/300, (17) Propoxyphene Napsylate with Acetaminophen 100-650, (18) Fioricet, and (19) Tussi-Organidin. One hundred and four prescriptions were included in the report.

Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted:

(1) Long-term use of Carisoprodol. Normally it would be expected that this medication would be most effective when given in full, therapeutic dosage for short time periods in acute clinical situations. Has this patient's condition improved to the point that this medication can now be stopped...?

(2) Drug-drug interaction. Entex LA is intended to help liquify and loosen bronchial secretions; Seldane will decrease and thicken mucous secretions, thereby producing the opposite therapeutic effect.

(3) Long-term use of Propoxyphene Napsylate with APAP. According to the profile, this patient has received this medication over the time period shown. What is the clinical situation that has required the long-term use of this medication?

(4) Therapeutic duplication: Propoxyphene Napsylate with APAP and Fioricet. Although these medications have different chemical compositions, as far as their analgesic effects are concerned, they would generally be considered to have similar therapeutic effect. Is it possible, therefore, to discontinue one of these drugs...?

The following ten prescription medications were included in this report as having been dispensed to Medicaid recipient "D.W.," but were later found in Respondent's home upon execution of the March 1, 1994, search warrant:

<u>Drug</u>	<u>Rx #</u>	<u>Quantity</u>	<u>Date Dispensed</u>
Ibuprofen 600mg	0149025	30	02/01/93
Ibuprofen 600mg	0149025	30	02/10/93
Ibuprofen 600mg	0149025	30	02/22/93
Ibuprofen 600mg	0160794	30	06/14/93
Ibuprofen 600mg	0160794	30	06/28/93
Ibuprofen 600mg	0160794	30	07/12/93
Seldane 60mg	0152178	20	06/01/93
Seldane 60mg	0162597	20	06/18/93
Vancenase AQ	0159963	25	06/01/93
Vancenase AQ	0159963	25	07/26/93

cc. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "H.D." on August 18, 1993, for medications allegedly prescribed for "H.D." by one practitioner and dispensed to "H.D." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between January 1, 1993, and June 30, 1993. The drugs listed in the report included the following: (1) Theodor 200mg, (2) Prilosec 20mg, (3) Duphalac 10gm/15ml, (4) Chloral Hydrate 500mg/5ml, (5) Hydroxyzine HCl 25mg, (6) Lorazepam 1mg, (7) Salsalate 500mg, (8) Cyclobenzaprine HCl 10mg, (9) Dicyclomine HCl 20mg, (10) Alupent 650mcg, (11) Proventil 90mcg, (12) Prednisone 10mg, (13) Ovide 0.5%, (14) Inflamase Forte 1%, (15) Gentamicin Sulfate 3mg/ml, (16) Sulindac 200mg, (17) Wymox 250mg, (18) Wymox 500mg, (19) PCE 333mg, (20) Atrovent 18mcg, (21) Elocon 0.1%, (22) Tagamet 400mg, (23) Cipro 500mg, (24) Vancenase AQ 0.042%, (25) Zestril 10mg, (26) Ceftin 250mg, (27) Quinine Sulfate 260mg, (28) Zephrex 400/60, (29) Zephrex LA 600/120, (30) Fero-Folic-500, (31) Tussi-Organidin DM, (32) Acetaminophen with Codeine 30/300, (33) Propoxyphene Napsylate with Acetaminophen 100-650, (34) Tussi-Organidin, and (35) Deconamine SR. Two hundred and eight prescriptions were included in the report.

Attached to the report was "re-review dictation" from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted:

(1) Please note the cost of Cephulac. Although this medication is covered by the recipient's prescription drug benefit, the Commission would request that (if it is used as a laxative) consideration be given to use of an alternate agent which could produce similar therapeutic effect at a substantial cost reduction.

(2) Long-term use of Lorazepam. The Commission would request that the long-term use of benzodiazepines be re-evaluated and (if possible) that this medication be tapered down and/or discontinued...

(3) Attention Pharmacy [Respondent]: Possible billing error. According to the profile, Medicaid was billed

for 30 Lorazepam 1mg tablets on 6/2/93 and 60 Lorazepam 1mg tablets on 6/3/93...

(4) Long-term use of Cyclobenzaprine. Normally it would be expected that this medication would be most effective when given in full, therapeutic dosage for short time periods in acute clinical situations. Has this patient's condition improved to the point that this medication can now be stopped...?

(5) Apparent therapeutic duplication: Alupent and Proventil. According to the profile, it would appear that the patient is receiving these medications, both of which are sympathomimetic bronchodilators, at the same time. Is there a specific, therapeutic rationale for the combined use of these agents or is it possible to discontinue one...?

(6) Long-term use of Elocon. Normally it would be expected that a steroid-responsive dermatosis would resolve within three to four weeks of full, therapeutic dosage treatment. Has this patient's condition improved to the point that this medication can now be stopped...?

(7) Long-term use of Tagamet in full therapeutic, indeterminate or prophylactic doses with NSAID, Salsalate. The Commission would request that, if the patient is still receiving Tagamet in either full therapeutic or prophylactic dosages, its ongoing use be re-evaluated and (if possible) that this medication be tapered down and/or discontinued.

(8) Therapeutic duplication: Wymox and Cipro. According to the profile, this patient has been receiving these medications at the same time. What is the clinical situation which has resulted in the combined use of these antibiotics?

(9) Long-term use of Acetaminophen w/Codeine. According to the profile, this patient has received this medication over the time period shown. What is the clinical situation which has required the long-term use of this medication? Long-term use carries with it the problems of tolerance as well as the development of **patient dependence**.

(10) Therapeutic duplication: Acetaminophen w/Codeine and Propoxyphene Napsylate w/APAP. Although these medications have different chemical compositions, as far as their analgesic effects are concerned, they would generally be considered to have similar therapeutic effect. Is it possible, therefore, to discontinue one of these drugs...?

(11) Long-term use of Tussi-Organidin DM and Tussi-Organidin. According to the profile, this patient has averaged using 10cc per day of this medication over the 5-month time period shown. Is the patient still receiving significant therapeutic benefit from the medication, or is it possible to discontinue this drug? In general, the Commission is concerned about the possibility of Iodism which may occur with the prolonged use of this medication and can result in a wide variety of physical symptoms.

The following twenty prescription medications were included in this report as having been dispensed to Medicaid recipient "H.D.," but were later found in Respondent's home upon execution of the March 1, 1994, search warrant:

<u>Drug</u>	<u>Rx #</u>	<u>Quantity</u>	<u>Date Dispensed</u>
Duphalac 10gm/15ml	0145009	240ml	03/22/93
Duphalac 10gm/15ml	0158083	240ml	04/05/93
Duphalac 10gm/15ml	0159049	240ml	05/03/93
Duphalac 10gm/15ml	0159049	240ml	06/01/93
Duphalac 10gm/15ml	0159049	240ml	06/14/93
Cyclobenzaprine HCl	0153643	50	03/22/93
Cyclobenzaprine HCl	0153643	50	06/14/93
Cyclobenzaprine HCl	0153643	50	06/28/93
Alupent 650mcg	0146761	14ml	03/22/93
Alupent 650mcg	0159051	14ml	06/14/93
Alupent 0.6%	0154598	63ml	06/14/93
Atrovent 18mcg	0157567	14ml	04/26/93
Atrovent 18mcg	0157567	14ml	05/24/93
Atrovent 18mcg	0157567	14ml	06/21/93
Quinine Sulf 260mg	0153381	30	04/05/93
Quinine Sulf 260mg	0153381	30	05/03/93
Quinine Sulf 260mg	0153381	30	06/28/93
Fero-Folic-500	0140927	30	04/12/93
Fero-Folic-500	0140927	30	05/10/93
Fero-Folic-500	0140927	30	06/07/93

dd. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "E.D." on September 10, 1993, for medications allegedly prescribed for "E.D." by various practitioners and dispensed to "E.D." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between February 1, 1993, and July 31, 1993. The drugs listed in the report included the following: (1) Loprox 1%, (2) Acetaminophen 500mg, (3) Anusol HC 25mg, (4) Anusol HC 2.5A%, (5) Lindane 1%, (6) Ovide 0.5%, (7) Peridex 0.12%, (8) Sulindac 200mg, (9) Pepcid 20mg, (10) Pepcid 40mg, (11) Vancenase AQ 0.042%, (12) Macrobid 100mg,

(13) Propoxyphene Napsylate with Acetaminophen 100-650, (14) Cortisporin, (15) Codimal DH, and (16) Codimal LA. Seventy-one prescriptions were included in the report.

Attached to the report was a notation from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted:

(1) Long-term use of Loprox. According to the profile, the patient has used this medication continuously over the 6-month time period shown. Usually it would be expected that a fungal infection sensitive to this agent would resolve within a few weeks to a month of full therapeutic dosage treatment. Has this patient's condition improved to the point that this medication can now be stopped...?

(2) Long-term use of Propoxyphene Napsylate with APAP. According to the profile, this patient has received this medication over the time period shown. What is the clinical situation that has required the long-term use of this medication?

(3) Please note the cost of Codimal LA. Although there is not a generic substitute for this product, there are many less expensive therapeutic alternatives. Would you consider changing this patient to a less costly medication which would provide equivalent therapeutic results?

ee. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "R.G." on September 10, 1993, for medications allegedly prescribed for "R.G." by various practitioners and dispensed to "R.G." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between February 1, 1993, and July 31, 1993. The drugs listed in the report included the following: (1) Betamethasone Dipropionate 0.05%, (2) Triamcinolone Acetonide 0.5%, (3) Sulindac 200mg, (4) Elimite 5%, (5) Cleocin-T 1%, (6) Elocon 0.1%, (7) Prozac 20mg, (8) Terazol-3 0.8%, (9) Acetaminophen with Codeine 30/300, and (10) Nucofed 60mg/20mg. Forty-seven prescriptions were included in the report.

Attached to the report was a letter dated January 25, 1994, in which the Iowa Medicaid Drug Utilization Review Commission expressed concerns to Respondent regarding the medication regimen of Medicaid recipient "R.G." The letter included the following comments:

In the re-review process the Commission commented on the long-term use of Nucofed. According to the profile you have identified Dr. Robert Major as the prescribing physician. In correspondence from Dr. Major he has indicated one prescription called in to your pharmacy on February 26, 1993, with no additional refills authorized.

