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STATE OF IOWA

BEFORE THE BOARD OF PHARMACY EXAMINERS IOWA PHARMACY EXAMINERS

IN THE MATTER OF THE LICENSE)	FINDINGS OF FACT,
TO PRACTICE PHARMACY OF)	CONCLUSIONS OF LAW
JOHN R. WHITAKER,)	AND DECISION
Respondent.)	

Pursuant to Chapters 17A and 258A of the Code of Iowa, a hearing was held before the Board of Pharmacy Examiners April 1, 1982 and April 15, 1982 for the purpose of receiving evidence to determine whether or not disciplinary action should be taken concerning the license of John R. Whitaker to practice pharmacy in Iowa.

Board members present for the hearing were: Angelo J. Palmer, Chairperson; Robert E. Bellinger; Max W. Eggleston; Vennetta M. Fiedler; Dennis D. Killion; and Margo L. Underwood. Peter J. Fox served as hearing officer for the Board. The State was represented by Thomas D. McGrane, Assistant Attorney General. The Respondent was represented by Patrick W. Brick, Attorney-at-Law.

The hearing officer having considered the testimony and evidence issues the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

1. Investigator Thomas D. Hill of the Board of Pharmacy Examiners conducted an investigation of the Methodist Plaza Pharmacy located at 1212 Pleasant Street, Des Moines, Iowa. The Methodist Plaza Pharmacy is owned and operated by the Respondent, John R. Whitaker. The investigation was made in September, 1981.

2. During the period from April, 1980 to August, 1981 the Methodist Plaza Pharmacy ordered and received a total of 28 ounces of cocaine H Cl flakes. Only one-quarter of an ounce was remaining. The pharmacy was unable to produce a single written prescription or order of the dispensation for the remaining 27 and three-quarters ounces of cocaine H Cl flakes. A physician has claimed to have purchased a solution of cocaine H Cl from the pharmacy during the period, but no record of transfer was found

in the records.

3. The Respondent testified that during the Spring of 1980 he was approached at the pharmacy by a person who introduced himself as "agent Lyons" who represented the Federal government. "Lyons" said he was conducting a drug investigation in Des Moines, and that he would be buying cocaine from him in amounts of 1 to 1.5 ounces per month for the investigation. According to the Respondent, "Lyons" told Respondent that he would have someone from the Federal Drug Enforcement Authority telephone the Respondent. "Lyons" also told Respondent that it was not necessary to contact the Iowa Board of Pharmacy Examiners. "Lyons" made purchases of cocaine H Cl from Respondent every month until the Fall of 1981. "Lyons" paid cash for the cocaine H Cl. Respondent ordered the cocaine H Cl from two pharmaceutical supply houses at the same time. During the period from April, 1980 until August 1981 the Respondent purchased a total of 28 ounces of cocaine H Cl from the two pharmaceutical supply houses.

4. The Federal Drug Enforcement Authority contacted by letter the Iowa Board of Pharmacy to inform the Board of excessive amounts of cocaine purchased by the Methodist Plaza Pharmacy. This resulted in the investigation conducted in September, 1981.

5. Investigator Alfred Cheeseman of the Drug Enforcement Administration testified that there is no such Federal employee by the name of "Lyons" doing drug investigation. Further, the Drug Enforcement Administration does not purchase cocaine from local pharmacies for use in investigations.

6. Respondent dispensed approximately 27 ounces of cocaine H Cl, without a prescription or physicians order, for unlawful use. Cocaine has a "street" value of approximately \$10,000 per ounce.

7. "Lyons" did not return to purchase additional cocaine after the investigation was made in September of 1981 by the Board of Pharmacy Examiners.

CONCLUSIONS OF LAW

1. Section 155.13 of the Code of Iowa provides in pertinent part: "The Board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regula-

tions promulgated hereunder, ..."

