

State of Iowa  
**Board of Pharmacy**

RiverPoint Business Park  
400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688  
<http://www.iowa.gov/lbpe>

Telephone: (515) 281-5944 Facsimile: (515) 281-4609

**BOARD MEMBERS**

SUSAN M. FREY, R. Ph.  
Villisca

JAMES MILLER, R. Ph.  
Dubuque

JUDITH M. TRUMPY  
Ames

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*Chairperson*

LLOYD K. JESSEN, R. Ph., JD., West Des Moines  
*Executive Director*

**BOARD MEMBERS**

SHARON K. MEYER, Pharm. D.  
Urbandale

LADONNA GRATIAS  
Clive

EDWARD J. MCKENNA, R. Ph.  
Storm Lake

**TELECONFERENCE MINUTES**  
**October 16, 2014**

The special meeting of the Iowa Board of Pharmacy was held on Thursday, October 16, 2014, at 4:00 p.m., via teleconference pursuant to the provisions of Iowa Code section 21.8. An in-person meeting was impractical due to the travel distances of members of the Board, the limited agenda, and the need for immediate action. Chairperson Maier called the meeting to order at 4:05 p.m.

**MEMBERS PRESENT**

Edward L. Maier, Chairperson  
James Miller, Vice-Chair  
LaDonna Gratias  
Edward J. McKenna

**MEMBERS ABSENT**

Susan M. Frey  
Sharon K. Meyer  
Judith M. Trumpy

**STAFF PRESENT**

Lloyd Jessen, Executive Director  
Meghan Gavin, Esq., Assistant Attorney  
General  
Therese Witkowski, Executive Officer  
Debbie Jorgenson, Administrative Assistant  
Becky Hall, Secretary  
Andrew Funk, Compliance Officer  
Sue Mears, Compliance Officer

I. Closed Session.

Motion (Miller/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review records required by state or federal law to be kept confidential, such as medical, mental health, or substance abuse records relating to non-licensee disciplinary issues; 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; and 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Gratias, Maier, McKenna, Miller; No: None; Abstain: None; Absent: Frey, Meyer, Trumpy. Passed: 4-0-0-3.

Motion (McKenna/Gratias) to go into open session. Roll call vote. Yes: Gratias, Maier, McKenna, Miller; No: None; Abstain: None; Absent: Frey, Meyer, Trumpy. Passed: 4-0-0-3.

In open session, the following action was taken:

A. Notice of Hearing and Statement of Charges.

Motion (McKenna/Gratias) to approve Notice of Hearing and Statement of Charges in the case of Bauder Pharmacy, Inc., Pharmacy License No. 222 of Des Moines. Roll call vote. Yes: Gratias, Maier, McKenna, Miller; No: None; Abstain: None; Absent: Frey, Meyer, Trumpy. Passed: 4-0-0-3. A copy of the Notice of Hearing and Statement of Charges is attached as Addendum A.

II. Closed Session.

Motion (Miller/McKenna) to go into closed session in accordance with Iowa Code Section 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; and 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Gratias, Maier, McKenna, Miller; No: None; Abstain: None; Absent: Frey, Meyer, Trumpy. Passed: 4-0-0-3.

Motion (Miller/McKenna) to go into open session. Roll call vote. Yes: Gratias, Maier, McKenna, Miller; No: None; Abstain: None; Absent: Frey, Meyer, Trumpy. Passed: 4-0-0-3.

Meeting adjourned at 5:13 p.m. on October 16, 2014.

*Becky Hall*

Becky Hall  
Recording Secretary

*Lloyd K. Jessen*

Lloyd K. Jessen  
Executive Director

*Edward L. Maier*

Edward L. Maier  
Board Chair

APPROVED THIS 19 DAY OF Nov., 2014.

**ADDENDUM A**

**NOTICE OF HEARING AND STATEMENT OF CHARGES**

**BAUDER PHARMACY, INC.  
PHARMACY LICENSE NO. 222  
DES MOINES, IOWA**

**BEFORE THE IOWA BOARD OF PHARMACY**

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Pharmacy License of	)	Case No. 2012-52
<b>BAUDER PHARMACY, INC.</b>	)	
License No. 222,	)	<b>NOTICE OF HEARING &amp;</b>
Respondent.	)	<b>STATEMENT OF CHARGES</b>
	)	

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**COMES NOW** the Iowa Board of Pharmacy (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2) and 17A.18(3) (2013). Respondent was issued Iowa license 222. Respondent's license is currently active.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on November 17, 2014, before the Iowa Board of Pharmacy. The hearing shall be held during the morning session, beginning at 9:00 a.m. and shall be located in the Board conference room located at 400 S.W. 8<sup>th</sup> Street, Des Moines, Iowa.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code rule 35.19. At hearing you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address.

Meghan Gavin  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor Hoover State Office Building  
Des Moines, Iowa 50319.