Yet the Medicaid report indicates that Respondent submitted Medicaid claims for Medicaid recipient "R.G." for the following drugs which Respondent claimed were authorized by Dr. Major:

<u>Drug</u>	<u>Rx Number</u>	<u>Quantity</u>	<u>Date Dispensed</u>
Nucofed	0155904	120ml	02/26/93
Nucofed	0155904	120ml	03/04/93
Nucofed	0155904	120ml	03/15/93
Nucofed	0155904	120ml	03/23/93
Nucofed	0155904	120ml	04/06/93
Nucofed	0155904	120ml	04/16/93

ff. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "M.B." on August 18, 1993, for medications allegedly prescribed for "M.B." by various practitioners and dispensed to "M.B." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., and other pharmacies between January 1, 1993, and June 30, 1993. The drugs listed in the report included the following: (1) Amitriptyline 50mg, (2) Buspar 10mg, (3) Pepcid 20mg, (4) Seldane 60mg, (5) Entex LA, (6) Acetaminophen with Codeine 30/300, (7) Hydrocodone with Acetaminophen 5/500, (8) Fioricet, (9) Butalbital/APAP/Caffeine, and (10) Zenate. Twenty-eight prescriptions were included in the report.

Attached to the report was "re-review dictation" from the Iowa Medicaid Drug Utilization Review Commission in which the following concerns were noted:

(1) Long-term use of Pepcid. Although there is no absolute time limit on the use of this medication prophylactically, at some point in time it should be possible to consider its discontinuation. Has this patient's condition improved to the point that this medication can now be stopped...? [All of the Pepcid prescriptions listed in the report were dispensed by the Respondent.]

(2) Long-term use of Butalbital/APAP/Caffeine. According to the profile, this patient has received this medication over the time period shown. What is the clinical situation which has required the long-term use of this medication? Long-term use carries with it the problems of tolerance as well as the development of **patient dependence**.

(3) Please note that these prescriptions were obtained from multiple physician and pharmacy providers. Therefore, all providers will be notified in order to better coordinate patient care.

(4) Significant cost savings could be realized by the use of a generic equivalent for Fioricet.

gg. The Drug Utilization Review Systems of the Iowa Department of Human Services produced a re-review profile for Medicaid recipient "I.B." on September 10, 1993, for medications allegedly prescribed for "I.B." by one practitioner and dispensed to "I.B." by Respondent's pharmacy, the Des Moines Pharmacy, Inc., between February 1, 1993, and July 31, 1993. The drugs listed in the report included the following: (1) Calan SR, (2) Hydrochlorothiazide 25mg, (3) Sulindac 200mg, (4) Tagamet 400mg, (5) Niferex-150 Forte, and (6) Norgesic Forte. Forty-five prescriptions were included in the report.

hh. In a letter dated February 7, 1994, the Iowa Medicaid Drug Utilization Review Commission expressed concerns to Respondent regarding the medication regimen of Medicaid recipient "M.S." and the dispensing practices of Respondent's pharmacy, the Des Moines Pharmacy, Inc. The letter addressed concerns about the following: (1) long-term use of Propoxyphene Napsylate with Acetaminophen, (2) apparent overuse of acetaminophen, and (3) utilization of multiple providers.

ii. The 18 Medicaid patient profiles described in this amendment to the emergency order and complaint and statement of charges were produced by the Drug Utilization Review Systems of the Iowa Department of Human Services between February 1, 1993, and February 11, 1994. These 18 profiles demonstrate that Respondent was systematically dispensing many prescription medications to Medicaid recipients which were unneeded, unwanted, unnecessary, excessive, therapeutically duplicative, and/or unauthorized by the indicated prescriber. The 18 profiles include 1,298 prescriptions. Eight profiles were produced because of "drug - drug interactions." Four profiles were produced because of "drug - diagnosis exceptions." A total of eight "re-review" profiles were produced.

In 17 cases, the *long-term use* of prescription medications was questioned by the Iowa Medicaid Drug Utilization Review Commission. In each of those cases, the Commission asked if the over-used drugs could be tapered down or discontinued. In 11 cases, the Commission questioned the dispensing of *expensive* brandname prescription medications when less expensive therapeutic alternatives were available. In six cases, inappropriate dispensing practices leading to patient drug dependence were noted. In five cases, the Commission asked if prescriptions or prescription refills were *unauthorized* (involving a total of 19 or more unauthorized prescriptions or prescription refills). In four cases, the Commission noted problems with *therapeutic duplication*. In one case, the Commission noted an apparent *underutilization* of a prescription medication.

The Commission also noted the following: "The pharmacist [Respondent] should dispense in accordance with requirements established by state law. In filling prescriptions the pharmacist shall fill a 30-day supply. Filling in lesser amounts imposes unnecessary administrative costs." In **all** 18 profiles produced, Respondent's pharmacy, the Des Moines Pharmacy, Inc., dispensed *less than* a 30-day supply of certain maintenance medications. Respondent routinely dispensed certain maintenance medications in the following quantities which imposed unnecessary administrative costs on the Iowa Medicaid program: a 2-day supply, a 3-day supply, a 5-day supply, a 6-day supply, a 7-day supply, a 10-day supply, a 14-day supply, a 15-day supply, a 20-day

supply, and/or a 25-day supply. In numerous instances, Respondent dispensed refills of prescription medications *before* they were needed (*before* the "days supply" which had been dispensed should have been consumed by the patient).

In two instances (Medicaid recipients "D.W." and "H.D."), a total of 30 prescription medications were included in the profile reports as having been dispensed by Respondent to Medicaid recipients and having been paid for by the Iowa Medicaid program, but the dispensed prescriptions (the labeled vials containing the prescription drugs) were later found stored in Respondent's home upon execution of the March 1, 1994, search warrant. The prescription vials which were found on March 1, 1994, had been prepared by Respondent between February 1, 1993, and July 26, 1993.

In addition, it is believed that additional profiles were produced by the Drug Utilization Review Systems of the Iowa Department of Human Services which reviewed the dispensing practices of Respondent's pharmacy, the Des Moines Pharmacy, Inc., at other times and for other Medicaid recipients.

jj. In summary, the information contained in the Emergency Order and Complaint and Statement of Charges and Notice of Hearing as well as this Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing demonstrates that Respondent has systematically dispensing many prescription medications to Medicaid recipients which were unneeded, unwanted, unnecessary, excessive, therapeutically duplicative, and/or unauthorized by the indicated prescriber. Further, the information indicates that Respondent has, by his actions, placed the health and safety of his patients at significant risk. The information indicates that Respondent has been in unlawful possession of prescription drugs and numerous "samples" of prescription drugs. It also indicates that Respondent has, by his actions, defrauded the Iowa Medicaid program. The exact amount of fraudulent Medicaid billings remains undetermined at this time.

8. Respondent is guilty of violations of those 1993 Iowa Code sections specified in paragraph 8 on pages 4 and 5 of the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, as well as 1993 Iowa Code sections 124.308(1), 124.402(1)(a), and 124.403(1)(c) by virtue of the allegations contained in paragraph 7 of this Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing.

1993 Iowa Code section 124.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

1993 Iowa Code section 124.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308;...

1993 Iowa Code section 124.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

9. Respondent is guilty of violations of those sections of 657 Iowa Administrative Code specified in paragraph 9 on pages 5 through 11 of the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, as well as 657 Iowa Administrative Code section 10.10 by virtue of the allegations contained in paragraph 7 of this Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing.

657 Iowa Administrative Code section 10.10 provides, in part, the following:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

The Iowa Board of Pharmacy Examiners finds that paragraphs 8 and 9 constitute additional grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent Stephen J. Weiss has violated 1993 Iowa Code sections 124.308(1), 124.402(1)(a), 124.403(1)(c), 147.55(2), 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.12(4), 155A.19(1)(g), 155A.23(2), and 155A.23(4) and 657 Iowa Administrative Code sections 6.10, 8.5(1), 8.18, 8.19, 8.20, 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(i), 9.1(4)(j), 9.1(4)(t), 9.1(4)(u), 10.10, and 10.10(5).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2(1), that Stephen J. Weiss appear before the Iowa Board of Pharmacy Examiners on Tuesday, April 19, 1994, at 10:00 a.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to discipline the license to practice pharmacy issued to Stephen J. Weiss on April 11, 1989, 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 disciplinary action, including 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 representing the public interest in these proceedings.

Information regarding the hearing may be obtained from Theresa O'Connell Weeg, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-6858). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS

A handwritten signature in cursive script, appearing to read "Lloyd K. Jessen".

Lloyd K. Jessen, Executive Secretary/Director

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

Re: Pharmacist License of STEPHEN J. WEISS License No. 17208 Respondent	} } } } } }	SECOND AMENDMENT TO EMERGENCY ORDER AND COMPLAINT AND STATEMENT OF CHARGES AND NOTICE OF HEARING
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COMES NOW, Lloyd K. Jessen, Executive Secretary/Director of the Iowa Board of Pharmacy Examiners, on the 15th day of November, 1994, and files this Second Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, to Stephen J. Weiss, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Marian L. Roberts, Chairperson; Phyllis A. Olson, Vice Chairperson; Jay J. Cayner; Phyllis A. Miller; Mary Pat Mitchell; Matthew C. Osterhaus; 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 April 11, 1989, by reciprocity.

3. Respondent was self-employed as part owner and pharmacist in charge of the Des Moines Pharmacy, Inc., located at 717 Lyon Street in Des Moines, Iowa 50309.

4. Respondent currently resides at 8226 Plum Drive, Urbandale, Iowa 50322.

5. Respondent's license to practice pharmacy in Iowa was current until June 30, 1994.

6. An Emergency Order and Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on March 4, 1994. An Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing was filed against Respondent on March 22, 1994. The Emergency Order and Complaint and Statement of Charges and Notice of Hearing and the Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing are incorporated by reference into this Second Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing as if fully set forth herein.

7. Since March 22, 1994, the Board has received additional information which alleges the following:

a. The following bulk pharmaceuticals (manufacturer's stock bottles or containers) seized from the active dispensing area of the Respondent's pharmacy, the Des Moines Pharmacy, Inc., on March 4, 1994, were found to be misbranded and/or adulterated due to the fact that the stock bottles contain a greater quantity of drug than that indicated on the manufacturer's label, indicating that the stock bottles contain some tablets or capsules (1) that were derived from *another* stock bottle and/or lot number, (2) that have unknown expiration dates, and (3) that are commingled together with other tablets or capsules:

(1) A United Research Laboratories (URL) stock bottle labeled as #100 Albuterol Sulfate 4mg tablets containing 115 tablets.

(2) A United Research Laboratories (URL) stock bottle labeled as #1000 Aminophylline 200mg tablets containing 1,222 tablets.