2. Section 155.20 provides: "No prescription drug may be sold at wholesale or brokerage for resale to other than licensed pharmacies nor shall any person licensed under this chapter sell or dispense any prescription drug to any person other than a licensed pharmacy or a physician without a prescription."

3. The rules of the Board found in 620-10.1(4)"h" of the Iowa Administrative Code provides for disciplinary action the, "Distribution of intoxicating liquors or drugs for other than lawful purposes."

4. Section 204.206(6) of the Code of Iowa provides that cocaine and its salts is a Schedule II controlled substance and as described in Section 204.205 has a high potential for abuse and abuse may lead to severe psychic or physical dependence.

5. The evidence shows that the Respondent over a period of 17 months dispensed approximately 27 ounces of cocaine H Cl without a prescription or lawful order. The cocaine was not used for a lawful purpose. No such investigator as "Lyons" existed. The dispensing of the cocaine by the Respondent of approximately 27 ounces would significantly contribute to drug abuse problems.

6. Over a period of 17 months, the Respondent should have made inquiry to determine whether "Lyons" was in fact a Federal investigator. Respondent made no contact with the Iowa Board of Pharmacy Examiners during the time period.

7. It is the conclusion of the Hearing Officer, upon recommendation of the Board, that disciplinary action to protect the public is required.

DECISION

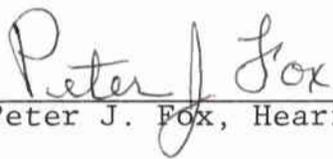
It is the decision and order of the Hearing Officer, upon recommendation of the Board of Pharmacy Examiners, that the license of the Respondent, John R. Whitaker, to practice pharmacy in the State of Iowa is suspended for a period of one year. The suspension will commence May 1, 1982 and end April 30, 1983. Prior to the end of the suspension, the Respondent must request in writing an appearance before the Board.

The period of suspension shall be followed by five years of probation.

Considering the quantity of cocaine H Cl which was dispensed unlawfully, the Respondent shall, as a condition to the retaining of his license to practice pharmacy for the remainder of the time he may be licensed in Iowa, maintain a perpetual inventory of Schedule II controlled substances including appropriate documents to substantiate the inventory to be kept on the premises.

Random audits of the records of the Respondent will be made by investigators for the Board of Pharmacy Examiners.

Dated this 22nd day of April, 1982


Peter J. Fox, Hearing Officer

Copies to:

John R. Whitaker
1212 Pleasant Street, Suite 105
Des Moines, IA 50309

Respondent - Certified Mail-Return Receipt Requested

Patrick W. Brick
550 39th Street
Des Moines, IA 50312

Attorney for Respondent - Certified Mail-Return Receipt Requested

Thomas D. McGrane, Assistant Attorney General

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

Re: Pharmacist License of	}	COMPLAINT
JOHN R. WHITAKER	}	AND
License No. 11977	}	STATEMENT
Respondent	}	OF CHARGES

COMES NOW, Norman C. Johnson, Executive Secretary of the Iowa Board of Pharmacy Examiners, on the 25th day of August, 1989, and files this Complaint and Statement of Charges against John R. Whitaker, a pharmacist licensed pursuant to Iowa Code chapter 155A, and alleges that:

1. Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice Chairperson; Donna J. Flower; Marian L. Roberts; John F. Rode; Alan M. Shepley; and Gale W. Stapp are duly appointed, qualified members of the Iowa Board of Pharmacy Examiners.