Ms. Gavin can also be reached by phone at (515)281-6736 or e-mail at [Meghan.Gavin@iowa.gov](mailto:Meghan.Gavin@iowa.gov).

Communications. You may contact the Board office (515)281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. However, you

may NOT contact individual members of the Board to discuss these proceedings by phone, letter, facsimile, email, or in person. Board members can only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may also direct questions relating to settlement of these proceedings to Assistance Attorney General Meghan Gavin at (515)281-6736.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction over this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 155A, and 272C and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

## **C. CHARGES**

### **Count I**

#### **UNETHICAL BEHAVIOR OR PRACTICE HARMFUL OR DETRIMENTAL TO THE PUBLIC**

Respondent is charged with engaging in unethical behavior or practice harmful or detrimental to the public in violation of Iowa Code sections 147.55(3) and 155A.15(2)(c) and 657 Iowa Administrative Code rule 36.1(4)(c); (u).

### **Count II**

#### **HAVING AN OWNER WHO HAS VIOLATED IOWA CODE CHAPTER 155A AND BOARD RULES**

Respondent is charged with having an owner who has violated Iowa Code chapter 155A and board rules in violation of Iowa Code sections 147.55(8) and 155A.15(2)(c) and 657 Iowa Administrative Code rule 36.1(4)(u)

### **Count III**

#### **VIOLATION OF A BOARD ORDER IN A DISCIPLINARY CASE**

Respondent is charged with violation of a board order in a disciplinary case in violation of Iowa Code sections 155A.15(2)(c) and 272C.3(2)(a) and 657 Iowa Administrative Code rule 36.1(4)(i); (u).

### **Count IV**

#### **FAILURE TO MAINTAIN SECURITY**

Respondent is charged with failing to maintain the security of the prescription

department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs in violation of Iowa Code sections 155A.15(2)(c) and 657 Iowa Administrative Code rules 6.7, 8.3(1), 8.5(3), and 36.1(4)(u).

#### **D. FACTUAL CIRCUMSTANCES**

1. On April 5, 2013, the Board issued its Findings of Fact, Conclusions of Law, Decision and Order in a disciplinary case concerning the Respondent and majority-owner Mark Graziano.<sup>1</sup>

2. The Board's April 5<sup>th</sup> order found approximately twenty violations against owner Mark Graziano, including numerous violations of Iowa Code chapter 155A and board rules.

3. On the Respondent's December 5, 2013 pharmacy license renewal, Mark Graziano was once again listed as an owner of the Respondent pharmacy.

4. The Board's April 5<sup>th</sup> order also placed Respondent's pharmacy license on "indefinite probation," subject to a number of terms and conditions. Amongst other things, the Order required the Respondent to prohibit Mark Graziano from having access to the pharmacy department or to prescription drugs within the pharmacy, "comply with all recommendations made by the [Board-approved] consultant," and submit quarterly reports by the Respondent and the consultant detailing the Respondent's full compliance with all recommendations made by the consultant. The quarterly reports were to be submitted on the 5<sup>th</sup> day of March, June, September, and December of each year. The consultant, moreover, is required to conduct quarterly inspections of the pharmacy.

5. To date, Mark Graziano continues to have access to the Respondent's pharmacy department, including having keys and the alarm code for the pharmacy. No secure, physical barrier exists between the pharmacy department and the drug store/soda fountain.

6. The Respondent, through owner Mark Graziano, terminated its first consultant and was without a consultant for several months. The initial consultant's work was stymied by the continued and, at times, harassing interference of Mark Graziano.

7. To date, the Respondent's current consultant Tom Crabb has yet to submit a quarterly report. Without quarterly reports, it is impossible for the Board to determine whether the required quarterly inspections were conducted.

8. To date, the Respondent has only submitted two of the six required quarterly reports.

9. Numerous other aspects of the Board Order, including submission of corrective action plan, submission of a Continuous Quality Improvement plan, and payment of the \$25,000 civil

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<sup>1</sup> Following a limited remand, the Board's initial order was upheld in its entirety with minor factual amendments.

penalty and hearing fees were completed. Each of these requirements, however, was completed in an untimely fashion inconsistent with the Board's Order.

### E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.3. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Meghan Gavin.

### F. PROBABLE CAUSE FINDING

On this the 16<sup>th</sup> day of October, 2014, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



EDWARD MAIER, Chairperson  
Iowa Board of Pharmacy  
400 SW Eighth Street, Suite E  
Des Moines, Iowa 50309-4688

cc: Meghan Gavin  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa

Rick L. Olson  
2635 Hubbell Ave.  
Des Moines, IA 50317  
ATTORNEY FOR RESPONDENT

#### Proof of Service

The undersigned certifies that the foregoing instrument was served in the following manner on the 17th day of October, 2014.

U.S. Mail                       Fax  
 Hand Delivery                 Overnight Courier  
 Federal Express                Other  
 Electronically

Signature: Becky Hall