(3) A United Research Laboratories (URL) stock bottle labeled as #1000 Amitriptyline HCL 25mg tablets containing 1,017 tablets.

(4) A Ciba Pharmaceutical stock bottle labeled as #100 Apresoline 25mg tablets containing 131 tablets (expiration date on label was 10/93).

(5) An ESI Pharmaceutical stock bottle labeled as #50 Aygestin 5mg tablets containing 59 tablets.

(6) A Marion Merrell Dow stock bottle labeled as #100 Bentyl 20mg tablets containing 140 tablets.

(7) An Abbott Laboratories stock bottle labeled as #60 Biaxin 250mg tablets containing 74 tablets.

(8) A Marion Merrell Dow stock bottle labeled as #100 Cardizem 90mg tablets containing 115 tablets.

(9) A Qualitest stock bottle labeled as #500 Chlorpropamide 250mg tablets containing 534 tablets (some tablets have a different color/shade or a different shape).

(10) A Mylan Pharmaceutical stock bottle labeled as #500 Clorazepate Dipotassium 7.5mg tablets containing 511 tablets.

(11) A Searle stock bottle labeled as #60 Cytotec 200mcg tablets containing 81 tablets.

(12) A United Research Laboratories (URL) stock bottle labeled as #1000 Dipyridamole 50mg tablets containing 1,211 tablets.

(13) A Forest Pharmaceuticals stock bottle labeled as #100 Esgic-Plus tablets containing 102 tablets.

(14) A SmithKline Beecham stock bottle labeled as #100 Eskalith CR 450mg tablets containing 140 tablets.

(15) A Sandoz Pharmaceuticals stock bottle labeled as #100 Fioricet tablets containing 124 tablets.

(16) A Sandoz Pharmaceuticals stock bottle labeled as #100 Fiorinal capsules containing 120 capsules (a Schedule III controlled substance).

(17) An E.R. Squibb & Sons stock bottle labeled as #100 Florinef Acetate 0.1mg tablets containing 102 tablets.

(18) A McNeil Pharmaceutical stock bottle labeled as #50 Floxin 200mg tablets containing 54 tablets.

(19) An Upjohn stock bottle labeled as #100 Halcion 0.125mg tablets containing 113 tablets (a Schedule IV controlled substance).

(20) A Zenith Laboratories stock bottle labeled as #500 Hydroxyzine Pamoate 50mg capsules containing 543 capsules.

(21) A Burroughs Wellcome stock bottle labeled as #1000 Lanoxin 0.125mg tablets containing 1,140 tablets.

(22) A Ciba Pharmaceutical stock bottle labeled as #100 Lotensin 10mg tablets containing 109 tablets.

(23) A Parke-Davis stock bottle labeled as #25 Nitrostat 0.6mg tablets containing 26 tablets (expiration date on label was 6/93).

(24) A Schein Pharmaceuticals stock bottle labeled as #100 Nortriptyline HCl 10mg capsules containing 104 capsules.

(25) A Creighton Products stock bottle labeled as #100 Nortriptyline HCl 25mg capsules containing 117 capsules.

(26) A Sandoz Pharmaceuticals stock bottle labeled as #100 Parlodel 2.5mg tablets containing 104 tablets.

(27) A SmithKline Beecham stock bottle labeled as #30 Paxil 20mg tablets containing 31 tablets.

(28) A Purepac Pharmaceuticals stock bottle labeled as # 500 Prednisone 10mg tablets containing 506 tablets.

(29) A Lemmon stock bottle labeled as #500 Propoxyphene Napsylate & Acetaminophen 100/650mg tablets containing 619 tablets (a Schedule IV controlled substance).

(30) A Schering stock bottle labeled as #100 Proventil Repetabs 4mg tablets containing 112 tablets.

(31) A SmithKline Beecham stock bottle labeled as #100 Relafen 500mg tablets containing 107 tablets.

(32) A United Research Laboratories (URL) stock bottle labeled as #500 Sulindac 200mg tablets containing 534 tablets.

(33) A SmithKline Beecham stock bottle labeled as #30 Tagamet Tiltab 800mg tablets containing 42 tablets.

(34) A Mylan Pharmaceuticals stock bottle labeled as #100 Thiothixene 2mg capsules containing 117 capsules.

(35) A Mylan Pharmaceuticals stock bottle labeled as #100 Thiothixene 5mg capsules containing 108 capsules.

(36) A Martec Pharmaceutical stock bottle labeled as #100 Trihexyphenidyl HCl 2mg tablets containing 121 tablets (expiration date on label was 9/93).

(37) A Purdue Frederick stock bottle labeled as #100 Trilisate 750mg tablets containing 136 tablets.

(38) An H.N. Norton stock bottle labeled as #100 Verapamil HCl Extended Release 240mg tablets containing 130 tablets.

b. The following bulk pharmaceuticals (manufacturer's stock bottles or containers) seized from the active dispensing area of the Respondent's pharmacy, the Des Moines Pharmacy, Inc., on March 4, 1994, were found to be misbranded and/or adulterated due to the fact that the stock bottles contain a mixture of different tablets or capsules, indicating that the stock bottles contain some tablets or capsules (1) that were derived from *other manufacturer's* stock bottles of unknown lot numbers, (2) that have

unknown expiration dates, and (3) that are commingled together with other tablets or capsules:

(1) A Stuart Pharmaceuticals stock bottle labeled as #100 Bucladin-S 50mg tablets containing 40 Bucladin-S 50mg tablets and 1 BuSpar 5mg tablet.

(2) A Martec Pharmaceutical stock bottle labeled as #500 Diazepam 2mg tablets containing 382 Diazepam 2mg tablets manufactured by Martec and 6 Diazepam 2mg tablets manufactured by Danbury Pharmacal.

(3) A Boehringer-Ingelheim stock bottle labeled as # 100 Persantine 50mg tablets containing 14 Persantine 50mg tablets and 1 Dipyridamole 50mg tablet manufactured by Mutual Pharm.

(4) A 3M Pharmaceuticals stock bottle labeled as #100 Disalcid 750mg tablets containing 100 Disalcid 750mg tablets and 20 Disalcid 750mg tablets manufactured by Riker.

(5) A Wyeth Laboratories stock bottle labeled as #100 Stuartnatal Plus tablets containing a mixture of 80 tablets with different logo colors and different imprints (imprint 791 and 792).

(6) A United Research Laboratories (URL) stock bottle labeled as #500 Sulindac 200mg tablets containing a mixture of 24 Sulindac 200mg tablets manufactured by Lemmon and 165 Sulindac 200mg tablets manufactured by Mutual Pharm.

(7) A Qualitest stock bottle labeled as #1000 Tolazamide 250mg tablets containing a mixture of 4 Tolazamide 250mg tablets manufactured by Interpharm and 116 Tolazamide 250mg tablets manufactured by Qualitest.

c. Of the 897 open stock bottles of bulk pharmaceuticals seized from the active dispensing area of Respondent's pharmacy, the Des Moines Pharmacy, Inc., on March 4, 1994, 45 stock bottles (5% of the total open drug stock) were found to be misbranded and/or adulterated.

d. Of the 897 open stock bottles of bulk pharmaceuticals seized from the active dispensing area of Respondent's pharmacy, the Des Moines Pharmacy, Inc., on March 4, 1994, 86 stock bottles (9.58% of the total open drug stock) were found to be outdated (expiration date was prior to March 4, 1994). Some items were up to three years outdated.

e. The following "filled prescriptions" were seized from the active dispensing area of the Respondent's pharmacy, the Des Moines Pharmacy, Inc., on March 4, 1994, where they were found misfilled and/or mislabeled by Respondent and

commingled on the prescription department shelves with bulk pharmaceutical stock bottles and containers:

(1) One 480ml amber bottle labeled as Rx # 158344U and Rx # 158345U for two patients, dated February 3, 1994, which appears to contain Proventil Syrup.

(2) One 240ml amber bottle labeled as Rx # 164335U, 240ml Duphalac Syrup, for patient "D.E.," dated October 27, 1993, which appears to contain only 120 ml of Duphalac Syrup.

(3) One 60ml amber bottle labeled as Rx # 162880U, 30ml Cardec-DM Drops, for patient "Z.O.," dated February 28, 1994, which contains 60ml of liquid.

(4) One 45gram tube of Lotrisone labeled as Rx # 176743U, 15gm Lotrisone Cream, for patient "C.R.," dated February 25, 1994, which contains only 4 to 5 grams.

(5) One 17gram Proventil Inhalation Aerosol Refill labeled as Rx # 176277U, 17gm Proventil Inhaler (complete kit), for patient "B.S.," dated February 17, 1994.

(6) One sealed stock bottle of #100 Lilly Sodium Chloride 1 gram tablets labeled as Rx # 134128, #100 Sodium Chlo .9% XIX, for patient "C.C.," dated February 12, 1992.

(7) One Qualitest (manufacturer) stock bottle of #100 Papaverine HCl 150mg controlled-release capsules labeled as Rx # 115981, #100 Papaverine HCl 150mg, for patient "P.P.," dated October 4, 1991, which contained 121 capsules.

(8) One amber prescription vial labeled as Rx # 169848U, #60 Resaid-SR Cap, for patient "J.W.," dated March 3, 1994, which contains only 45 capsules.

(9) One amber prescription vial labeled as Rx # 173028P, #60 Naproxen Sodium 550mg, for patient "D.D.," dated February 28, 1994, which contains only 30 tablets.

(10) One amber prescription vial labeled as Rx # 175205U, #60 Metoclopropamide 10mg X1X, for patient "D.L.," dated February 25, 1994, which contains only 59 tablets.

(11) One amber prescription vial labeled as Rx # 175280U, #50 Metoclopropamide 10mg, for patient "G.B.," dated February 28, 1994, which contains only 30 tablets.

(12) One amber prescription vial labeled as Rx # 167995U, #20 Benzonatate 100mg, for patient "F.H.," dated March 3, 1994, which contains 30 capsules.

(13) One amber prescription vial labeled as Rx # 174942U, #30 Proventil 4mg Repetabs, for patient "V.F.," dated February 7, 1994, which contains 31 tablets.

(14) One amber prescription vial labeled as Rx # 173122U, #60 Zoloft 100mg, for patient "K.O.," dated February 21, 1994, which contains only 42 tablets.

f. A random survey of the computerized prescription records of 645 prescriptions of the Des Moines Pharmacy, Inc., reveals that Respondent exceeded the prescription refill limitation of not more than eleven (11) refills within eighteen (18) months following the date on which a prescription is issued for the following 62 prescriptions (9.6% of the total number surveyed) which Respondent refilled at his pharmacy, the Des Moines Pharmacy, Inc.:

(1) Prescription number 118345 for the drug K-Dur 20meq which was refilled a total of 13 times between March 18, 1991, and January 26, 1993.