2. Respondent was issued a license to practice pharmacy in Iowa on September 17, 1952, by examination.

3. Respondent was issued a license to practice pharmacy in Minnesota (license number 14251) in 1986 by reciprocity.

4. Respondent currently resides at 11231 49th Avenue North, Plymouth, Minnesota 55442.

5. Respondent's license to practice pharmacy in Iowa expired on June 30, 1989, and is now delinquent.

6. On July 7, 1989, the Board received information from the Minnesota Board of Pharmacy which indicated that on or about November 7, 1988, Respondent allegedly stole the following controlled substances from Cub Foods Pharmacy in Cottage Grove, Minnesota: (1) 12 tablets of Dilaudid 2mg, a schedule II controlled substance; (2) 12 tablets of Percocet, a schedule II controlled substance; (3) 25 tablets of Percodan, a schedule II controlled substance; (4) 199 tablets of Tylenol with Codeine No. 3, a schedule III controlled substance; (5) 259 tablets of Valium (Diazepam) 5mg, a schedule IV controlled substance; and (6) 100 tablets of Valium (Diazepam) 10mg, a schedule IV controlled substance. The information also indicated the following: (1) that on or about December 29, 1988, Respondent pled guilty in Washington County District Court (Minnesota) to one count of

theft of controlled substances from Cub Foods Pharmacy in Cottage Grove, Minnesota; and (2) that Respondent had voluntarily and permanently surrendered his Minnesota pharmacist license (license number 14251) effective March 13, 1989, by order of the Minnesota Board of Pharmacy.

7. Respondent failed to report to the Board the disciplinary action taken by the Minnesota Board of Pharmacy against his Minnesota pharmacist license (license number 14251).

8. Respondent is guilty of violations of 1989 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), and 155A.23(1)(c) by virtue of the allegations in paragraphs 6 and 7.

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.

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

....
8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

....
10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

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

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

....

c. Concealment of a material fact.

9. Respondent is guilty of violations of 1989 Iowa Acts, House File 780, Section 11(1)(c)(6) and 11(1)(d) by virtue of the allegations in paragraphs 6 and 7.

1989 Iowa Acts, House File 780, Section 11 provides, in part, the following:

Section 204.401, subsections 1 and 2, [Iowa] Code 1989, are amended by striking the subsections and inserting in lieu thereof 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. Violations of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor...

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

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:...

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.

....

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

....

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.

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

....

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

The Iowa Board of Pharmacy Examiners finds that paragraphs 8, 9, and 10 constitute grounds for which Respondent's license to practice pharmacy in Iowa can be suspended or revoked.

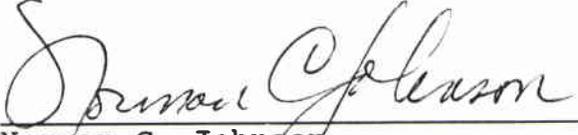
WHEREFORE, the undersigned charges that Respondent has violated 1989 Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), and 155A.23(1)(c); 1989 Iowa Acts, House File 780, Section 11(1)(c)(6) and 11(1)(d); and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(e), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u).

IT IS HEREBY ORDERED that John R. Whitaker appear before the Iowa Board of Pharmacy Examiners on October 11, 1989, at 9:00 o'clock a.m., in the second floor conference room, 1209 East Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa.

The undersigned further asks that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice pharmacy issued to John R. Whitaker on September 17, 1952, 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. The failure of Respondent to appear could result in the permanent suspension or revocation of his license. Information regarding the hearing may be obtained from Thomas D. McGrane, Assistant Attorney General, Hoover Building, Capitol Complex, Des Moines, Iowa 50319.

IOWA BOARD OF PHARMACY EXAMINERS


Norman C. Johnson
Executive Secretary

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE: Pharmacist License of)	
)	
JOHN R. WHITAKER,)	
License No. 11977)	DIA NO. 89PHB-11
)	
Respondent)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

To: John R. Whitaker:

A Complaint and Statement of Charges was filed by Norman C. Johnson, executive secretary of the Iowa Board of Pharmacy Examiners, on August 25, 1989. The complaint alleged that the Respondent had violated a number of pharmacy related statutes and rules. The Complaint and Statement of Charges included the Notice of Hearing, which set the hearing for October 11, 1989, at 9:00 a.m. in the second floor conference room, 1209 E. Court Avenue, Executive Hills West, Capitol Complex, Des Moines, Iowa. The hearing on the above Complaint and Statement of Charges was held on Wednesday, October 11, 1989 beginning at 9:00 a.m. The hearing was held in the second floor conference room, Executive Hills West, Des Moines, Iowa 50319. Present were the following members of the Board: Rollin C. Bridge, Chairperson; Melba L. Scaglione, Vice-Chairperson; Donna L. Flower, Marian L. Roberts, John F. Rode, Alan M. Shepley, and Gale W. Stapp. Thomas D. McGrane, Assistant Attorney General, appeared on behalf of the State. The Respondent, John R. Whitaker, was not present and was not represented by counsel. The State presented a return receipt card showing that John R. Whitaker signed as having received the Complaint and Statement of Charges. There is no date on the return receipt card showing the date that he signed the card. However, there is a date stamp showing that the Iowa Board of Pharmacy Examiners received back the signed return receipt card on August 30, 1989. Therefore, the Respondent was served according to law and pursuant to Iowa Code section 17A.12(3), the hearing proceeded in his absence. Present also were members of the staff of the Board and a court reporter. Amy Christensen Couch, Administrative Law Judge from the Iowa Department of Inspections and Appeals presided. After hearing the testimony and examining the exhibits, the Board convened in closed executive session pursuant to Iowa Code section 21.5(1)f (1989) to deliberate. The undersigned Administrative Law Judge was instructed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Complaint and Statement of Charges, the recorded testimony of the witness, and State's Exhibit 1.

FINDINGS OF FACT

1. The Respondent, John R. Whitaker, was issued Iowa Pharmacist License Number 11977 on September 17, 1952, by examination. (testimony of Norman Johnson, official file).
2. Several years ago, in a prior action by the Iowa Board of Pharmacy Examiners, this Respondent's license was suspended. In that action the Respondent was found to have distributed pharmaceutical cocaine illegally. In that action, the Respondent lied to the Board regarding the illegal distribution of cocaine. The Iowa Board of Pharmacy Examiners subsequently allowed the Respondent's Iowa license to be transferred to Minnesota. (testimony of Norman C. Johnson).
3. On July 7, 1989, the Iowa Board of Pharmacy Examiners received an Order entered by the Minnesota Board of Pharmacy against the Respondent's license. The Minnesota Board ordered the following disciplinary action against the Respondent:
 1. That the Respondent was to permanently discontinue the practice of pharmacy in the State of Minnesota;
 2. That he permanently surrender and cause the Board to receive his current Minnesota Pharmacist License Renewal Certificate; and
 3. That the Respondent could not reapply for a license to practice pharmacy in Minnesota and that if he did so the Board could reopen its files in the matter.

The Order was based on a Settlement Stipulation which was entered into by the Minnesota Board of Pharmacy Examiners and the Respondent. In the Settlement Stipulation, the Respondent admitted that he was employed at several pharmacies including Cub Foods Pharmacy in Cottage Grove, Minnesota. In the Stipulation, the Respondent admitted that the allegations set forth in the Notice of Conference were true, except that the Respondent denied stealing Tylenol #3 from Cub Foods. The Respondent further admitted that on or about December 29, 1988, he pled guilty in Washington County District Court to one count of the theft of controlled substances from Cub Food Pharmacy. In the Stipulation, the Respondent agreed that he would permanently discontinue the practice of pharmacy in the State of Minnesota, permanently surrender his pharmacist's license to the Minnesota Board, and would not reapply for a license to practice pharmacy. The Respondent admitted in the Minnesota action that while he was working as a pharmacist at Cub Foods Pharmacy in Cottage Grove, Minnesota, on or about November 7, 1988, he stole the following drugs: 12 Dilaudid 2 mg., 12 Percocet, 25 Percodan, 259 Valium (Diazepam) 5 mg, and 100 Valium (Diazepam) 10 mg. (testimony of Mr. Johnson; State's Ex 1).