(2) Prescription number 111803 for the drug Theolair-SR 300mg which was refilled a total of 15 times between October 29, 1990, and January 23, 1992.

(3) Prescription number 111732 for the drug Theolair-SR 300mg which was refilled a total of 13 times.

(4) Prescription number 111729 for the drug Ibuprofen 600mg which was refilled a total of 12 times.

(5) Prescription number 120869 for the drug Questran Powder which was refilled a total of 18 times.

(6) Prescription number 112656 for the drug Renese 2mg which was refilled a total of 24 times between November 16, 1990, and December 11, 1992.

(7) Prescription number 116095 for the drug Inderal LA 120mg which was refilled a total of 12 times.

(8) Prescription number 120539 for the drug Zantac 150mg which was refilled a total of 12 times.

(9) Prescription number 121532 for the drug Quinine Sulfate 260mg which was refilled a total of 15 times (21 times based on quantity of drug dispensed) between June 3, 1991, and May 11, 1993.

(10) Prescription number 111245 for the drug SSKI Solution 1gm/ml which was refilled a total of 13 times.

(11) Prescription number 114892 for the drug Catapres-TTS 0.2 Patches which was refilled a total of 13 times between January 8, 1991, and January 21, 1993.

(12) Prescription number 121235 for the drug Proventil 4mg Repetabs which was refilled a total of 12 times.

(13) Prescription number 114235 for the drug Rogaine 2% which was refilled a total of 22 times between December 26, 1990, and December 7, 1992.

(14) Prescription number 134501 for the drug Nolex LA which was refilled a total of 18 times (23 times based on quantity of drug dispensed).

(15) Prescription number 136877 for the drug Novolin 70/30 which was refilled a total of 24 times.

(16) Prescription number 135164 for the drug Micronase 5mg which was refilled a total of 12 times.

(17) Prescription number 136878 for the drug K-Dur 20meq which was refilled a total of 12 times.

(18) Prescription number 112496 for the drug Hydrochlorothiazide 50mg which was refilled a total of 14 times (more than 20 times based on quantity of drug dispensed) between November 13, 1990, and May 7, 1993.

(19) Prescription number 132535 for the drug Furosemide 40mg which was refilled a total of 12 times.

(20) Prescription number 133639 for the drug Meclizine HCl 25mg which was refilled a total of 12 times.

(21) Prescription number 122516 for the drug Humulin-N which was refilled a total of 14 times.

(22) Prescription number 120431 for the drug Humulin-R which was refilled a total of 13 times.

(23) Prescription number 163344 for the drug Novolin 70/30 which was refilled a total of 13 times.

(24) Prescription number 142788 for the drug Carisoprodol 350mg which was refilled a total of 13 times.

(25) Prescription number 158256 for the drug Zenate which was refilled a total of 12 times.

(26) Prescription number 157690 for the drug Theophylline Elixir 80/15 which was refilled a total of 12 times.

(27) Prescription number 158918 for the drug Carisoprodol which was refilled a total of 12 times.

(28) Prescription number 150028 for the drug Meclizine HCl 25mg which was refilled a total of 13 times.

(29) Prescription number 152864 for the drug Desyrel 100mg which was refilled a total of 12 times.

(30) Prescription number 157900 for the drug Propine C 0.1% which was refilled a total of 17 times.

(31) Prescription number 142661 for the drug Proventil Inhaler 17gm which was refilled a total of 13 times.

(32) Prescription number 148765 for the drug Norgesic Forte which was refilled a total of 13 times.

(33) Prescription number 147911 for the drug Proventil 4mg Repetabs which was refilled a total of 13 times.

(34) Prescription number 140430 for the drug Prazosine HCl 2mg which was refilled a total of 13 times.

(35) Prescription number 144802 for the drug Lotrisone Cream which was refilled a total of 13 times.

(36) Prescription number 156231 for the drug Amitriptyline 25mg which was refilled a total of 12 times.

(37) Prescription number 138915 for the drug Cardizem SR 120mg which was refilled a total of 12 times.

(38) Prescription number 140437 for the drug Ferrotrinsic which was refilled a total of 12 times.

(39) Prescription number 140751 for the drug Blephamide Drops which was refilled a total of 13 times.

(40) Prescription number 156923 for the drug Furosemide 20mg which was refilled a total of 12 times.

(41) Prescription number 140752 for the drug Vancenase AQ Nasal Spray which was refilled a total of 12 times.

(42) Prescription number 152696 for the drug Ibuprofen 800mg which was refilled a total of 12 times.

(43) Prescription number 157909 for the drug Hydroxyzine 25mg which was refilled a total of 13 times.

(44) Prescription number 156248 for the drug Welbutrin 100mg which was refilled a total of 12 times.

(43) Prescription number 156249 for the drug Furosemide 20mg which was refilled a total of 12 times.

(44) Prescription number 156252 for the drug Alupent Inhaler which was refilled a total of 12 times.

(45) Prescription number 156251 for the drug Metoclopropamide 10mg which was refilled a total of 12 times.

(46) Prescription number 157912 for the drug Loperamide 2mg which was refilled a total of 12 times.

(47) Prescription number 140442 for the drug Furosemide 40mg which was refilled a total of 14 times.

(48) Prescription number 140440 for the drug Zantac 150mg which was refilled a total of 12 times.

(49) Prescription number 142871 for the drug Transderm-Nitro which was refilled a total of 12 times.

(50) Prescription number 146048 for the drug Depakote 250mg which was refilled a total of 12 times.

(51) Prescription number 149664 for the drug Ibuprofen 800mg which was refilled a total of 12 times.

(52) Prescription number 156066 for the drug Amitriptyline 10mg which was refilled a total of 12 times.

(53) Prescription number 153653 for the drug Premarin 1.25mg which was refilled a total of 12 times.

(54) Prescription number 150579 for the drug Sulindac 200mg which was refilled a total of 13 times.

(55) Prescription number 148361 for the drug Diltiazem 90mg which was refilled a total of 12 times.

(56) Prescription number 147394 for the drug Provera 2.5mg which was refilled a total of 12 times.

(57) Prescription number 157964 for the drug Alupent 0.6% which was refilled a total of 13 times.

(58) Prescription number 157965 for the drug Atrovent Inhaler which was refilled a total of 12 times.

(59) Prescription number 148818 for the drug Theolair-SR 300mg which was refilled a total of 12 times.

(60) Prescription number 153055 for the drug Lanoxin 0.125mg which was refilled a total of 12 times.

(61) Prescription number 153056 for the drug Trental 400mg which was refilled a total of 12 times.

(62) Prescription number 153057 for the drug Doxepin 25mg which was refilled a total of 12 times.

g. A limited survey of the computerized prescription records of certain patients of the Des Moines Pharmacy, Inc., including many Medicaid recipients, indicates that the following 347 prescriptions or refills of prescriptions which were dispensed by Respondent were *not* authorized by the prescriber indicated on the prescription or in the pharmacy's computer files:

- (1) Five prescriptions for Ceftin 250mg #20 dated June 7, 1990, for Dr. "D."
- (2) Nineteen prescriptions for Nitrostat #25 dated between January 12, 1990, and September 20, 1993, for patient "M.S."
- (3) Four prescriptions for Nitrostat #100 dated between December 6, 1993, and February 28, 1994, for patient "M.S."
- (4) One prescription for Lorazepam 1mg #30 dated June 2, 1993, for patient "H.D." Lorazepam is a Schedule IV controlled substance.

(5) One prescription for Lorazepam 1mg #60 dated June 3, 1993, for patient "H.D." Lorazepam is a Schedule IV controlled substance.

(6) One prescription for Quinine Sulfate 260mg dated November 18, 1993, for patient "C.F."

(7) One prescription for K-Dur 20mEq dated January 31, 1994, for patient "V.L."

(8) Two prescriptions for K-Dur 20mEq dated December 17, 1992, and January 31, 1994, for patient "H.D."

(9) Two prescriptions for Nasalcrom Solution dated November 24, 1993, and February 14, 1994, for patient "H.D."

(10) One prescription for Codimal-LA dated December 17, 1993, for patient "L.E."

(11) Seven prescriptions for Vancenase AQ dated between May 3, 1993, and October 18, 1993, for patient "D.W."

(12) Eight prescriptions for Entex-LA dated between February 1, 1993, and September 7, 1993, for patient "D.W."

(13) Seven prescriptions for Entex-LA dated between August 23, 1993, and November 1, 1993, for patient "G.W."

(14) Three prescriptions for Anaprox-SD 550mg dated between June 1, 1993, and August 23, 1993, for patient "G.W."

(15) Three prescriptions for Cyclobenzaprine HCl dated between June 28, 1993, and October 4, 1993, for patient "G.W."

(16) Four prescriptions for Isosorbide 40mg dated between August 11, 1993, and November 29, 1993, for patient "G.W."

(17) Four prescriptions for Prednisone 5mg dated between August 2, 1993, and November 22, 1993, for patient "G.W."

(18) Three prescriptions for Salsalate dated between July 12, 1993, and November 1, 1993, for patient "G.W."

(19) Eight prescriptions for Spironolactone dated between February 15, 1993, and October 25, 1993, for patient "G.W."

(20) One prescription for Theo-Dur 300mg dated July 6, 1993, for patient "G.W."

(21) Six prescriptions for Vancenase AQ Nasal Spray dated between April 12, 1993, and November 22, 1993, for patient "G.W."

(22) Two prescriptions for Nitro-Dur dated September 13, 1993, and December 6, 1993, for patient "G.W."

(23) Fourteen prescriptions for Yohimbine dated between October 12, 1992, and November 29, 1993, for patient "G.W."

(24) Fourteen prescriptions for Alupent dated between March 8, 1993, and November 29, 1993, for patient "H.D."

(25) Nine prescriptions for Atrovent Inhaler dated between March 1, 1993, and October 11, 1993, for patient "H.D."

(26) Eleven prescriptions for Cyclobenzaprine dated between February 12, 1993, and September 20, 1993, for patient "H.D."

(27) Two prescriptions for Elocon Cream dated June 3, 1992, and May 3, 1993, for patient "H.D."

(28) Seven prescriptions for Fero-Folic 500 dated between March 15, 1993, and November 22, 1993, for patient "H.D."

(29) Eleven prescriptions for Quinine Sulfate dated between March 8, 1993, and November 29, 1993, for patient "H.D."

(30) One prescription for Temazepam dated October 25, 1993, for patient "H.D." Temazepam is a Schedule IV controlled substance.

(31) One prescription for Zestril dated August 23, 1993, for patient "H.D."

(32) Thirteen prescriptions for Duphalac Syrup dated between April 5, 1993, and November 15, 1993, for patient "H.D."

(33) Two prescriptions for Buspar dated July 9, 1992, and August 10, 1992, for patient "B.B."

(34) One prescription for Cyclobenzaprine HCl dated April 22, 1993, for patient "B.B."

(35) One prescription for Ovide dated July 1, 1993, for patient "B.B."

(36) One prescription for Poly-Histine DM dated February 16, 1993, for patient "B.B."

(37) Eight prescriptions for Propoxyphene Napsylate with Acetaminophen dated between January 14, 1993, and August 5, 1993, for patient "B.B." Propoxyphene Napsylate with Acetaminophen is a Schedule IV controlled substance.

(38) One prescription for Vancenase AQ Nasal Spray dated February 5, 1993, for patient "B.B."

(39) Two prescriptions for Atrovent Inhaler dated May 26, 1992, and November 22, 1993, for patient "R.B."

(40) One prescription for Cyclobenzaprine HCl dated October 12, 1993, for patient "R.B."

(41) One prescription for Hydroxyzine dated March 9, 1992, for patient "R.B."

(42) One prescription for Ibuprofen #18 dated August 25, 1993, for patient "R.B."

(43) Two prescriptions for Niferex-150 Forte dated April 28, 1992, and May 26, 1992, for patient "R.B."

(44) Five prescriptions for Propoxyphene Napsylate with Acetaminophen dated between October 20, 1992, and October 12, 1993, for patient "R.B." Propoxyphene Napsylate with Acetaminophen is a Schedule IV controlled substance.

(45) One prescription for Proventil dated June 26, 1992, for patient "R.B."

(46) One prescription for Sulindac dated October 25, 1993, for patient "R.B."

(47) One prescription for Cortisporin Suspension Ophthalmic dated January 3, 1994, for patient "A.P."

(48) One prescription for Nix dated October 14, 1993, for patient "J.P."

(49) One prescription for Ovide dated June 29, 1993, for patient "J.P."

(50) One prescription for Poly-Histine DM dated December 6, 1993, for patient "J.P."

(51) Three prescriptions for Zephrex dated between May 4, 1993, and July 9, 1993, for patient "J.P."

(52) One prescription for Cardec-DM Syrup dated December 6, 1993, for patient "S.P."

(53) One prescription for Poly-Histine DM dated November 12, 1993, for patient "S.P."

(54) One prescription for Rondec Syrup dated July 21, 1993, for patient "S.P."

(55) One prescription for Poly-Histine DM dated November 21, 1993, for patient "J.P."

(56) One prescription for Poly-Histine DM dated November 21, 1993, for patient "S.P."

(57) One prescription for Cardec-DM Syrup dated September 7, 1993, for patient "A.B."

(58) One prescription for Ovral-28 dated March 3, 1993, for patient "B.B."

(59) One prescription for Genora-28 dated September 15, 1993, for patient "J.J."

(60) Eight prescriptions for Fero-Folic 500 dated between January 21, 1993, and August 4, 1993, for patient "V.J."

(61) One prescription for Estraderm Patches dated September 27, 1993, for patient "M.S."

(62) Two prescriptions for Ovral-28 dated December 23, 1992, and January 21, 1993, for patient "T.V."

(63) One prescription for Piroxicam 20mg dated November 4, 1993, for patient "R.B."

(64) One prescription for Corgard 40mg dated October 14, 1993, for patient "C.N."

(65) One prescription for Cyclobenzaprine 10mg dated October 28, 1993, for patient "C.N."

(66) Two prescriptions for Hydroxyzine Pamoate 25mg dated October 14, 1993, and October 28, 1993, for patient "C.N."

(67) Fifty prescriptions for various prescription drugs for patient "P.P." dispensed between December 26, 1991, and January 27, 1994.

(68) Five prescriptions for various prescription drugs for patient "W.S." dispensed between May 15, 1992, and March 15, 1993.

(69) Ten prescriptions for Nolex LA dated between January 27, 1992, and November 5, 1993, for patient "M.W."

(70) Nine prescriptions for Vancenase AQ Nasal Spray dated between January 27, 1992, and November 5, 1993, for patient "M.W."

(71) One prescription for Nizoral 2% Cream dated December 10, 1993, for patient "R.S."

(72) One prescription for Poly-Histine DM dated September 8, 1993, for patient "J.H."

(73) Twenty-nine prescriptions for various prescription drugs (including Alupent Inhaler, Cyclobenzaprine, K-Lyte DS, Nolex LA, and Tessalon 100mg) for patient "D.B." dispensed between September 30, 1992, and January 18, 1994.

(74) Seven prescriptions for various prescription drugs (including Gemfibrozil 600mg, Glucotrol 10mg, and Glynase 3mg) for patient "M.H." dispensed between October 8, 1993, and January 3, 1994.

h. Between November 1989 when the Des Moines Pharmacy, Inc., opened and March 4, 1994, when the Des Moines Pharmacy closed, the pharmacy's computer files indicate that Respondent dispensed a total of 187,768 prescriptions (new and refill). During calendar year 1993, Respondent filled or refilled a total of 63,784 prescriptions or approximately 248 prescriptions per day. On average, during 1993, Respondent filled or refilled approximately 30 prescriptions per hour (one prescription every two minutes) during every hour of every day that the Des Moines Pharmacy, Inc., was open for business. The rapid rate at which Respondent dispensed prescriptions precluded Respondent from conducting effective prospective drug use review and from complying with other Iowa pharmacy law and Board administrative rules pertaining to the practice of pharmacy and the distribution of controlled substances.

i. Between May 10, 1991, and July 6, 1992, Respondent filled and refilled prescriptions for a Medicaid patient, "E.G.," for Fiorinal tablets in quantities and frequencies that were *not* authorized by the prescriber. During the 422-day time period between May 10, 1991, and July 6, 1992, Respondent dispensed a total of 87 prescriptions for Fiorinal and a total of 4,580 tablets of Fiorinal to patient "E.G." On average, the Respondent provided patient "E.G." with 52.6 tablets of Fiorinal every 4.85 days. On average, patient "E.G." consumed 10.85 tablets of Fiorinal every day for 422

days. Between January 7, 1992, and March 16, 1992, patient "E.G." consumed an average of 15.6 tablets of Fiorinal a day. Between April 10, 1992, and April 20, 1992, patient "E.G." consumed an average of 18 tablets of Fiorinal a day.

According to product information provided by Sandoz Pharmaceuticals, the manufacturer of Fiorinal, "prolonged use of barbiturates can produce drug dependence, characterized by psychic dependence, and less frequently, physical dependence and tolerance. The abuse liability of Fiorinal is similar to that of other barbiturate-containing drug combinations...*Total daily dose should not exceed 6 tablets or capsules.*"

On sixteen different dates between January 24, 1992, and March 16, 1992, Respondent also provided an equal or greater number of Fiorinal tablets to "E.G.'s" husband, "M.G.," and to "E.G.'s" friend, "P.F." The Fiorinal tablets were provided to "M.G." and "P.F." on the same dates that Respondent dispensed Fiorinal tablets to "E.G."

Fiorinal is a Schedule III controlled substance. Each tablet contains 50mg of butalbital (may be habit forming), 325mg of aspirin, and 40mg of caffeine.

j. Between December 18, 1989, and January 25, 1994, Respondent dispensed a total of 44 prescriptions or refills of prescriptions to himself and four other family members. These prescriptions or refills of prescriptions were *not* authorized by the prescriber indicated on the prescriptions or in the pharmacy's computer files. A total of 24 of these prescriptions were for a controlled substance listed in Schedule III, IV, or V. According to the pharmacy's computer files, 19 of these prescriptions were billed to PCS, a third party payor.

8. Respondent is guilty of violating 21 Code of Federal Regulations--Parts 210 and 211; 1993 Iowa Code sections 124.308(1), 124.308(3), 124.401(1)(c)(6), 124.401(1)(d), 124.402(1)(a), 124.403(1)(c), 126.3(1), 126.3(2), 126.3(3), 126.3(10), and 155A.29; and those 1993 Iowa Code sections specified in paragraph 8 on pages 4 and 5 of the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, by virtue of the allegations contained in paragraph 7 of this Second Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing.

1993 Iowa Code section 124.308 provides, in part, the following:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

...

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than

six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

1993 Iowa Code section 124.401 provides, in part, the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

...

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

...

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violation of this subsection, with respect to any other controlled substances...classified in schedule IV or V is an aggravated misdemeanor.

1993 Iowa Code section 124.402(1) provides, in part, the following:

It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308;...

1993 Iowa Code section 124.403(1) provides, in part, the following:

It is unlawful for any person knowingly or intentionally:...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;...

1993 Iowa Code section 126.3 provides, in part, the following:

Prohibited Acts.

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic in commerce.

3. The receipt in commerce of a drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

...

10. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if the act is done while the article is held for sale, whether or not it would be the first sale, after shipment in commerce; and if the action results in the article being adulterated or misbranded.

1993 Iowa Code section 126.9 provides, in part, the following:

Drugs and devices--adulteration.

A drug or device is adulterated under any of the following circumstances:...

(1)(c) If it is a drug and the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

...

(4) If it is a drug and any substance has been mixed or packed with it so as to reduce its quality or strength, or any substance has been substituted for it wholly or in part.

1993 Iowa Code section 126.10 provides, in part, the following:

Drugs and devices--misbranding--labeling.

A drug or device is misbranded under any of the following circumstances:

1. If its labeling is false or misleading in any particular.

2. If in a package form unless it bears a label containing both of the following:

a. The name and place of business of the manufacturer, packer, or distributor.

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

1993 Iowa Code section 155A.29 provides, in part, the following:

Prescription refills.

1. ...[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.

9. Respondent is guilty of violations of those sections of 657 Iowa Administrative Code specified in paragraph 9 on pages 5 through 11 of the Emergency Order and Complaint and Statement of Charges and Notice of Hearing issued on March 4, 1994, by virtue of the allegations contained in paragraph 7 of this Second Amendment to the Emergency Order and Complaint and Statement of Charges and Notice of Hearing.