4. On February 23, 1989, the Respondent was sentenced to a term of probation for a period not to exceed five years and ordered to pay restitution by the Washington County District Court of Minnesota. He was further fined \$550.00. (State's Ex 1).
5. The Board has no evidence or information that the Respondent is addicted to drugs. (testimony of Mr. Johnson).
6. The Respondent has a past history of theft of drugs and delivery of those drugs to the street. Given the quantity of drugs stolen by the Respondent on approximately November 7, 1988, and given his prior history, the Board infers that the Respondent stole the drugs on November 7, 1988 with the intent to distribute them. (testimony of Mr. Johnson; State's Ex 1).
7. The Respondent never reported to the Iowa Board of Pharmacy Examiners that disciplinary action had been taken by the Minnesota Board of Pharmacy Examiners against his Minnesota license. (testimony of Mr. Johnson; official file).

CONCLUSIONS OF LAW

1. 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 the licensee on probation, if the Board finds that the applicant or licensee has done any of the following:
 1. Violated any provision of this chapter or any rules of the Board adopted under this chapter.
 - . . .
 5. Violated any provision of the controlled substances Act or rules relating to that Act.
 - . . .
 8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction. . . .
 10. Had a license to practice pharmacy issued by another state cancelled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

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

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

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3. 1989 Iowa Acts, House File 780, section 11 provides, in part, the following:

Section 204.401, subsections 1 and 2, [Iowa] Code 1989 are amended by striking the subsections and inserting in lieu thereof 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 person 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 \$1,000.00 nor more than \$50,000.00: . . .

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

d. Violations of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in Schedule IV or V is an aggravated misdemeanor. . . .

4. 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 \$25,000.00, when the Board determines that the licensee or registrant is guilty of the following acts or offenses: . . .

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.

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

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 a misdemeanor, which statute or law relates to the practice of pharmacy.

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or a country.

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.

5. The Respondent violated Iowa Code sections 155A.12(1), 155A.12(5), 155A.12(8), 155A.12(10), 155A.23(1)(a), and 155A.23(1)(c) (1989); 1989 Iowa Acts, House File 780, section 11(1)(c)(6) and 11(1)(d); and 657 Iowa Administrative Code sections 9.1(4)(c), 9.1(4)(e), 9.1(4)(j), 9.1(4)(k), and 9.1(4)(u).

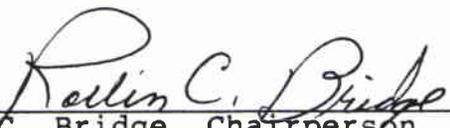
DECISION AND ORDER

The Respondent has a past history of illegally diverting drugs and lying to the Board. The Board in good faith allowed this Respondent to transfer his Iowa license to Minnesota, and the Respondent broke that trust agreement with this Board. The Respondent stole drugs in Minnesota. His prior history and the amount of drugs that he stole clearly indicate an intent to deliver these controlled substances as opposed to keeping them for personal use. The Minnesota Board in its settlement ordered this Respondent to permanently surrender his license, and he stipulated that he would never practice pharmacy in the State of Minnesota again. This indicates to this Board that he does not intend to practice pharmacy. The Board feels very strongly that protection of the public, the Respondent's past history, and the

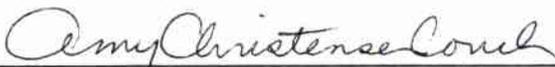
permanent revocation by the Minnesota Board require that this Respondent never practice pharmacy in Iowa again.

Therefore it is the ORDER of the Iowa Board of Pharmacy Examiners that License Number 11977 issued to the Respondent, John R. Whitaker, is hereby permanently revoked. This Respondent may never apply for reinstatement of his license. It is the further ORDER of the Iowa Board of Pharmacy Examiners that the Respondent immediately turn in his license to the Board office.

Dated this 19th day of October, 1989.



Rollin C. Bridge, Chairperson
Iowa Board of Pharmacy Examiners



Amy Christensen Couch, Administrative Law Judge
Iowa Department of Inspections and Appeals

ACC/fah

KDPHB11