The Iowa Board of Pharmacy Examiners finds that paragraphs 8 and 9 constitute additional grounds for which Respondent's license to practice pharmacy in Iowa can be disciplined.

WHEREFORE, the undersigned charges that Respondent Stephen J. Weiss has violated 21 Code of Federal Regulations--Parts 210 and 211; 1993 Iowa Code sections 124.308(1), 124.308(3), 124.401(1)(c)(6), 124.401(1)(d), 124.402(1)(a), 124.403(1)(c), 126.3(1), 126.3(2), 126.3(3), 126.3(10), 147.55(2), 147.55(3), 155A.12(1), 155A.12(2), 155A.12(3), 155A.12(4), 155A.19(1)(g), 155A.23(2), 155A.23(4), and 155A.29; and 657 Iowa Administrative Code sections 6.10, 8.5(1), 8.18, 8.19, 8.20, 9.1(4)(b)(2), 9.1(4)(b)(4), 9.1(4)(c), 9.1(4)(i), 9.1(4)(j), 9.1(4)(t), 9.1(4)(u), 10.10, and 10.10(5).

IT IS HEREBY ORDERED, pursuant to Iowa Code section 17A.12 and 657 Iowa Administrative Code section 1.2(1), that Stephen J. Weiss appear before the Iowa Board of Pharmacy Examiners in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa, at a future date and time yet to be determined.

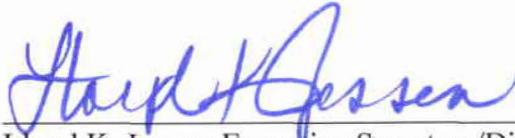
The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to discipline the license to practice pharmacy issued to Stephen J. Weiss on April 11, 1989, and take whatever additional action that they deem necessary and appropriate.

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 disciplinary action, including 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 representing the public interest in these proceedings.

Information regarding the hearing may be obtained from Linny C. Emrich, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-3658). Copies of all filings with the Board should also be served on counsel.

IOWA BOARD OF PHARMACY EXAMINERS



Lloyd K. Jessen, Executive Secretary/Director

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

Re: Pharmacist License of	}	
STEPHEN J. WEISS	}	THIRD AMENDMENT
License No. 17208	}	TO
Respondent	}	STATEMENT OF CHARGES

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 Third Amendment to the Emergency Order and Complaint and Statement of Charges solely in his official capacity.

2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (1997).

3. Respondent was issued Iowa pharmacist license number 17208 on April 11, 1989, by reciprocity.

4. Respondent's Iowa pharmacist license number 17208 was summarily suspended by emergency order of the Board on March 4, 1994. The license expired on June 30, 1994.

5. Respondent was self-employed as part owner and pharmacist in charge of the Des Moines Pharmacy, Inc., a.k.a. Oak Lawn Pharmacy, Inc., located at 717 Lyon Street in Des Moines, Iowa 50309.

6. Respondent currently resides at 8226 Plum Drive, Urbandale, Iowa 50322.

COUNT I

The Respondent is charged under Iowa Code § 147.55(5) with having been convicted of felonies related to the profession of pharmacy.

THE CIRCUMSTANCES

1. The Board has received a certified copy of a Plea Agreement filed on April 24, 1996, in the United States District Court for the Southern District of Iowa, titled United States of America v. Stephen Joseph Weiss and Oak Lawn Pharmacy, Criminal Case No. 95-89.

2. The Board has received a certified copy of a Judgment in a Criminal Case filed in the United States District Court for the Southern District of Iowa, titled United States of America v. Stephen Joseph Weiss, Criminal Case No. 95-89 entered on October 22, 1996.

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 3rd day of March, 1998, the Iowa Board of Pharmacy Examiners found probable cause to file this Third Amendment to the Emergency Order and Complaint and Statement of Charges and to order a hearing in this case.


Phyllis A. Olson, Chairperson
Iowa Board of Pharmacy Examiners
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

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

Re:	)	ORDER
Pharmacist License of	)	ACCEPTING
STEPHEN J. WEISS	)	SURRENDER OF LICENSE
License No. 17208	)	TO PRACTICE PHARMACY
Respondent	)	AND ORDER DISMISSING
	)	OTHER CHARGES

COMES NOW, Phyllis A. Olson, Chairperson of the Iowa Board of Pharmacy Examiners, on the 15th day of April, 1998, and declares that:

1. On March 3, 1998, the Board issued a Third Amendment to the Statement of Charges to the Respondent.

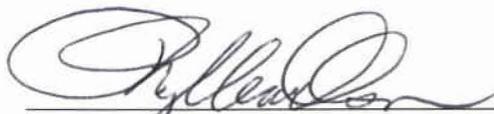
2. On April 8, 1998, Respondent executed a voluntary surrender of his pharmacist license number 17208 pursuant to 657 Iowa Administrative Code § 9.25. In so doing, Respondent waived his right to a formal hearing before the Iowa Board of Pharmacy Examiners.

3. On April 15, 1998, the Board reviewed Respondent's voluntary surrender of his license to practice pharmacy and agreed to accept it.

4. All previous Statements of Charges and Amendments to Statements of Charges issued to Respondent, except the Third Amendment referred to in paragraph 1, above, are hereby dismissed.

WHEREFORE, it is hereby ordered that Respondent's voluntary surrender of his Iowa pharmacist license number 17208 is hereby accepted and, pursuant to 657 Iowa Administrative Code § 9.25, said surrender shall be considered a revocation of license with respect to any future request for reinstatement. It is also ordered that all previously issued Statements of Charges and Amendments to Statements of Charges, except for the Third Amendment, are hereby dismissed.

IOWA BOARD OF PHARMACY EXAMINERS



Phyllis A. Olson, Chairperson

V O L U N T A R Y S U R R E N D E R O F
L I C E N S E T O P R A C T I C E P H A R M A C Y

I, Stephen J. Weiss, of 8226 Plum Drive, Urbandale, Iowa, do hereby voluntarily surrender my license to practice pharmacy in the State of Iowa, number 17208, to the Iowa Board of Pharmacy Examiners, for an indefinite period of time. This surrender of license shall become effective upon the notarized signature of the licensee, Stephen J. Weiss, being affixed to this voluntary surrender document.

I, Stephen J. Weiss, do hereby further acknowledge that by voluntarily signing this surrender statement that I am knowingly giving up the exercise of the following legal rights:

- (1) My right to a formal hearing before the Iowa Board of Pharmacy Examiners on the matter of my continued licensure pursuant to Chapter 155A, Code of Iowa 1997.
- (2) My right to be represented by an attorney in preparation for and during such formal hearing before the Iowa Board of Pharmacy Examiners.
- (3) My right to submit evidence and to have witnesses called on my own behalf at such formal hearing.
- (4) My right to be represented by an attorney in this matter at this time.

I, Stephen J. Weiss, do hereby acknowledge that pursuant to 657 Iowa Administrative Code section 9.25, a license to practice pharmacy which has been voluntarily surrendered shall be considered a revocation of license with respect to a request for reinstatement, which will be handled under the terms established by 657 Iowa Administrative Code section 9.23, which provides as follows:

Any person whose license to practice pharmacy...has been revoked...must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.
2. A person whose license to practice pharmacy was revoked must successfully pass NABPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657-9.24(17A,147,155A,204B,258A).
4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.
5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

I, Stephen J. Weiss, hereby further acknowledge that I shall not engage in any of the practices or aspects thereof of the practice of pharmacy in the State of Iowa for which such a license is required.

April 8, 1998
Date of Signature

Stephen J. Weiss

Subscribed and Sworn to before me on this 8th day of April, 1998.



Nancy Franklin
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:	)	DIA NO: 020PHB002
Pharmacist License of)	
STEPHEN J. WEISS	)	FINDINGS OF FACT,
License No. 17208	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

TO: STEPHEN J. WEISS

On April 15, 1998, the Iowa Board of Pharmacy Examiners (Board) issued an order accepting the surrender of the pharmacist license issued to Stephen J. Weiss (Respondent). On November 15, 2001, the Respondent filed a request for reinstatement. A formal hearing was scheduled for January 23, 2002 at 2:00 p.m.

The hearing was held on January 23, 2002 at 2:00 p.m., in the conference room at the Iowa Department of Economic Development, 200 E. Grand Ave., Des Moines, Iowa. The following members of the Board were present, either in person or by video conferencing: Matthew C. Osterhaus, Chairperson; Katherine A. Linder; Michael J. Seifert; Lemman Olson; Paul Abramowitz; G. Kay Bolton; and Barbara E. O'Roake. The Respondent appeared and was not represented by counsel. The state was represented by Shauna Russell Shields, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code section 272C.6(1)(2001).

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, Complaint, Statement of Charges, and Notice of Hearing, issued 3/4/94; First Amendment, issued 3/22/94; Second Amendment, issued 11/15/94; request for

reinstatement; the testimony of the witnesses; and the following exhibits:

- State Exhibit A: Third Amendment to Statement of Charges, issued 3/3/98
- State Exhibit B: Plea Agreement in United States of America v. Stephen Joseph Weiss and Oak Lawn Pharmacy, d/b/a Des Moines Pharmacy, Inc., in the United States District Court for the Southern District of Iowa, Criminal No. 95-89, dated 4/24/96
- State Exhibit C: Transcript of Plea, dated 4/24/96
- State Exhibit D: Judgment in a Criminal Case, dated 10/22/96
- State Exhibit E: Order Accepting Surrender of License to Practice Pharmacy and Order Dismissing Other Charges, dated 4/15/98
- State Exhibit F: Voluntary Surrender of License To Practice Pharmacy, signed by Respondent on 4/8/98
- Respondent Exhibit 1: State of Illinois Registered Pharmacist Probationary License, expires 3/31/02
- Respondent Exhibit 2: Consent Order, State Of Illinois Department of Professional Regulation, 9/13/00
- Respondent Exhibit 3: Certificates of Completion of Continuing Education

FINDINGS OF FACT

1. On April 11, 1989, the Board issued the Respondent license number 17208, by reciprocity, to engage in the practice pharmacy in Iowa, subject to the laws of the state of Iowa and the rules of the Board. (Testimony of Respondent; State Exhibit A)

2. On March 4, 1994, the Board issued an Emergency Order, Complaint and Statement of Charges and Notice of Hearing, which summarily suspended the Respondent's pharmacy license and scheduled a hearing for April 19, 1994.

a. The summary suspension was based, in part, on investigative information suggesting that the Respondent delivered numerous unneeded and unwanted prescription drugs to Medicaid recipients, that he routinely mailed prescription drugs to Medicaid recipients every 28 days unless they notified him they did not need the drugs; that he mailed some prescriptions without prescriber authorization; that he allowed Medicaid recipients to return prescription medications which he had previously dispensed to them, and that an unknown quantity of controlled substances were missing from his pharmacy, the Des Moines Pharmacy, Inc. and the Respondent failed to report the loss to the Board until six months after an employee confessed to him that she had taken them. (Emergency Order and Complaint and Statement of Charges)

b. On March 4, 1994, the Board filed a first Amendment to the Emergency Order and Complaint and Statement of Charges. The amendment contained additional factual allegations of dispensing unneeded, unwanted, and unnecessary prescription drugs, additional allegations of unlawful possession of prescription and numerous "samples" of prescription drugs, and allegations of Medicaid fraud. (First Amendment)

c. On November 15, 1994, the Board filed a second amendment which alleged that numerous bulk pharmaceuticals seized from the Respondent's active dispensing area were misbranded and/or adulterated due to the fact that they contained a greater quantity of the drug than indicated on the manufacturer's label. In addition, the second amendment alleged, in part, that the Respondent exceeded the refill limitation on numerous prescriptions, filled or refilled numerous prescriptions without prescriber authorization and that he filled prescriptions at a rate that precluded effective prospective drug use review and compliance with statutes and rules pertaining to the practice of pharmacy and distribution of controlled substances. (Second Amendment)

3. On April 24, 1996, the Respondent and his pharmacy each entered guilty pleas to felonies, pursuant to a plea agreement, in the United States District Court for the Southern District of Iowa. In exchange for the guilty pleas, the government agreed to dismiss the remaining counts of the Superceding Indictment.

a. The Respondent pled guilty to one count of misbranding of drugs (Count 426), in violation of 21 U.S.C. §§ 331(k) and 333(a)(2). The maximum penalty for the violations was imprisonment for not more than three years, a fine of not more than \$250,000.00, or both.

b. The Respondent's pharmacy pled guilty to one count of false claims (Count 49) and to the corresponding count of mail fraud (Count 2), in violation of 18 U.S.C. §§ 287 and 1341. With respect to each count, the maximum penalty for a felony committed by an organization was a fine of not more than \$500,000.

(State Exhibits B, C; Testimony of Respondent)

4. The guilty pleas of both the Respondent and his pharmacy were supported by factual stipulations.

a. In his factual stipulation, the Respondent admitted that he was pharmacist in charge of the Des Moines Pharmacy, Inc. from the date it opened in or about November 1989 until March 1994. He further admitted that he caused prescription drugs to be misbranded by combining prescription drugs from multiple containers, thereby causing its labeling to be false and misleading in that the statements of the quantity of the contents are inaccurate. On March 4, 1994, the Respondent held for sale the prescription drug Bentyl (20 mg) which was labeled with a tablet count of 100. The container actually contained 140 tablets of Bentyl, 40% more than indicated on the label. (State Exhibit B, P. 9) The Respondent admitted that he acted with intent to mislead. (State Exhibit B, p.9)

b. In the factual stipulation supporting count 49, the Respondent's pharmacy admitted that it submitted a claim for payment to the Medicaid program for dispensing the prescription drug Fiorinal. The claim was false in that the patient's treating physician had expressly denied

authorization to dispense this drug to her at this time, making the claim ineligible for payment. Knowledge of the falsity of the claim was imputed to the Respondent.

In the factual stipulation supporting count 2, the Respondent's pharmacy admitted that its authorized agents acting voluntarily, intentionally and with the intent to defraud the Medicaid program and it was reasonably foreseeable that the mails would be used in the commission of the fraud. The authorized agents knew that payment on the false claim and processing documentation would be returned to the pharmacy through the mails. (State Exhibit B, pp. 11-12)

5. While the Respondent and his father were both members of the Board of Directors for the pharmacy, the Respondent was solely responsible for the entire conduct and management of the business and delivery of all services. (State Exhibit C, pp. 9-10)

6. On October 22, 1996, Judgment was entered on the Respondent's guilty plea. He was sentenced to a 15-month term of imprisonment, to be followed by a one year supervised release. As a special condition of supervised release, the Respondent was ordered to pay \$120,001.00 to the Iowa Medicaid program. The restitution was a joint obligation of the Respondent and his pharmacy. (State Exhibit D)

7. The Respondent served 13 months of the 15-month sentence and was released from prison on December 31, 1997. He testified that he was released from supervised release on or about December 31, 1998 and that he has paid the court ordered restitution. The Respondent did not submit any documentation verifying completion of supervised release. (Testimony of Respondent)

8. On April 8, 1998, the Respondent signed a Voluntary Surrender of his Iowa license to practice pharmacy. In the voluntary surrender, the Respondent acknowledged that a voluntary surrender is considered a revocation of license and reinstatement is governed by 657 IAC 9.23. [now found at 657 IAC 36.13]

The Respondent further acknowledged that 657 IAC 9.23 required the person whose license was revoked to successfully pass the NABPLEX or an equivalent examination as determined by the NABP, the Federal Drug Law Examination (FDLE) and the Iowa Drug Law Examination. In addition, the Respondent acknowledged that an application for reinstatement must allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it is in the public interest for the license to be reinstated. (Testimony of Respondent; State Exhibit F)

On April 15, 1998, the Board issued an Order Accepting Surrender Of License To Practice Pharmacy and Order Dismissing Charges. By this order, the Board dismissed all Statements of Charges and Amendments to Statements of Charges, except for the Third Amendment. (State Exhibit E)

9. The Respondent earned his pharmacy degree at the University of Illinois-Chicago and was initially licensed to practice pharmacy in Illinois. His Illinois license was suspended as a result of the summary suspension by the Iowa Board and the federal criminal convictions.

On September 13, 2000, the Illinois Department of Professional Regulation filed a Consent Order which stipulated that the Respondent's Certificate of Registration as a Pharmacist in the State of Illinois would be reinstated and placed on indefinite probation for a minimum period of two years, subject to certain terms and conditions. The Respondent completed a pharmacy law course before appearing for the informal conference with the Illinois Department of Regulation. (Testimony of Respondent; Respondent Exhibits 1, 2)

a. The Respondent was required to take an additional 30 hours of approved continuing education per year for the first two years of probation for a total of 60 additional hours of continuing education. The Respondent has completed approximately 40 of the 60 credits and will timely complete the remaining continuing education. (Testimony of Respondent; Respondent Exhibits 2, 3)

b. The Respondent was required to engage in 400 hours of the practice of pharmacy under the supervision of a Board-approved pharmacist, within the first twelve (12) months of

probation. The Board approved Gregory Cwik of Connors Pharmacy to supervise the Respondent. Connors Pharmacy was owned by the Respondent's father, who is also a licensed pharmacist. The Respondent was prohibited from resuming the unsupervised practice of pharmacy until the Department reviewed a written report from the supervising pharmacist and until the Respondent completed six hours of direct contact continuing education in the area of drug therapy.

The Respondent testified that he has successfully completed the 400 hours of supervised practice and the six hours of face to face continuing education in drug therapy. (Testimony of Respondent; Respondent Exhibits 2, 3)

The Consent Order also contained a number of other general conditions of probation, including a prohibition on having an ownership interest in a pharmacy or serving as a pharmacist in charge. The Respondent testified that he is in compliance with all of the conditions of his Illinois probation. (Testimony of Respondent)

10. The Respondent has not practiced pharmacy in Illinois since he completed his 400 hours of supervised practice. It is difficult for him to be hired as a pharmacist by most employers because his privilege to bill Medicaid was suspended for five years in 1998. The Respondent has kept his continuing education current and continues to read pharmacy journals and magazines. (Testimony of Respondent)

11. The Respondent testified that he is proud of the pharmacy profession. His father and brother are pharmacists, and the pharmacy profession has been a tradition in his family. The Respondent testified that he received an excellent education at the University of Illinois and feels that he is a very good pharmacist. He notes that after opening his pharmacy in Des Moines, he built the business up from nothing to 250 prescriptions a day in three years.

The Respondent has had difficulty financially supporting his wife and children since his license was summarily suspended and then surrendered. His felony conviction has made it difficult to find employment. In early 1998, the Respondent opened a nutrition store in the Des Moines area. (Testimony of Respondent)

CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

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

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

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

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal settlement conference before the board...

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the

revocation or suspension no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

Based on the testimony and evidence in this record, the Board is unable to conclude that the basis for the voluntary surrender of the Respondent's license to practice pharmacy no longer exists and that it is in the public interest for his license to be reinstated.

The Respondent and his pharmacy have pled guilty to serious felonies that are directly related to the practice of pharmacy: misbranding of drugs, false Medicaid claims, and mail fraud. In exchange for the guilty pleas, numerous other criminal counts were dismissed. The Respondent was required to serve a substantial prison term and was personally liable, along with his pharmacy, for reimbursing the Iowa Medicaid program \$120,001. As the pharmacist in charge, the Respondent was responsible for ensuring that his pharmacy was operated in conformance with all of the applicable statutes and rules.

Despite these facts, the Respondent appeared before the Board and insisted that he had no responsibility for the federal crimes committed by his pharmacy, and that he was only responsible for misbranding one bottle of Bentyl. The Respondent minimized his offenses and failed to appreciate that his actions have harmed the public interest and the public trust. The Respondent showed no remorse for his actions. In light of this, the Board cannot be confident that the Respondent would practice pharmacy in conformance with the law in the future.

The only substantive evidence presented by the Respondent was the reinstatement of his Illinois license on probation. The fact that the Respondent presently holds a probationary license

in Illinois did not persuade the Board that it is in the public interest for his license to be reinstated in Iowa.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for reinstatement, filed by Stephen J. Weiss, License No. 17208, is hereby DENIED.

Dated this 4th day of March, 2002.

Matthew C. Osterhaus

Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

BEFORE THE IOWA BOARD OF PHARMACY

RE:	)	DIA NO: 10PHB004
Pharmacist License of)	
STEPHEN J. WEISS	)	FINDINGS OF FACT,
License No. 17208	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

On June 1, 2010, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Stephen J. Weiss (Respondent). The following members of the Board presided at the hearing: Vernon Benjamin, Chairperson; Susan Frey; Edward Maier; DeeAnn Wedemeyer-Oleson; Mark Anliker; Ann Diehl; and Margaret Whitworth. Respondent appeared and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1), and was recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

On September 29, 2010, the Board's Executive Director issued a Notice to the parties informing them that the Board's staff had obtained additional information relevant to the reinstatement request. The Notice reopened the record for the limited purpose of presenting new information and allowing the parties to respond. A second hearing was set for January 11, 2011. Respondent appeared, this time with attorney Chris Coppola. Mr. Galenbeck again represented the state. Board members Benjamin, Frey, Maier, Oleson, Diehl, and Whitworth were present. Administrative Law Judge Jeff Farrell assisted the Board. After the presentation of evidence and argument, the Board went into closed session to deliberate. The Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record from the June 1, 2010 hearing includes the Notice of Hearing; the testimony of Respondent and one witness; and State Exhibits 1-2 (Decision and Exhibits from prior

reinstatement hearing) and Respondent Exhibits A-B (Documentation of Reinstatement of Illinois Pharmacy license and Letter Regarding Medicare Reinstatement). The record from the January 11, 2011 hearing included the testimony of Jean Rhodes, Jennifer Tiffany, and Respondent. The State's exhibits AA and BB were admitted.

FINDINGS OF FACT

1. On April 11, 1989, the Board issued Respondent license number 17208 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board. The license was issued by reciprocity from the state of Illinois, where Respondent had previously practiced pharmacy. (State Exhibit 2)
2. Respondent opened Des Moines Pharmacy-Wilden Clinic in 1989. On March 4, 1994, the Board issued an Emergency Order, Complaint and Statement of Charges alleging, in part, that Respondent had delivered numerous unneeded and unwanted drugs to Medicaid recipients. The Emergency Order further alleged that an unknown quantity of controlled substances were missing from the pharmacy and that Respondent failed to report the loss to the Board until six months after an employee admitted taking the drugs. The Board subsequently filed amendments to the Emergency Order charging Respondent with unlawful possession of sample prescription drugs, Medicaid fraud, possession of misbranded and/or adulterated bulk pharmaceuticals, and exceeding refill limitations. (State Exhibit 2)
3. On April 24, 1996, Respondent and his pharmacy entered guilty pleas to felonies (one count of misbranding drugs and one count of false claims and mail fraud) in federal district court, pursuant to a plea agreement. On October 22, 1996, Respondent was sentenced to 15 months in prison, followed by one year of supervised release. Respondent was ordered to pay \$120,001.00 to the Iowa Medicaid program as restitution. Respondent served his sentence, completed his probation, and has paid the court ordered restitution. (State Exhibit 2; Testimony of Respondent)
4. Respondent voluntarily surrendered his Iowa pharmacist license on April 8, 1998. The Board signed an Order accepting the surrender on April 15, 1998. Respondent's Illinois pharmacist license was suspended as a result of the Board's disciplinary actions and Respondent's federal convictions. (State Exhibit 2)

5. Respondent has owned and operated a nutrition store in Des Moines since 1994. (Testimony of Respondent; State Exhibit 2)

6. On September 13, 2000, the Illinois Department of Professional Regulation filed a Consent Order reinstating Respondent's Illinois license and placing it on indefinite probation, subject to terms and conditions. In compliance with that Order, Respondent completed a pharmacy law course, completed an extra 30 hours of approved continuing education per year for the first two years of probation, and practiced pharmacy under supervision for 400 hours. (State Exhibit 2; Testimony of Respondent)

7. On March 4, 2002, the Board denied Respondent's first request to reinstate his pharmacist license. The denial was based, in part, upon Respondent's failure to take responsibility for his crimes. (State Exhibit 2)

8. On August 17, 2009, Respondent's Illinois license was restored to unencumbered status. (Respondent Exhibit B)

9. On September 25, 2009, the United States Department of Health and Human Services approved Respondent's eligibility to participate as a provider in the Medicare program. (Respondent Exhibit B)

10. On August 17, 2010, Jean Rhodes, a compliance officer for the Board, visited Nutrition Market Place (Nutrition) in Clive, Iowa in an undercover capacity. Nutrition is owned by Respondent. Respondent greeted Ms. Rhodes when she entered the store. He introduced himself as the owner and stated "I was a clinical pharmacist for many years." Ms. Rhodes inquired into weight loss aids for her husband. She asked questions about how products might interact with medications, and whether they would show on a drug screen (as her husband worked for a railroad and was subject to drug testing). Respondent responded to the questions by providing copies of publications from magazines and the internet. Ms. Rhodes did not perceive that Respondent was promoting himself as a pharmacist or providing counseling as a pharmacist. She interpreted his use of his phrase "was a pharmacist," as referring to a position he held in the past. (State Exhibit AA; Testimony of Rhodes)

11. On August 20, 2010, Jennifer Tiffany, another compliance officer for the Board, visited Nutrition in an undercover capacity. A man behind the counter asked if he could help, and then took a telephone call. He introduced himself on the call as

“Steve,” and said he was the owner. Ms. Tiffany believed he was Respondent. (State Exhibit BB)

12. Ms. Tiffany told Respondent that she wanted to get off her antidepressant medication. Respondent asked what she was on, and if it was Lexapro or Effexor. She stated that it was Laxapro. He told her that most people gain at least ten pounds when they start to take prescription antidepressants. Ms. Tiffany also told Respondent that she wanted to get off birth control pills because she was hoping to get pregnant. Respondent showed her two bottles of products that he said were safe to take during pregnancy, with one helping to reduce depression. He talked about other products as well, and then told Ms. Tiffany “I’m a clinical pharmacist.” He stated that, after she decided to stop taking her antidepressant, she should titrate her dose down for two to three months. He told her not to listen to her doctor if the doctor recommended a one to two month weaning period. She purchased some products and Respondent told her that she should return when she decided to stop taking her antidepressant, and he would help her to titrate off the medication. (State Exhibit BB; Testimony of Tiffany)

13. Respondent testified at the January 11, 2011 hearing that he practiced as a pharmacist in a clinic from 1985 to 1994. He has described himself as a “clinic pharmacist” in the past, because he practiced in that setting. He denied referring to himself as a “clinical pharmacist.” (Testimony of Respondent)

14. Respondent’s nutrition store specializes in gluten-free products, but also sells vitamins, food products, and supplements. He knows through prior education and experience that some supplements may not interact well with some medications. He offers advice to customers when he believes it would be helpful to avoid a mistake that could result from mixing prescription medications and supplements. Respondent believes that this puts the public in a better position to make good choices than if they did not have the information. (Testimony of Respondent)

15. Respondent is not sure whether he would practice pharmacy if the Board allows reinstatement. He has no present plan to practice, but might consider it depending on various factors. (Testimony of Respondent).

CONCLUSIONS OF LAW

The Board may reinstate a license to practice pharmacy that was previously suspended or revoked. 657 IAC 36.13. The applicant has the burden of proof to show that the basis for the revocation or suspension no longer exists, and that reinstatement shall serve the public interest. A voluntary surrender of a licensed is considered a revocation and is subject to the reinstatement requirements set forth in section 36.13. *See* 657 IAC 36.15.

There are several factors that weigh in favor of reinstatement. It has been twelve years since Respondent surrendered his pharmacist license. Respondent took full responsibility for the crimes that led to the voluntary surrender of his license. Respondent's Illinois license has been reinstated without conditions following his completion of the required hours of continuing education and 400 hours of supervised practice in 2002. The United States Department of Health and Human Services has reinstated his eligibility to participate as a provider for the Medicare program.

However, the Board has concerns with Respondent's representations during his conversation with Ms. Tiffany. He told Ms. Tiffany that he is a clinical pharmacist. While the parties disputed whether Respondent used the word "clinic" or "clinical," he certainly was not a pharmacist because he does not have a license to practice pharmacy. Further, he discussed the effects of prescription medication and offered to provide care as she titrate off an antidepressant medication. This is the same type of discussion a pharmacist might have with a client. The Board is further concerned with Respondent's comment not to follow her doctor's advice if the doctor recommended a shorter titration period. He should not be undermining advice provided by a physician.

Respondent attempted to justify some of his conduct by stating that he is providing information within his knowledge as a public service. This is not acceptable. It is irrelevant whether his advice was helpful to the client – Respondent is not licensed, he cannot practice. The Iowa Supreme Court rejected a similar claim in a comparable case in which a non-lawyer engaged in the practice of law by helping clients file bankruptcy pleadings. *See Iowa Supreme Court Commission on the Unauthorized Practice of Law v. Sturgeon*, 635 N.W.2d 679, 683 (Iowa 2001). In *Sturgeon*, the respondent claimed:

I made a decision that - because I would at least from having some years of experience at it - know better how to fill out forms than some people, that I could perform a service.

The Court rejected that claim and enjoined Sturgeon from the further practice of law. Respondent's justification in the present case is very comparable to Sturgeon's attempts to justify his conduct.

Notwithstanding the Board's concerns with Respondent's statements to Ms. Tiffany, after carefully considering the record as a whole, the Board agreed to reinstate Respondent's license with conditions. The Board is satisfied that reinstatement is consistent with the public interest, as long as Respondent satisfies the requirements established in this Order. The practice of pharmacy has changed substantially since Respondent last practiced without supervision, so lengthy internship shall be required, along with the testing that is required under the regulations.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that to reinstate pharmacist license number 17208, Respondent Stephen J. Weiss must first comply with the following requirements:

A. Respondent must register as an intern, pay the applicable fee, and successfully complete a 1000 hour internship at an Iowa site pre-approved by the Board. Respondent must complete and submit the internship booklet, as defined in 657 IAC 4.1. Upon completion of the internship, Respondent may apply to take the licensing examinations.

B. Respondent must take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, as required by Iowa Code section 657 IAC 36.13(2). Respondent must pass all components in Iowa within a period of one year beginning with the date Respondent passed an initial component. See 657 IAC 2.1.

C. The internship and the required examinations must be completed within eighteen (18) months of the date of this Decision and Order.

D. Respondent shall not refer to himself as a pharmacist nor shall he engage in the practice of pharmacy until he completes each of the terms set forth in paragraphs A through C above.

Upon timely completion of the required examinations, Respondent's pharmacist license no. 17208 shall be REINSTATED and shall immediately be placed on PROBATION for a term of three (3) years. Periods when Respondent is not employed as a pharmacist shall not count toward satisfaction of the three-year probationary period. IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

A. Respondent shall 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 current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

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

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

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

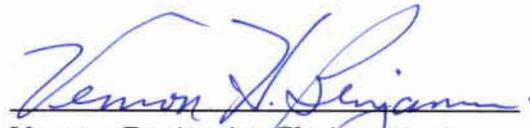
E. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.

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

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

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

Dated this 8 day of March, 2011.



Vernon Benjamin, Chairperson

Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General
Chris Coppola, Respondent Attorney

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.