

State of Iowa  
**Board of Pharmacy**

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*Executive Director*

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LADONNA GRATIAS  
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**TELECONFERENCE MINUTES  
October 28, 2014**

The special meeting of the Iowa Board of Pharmacy was held on Tuesday, October 28, 2014, at 10:00 a.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 10:00 a.m.

**MEMBERS PRESENT**

Edward L. Maier, Chairperson  
LaDonna Gratias  
Edward J. McKenna  
Judith M. Trumpy

**STAFF PRESENT**

Lloyd Jessen, Executive Director  
Meghan Gavin, Esq., Assistant Attorney  
General  
Laura Steffensmeier, Esq., Assistant Attorney  
General  
Debbie Jorgenson, Administrative Assistant  
Becky Hall, Secretary

**MEMBERS ABSENT**

Susan M. Frey  
Sharon K. Meyer  
James Miller, Vice-Chair

**I. Open Session.**

- A. Request for Modification Findings of Fact, Conclusions of Law, Decision and Order of the Iowa Board of Pharmacy – Christopher P. Tuetken, Pharmacist License No. 19681 of Robins, and Downtown Drug, Pharmacy License No. 1281 of Cedar Rapids.

Motion (Gratias/Trumpy) to modify Findings of Fact, Conclusions of Law, Decision and Order granting an extension of time until January 31, 2015; and notify Mr. Tuetken a pharmacy consultant needs to be in place to comply with the Board's original Order and that he is responsible for all requirements

for closing Downtown Drug properly. Roll call vote. Yes: Gratiias, Maier, McKenna, Trumpy; No: None; Abstain: None; Absent: Frey, Meyer, Miller. Passed: 4-0-0-3.

II. Closed Session.

Motion (Trumpy/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; and 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Gratiias, Maier, McKenna, Trumpy; No: None; Abstain: None; Absent: Frey, Meyer, Miller. Passed: 4-0-0-3.

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

In open session, the following action was taken:

A. Settlement Agreement and Final Order.

Motion (Trumpy/McKenna) to approve Settlement Agreement and Final Order for Bauder Pharmacy, Inc., Pharmacy License No. 222 of Des Moines. Roll call vote. Yes: Gratiias, Maier, McKenna, Trumpy; No: None; Abstain: None; Absent: Frey, Meyer, Miller. Passed: 4-0-0-3. A copy of the Settlement Agreement and Final Order is attached as Addendum A.

Meeting adjourned at 10:25 a.m. on October 28, 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**

**SETTLEMENT AGREEMENT  
AND  
FINAL ORDER**

**BAUDER PHARMCY, 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>SETTLEMENT AGREEMENT</b>
Respondent.	)	<b>&amp; FINAL ORDER</b>
	)	

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**COME NOW** the Iowa Board of Pharmacy and Bauder Pharmacy, Inc. (hereinafter, "Respondent"), pursuant to Iowa Code sections 17A.10 and 272C.3(4) (2013), and enter into the following Settlement Agreement and Final Order settling a licensee disciplinary proceeding currently pending before the Board.

Allegations contained in the Statement of Charges against Respondent shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. Respondent is a pharmacy operating in Des Moines, Iowa.
2. Respondent's pharmacy license is active, but has been on indefinite probation since April 5, 2013.
3. On September 29, 2014, the State filed a Motion for a New Statement of Charges concerning the Respondent and a Proposed Statement of Charges.
4. On October 16, 2014, the Board granted the State's motion and issued a Statement of Charges against the Respondent.
5. Respondent and the Board have reached a compromise settlement of the claims brought by the Board. Respondent chooses not to contest the allegations set forth in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline described herein.
6. In order to resolve the Statement of Charges, Respondent agrees as follows:

a. Within thirty (30) days of the Board's approval of this Settlement Agreement and Final Order, Mark Graziano will divest himself of his ownership interest in the Respondent Pharmacy. Upon proof of divestment and application for licensure, the Board will issue Respondent a new pharmacy license in the name of the new owner/s— provided that Respondent's application comply with Iowa law. If Respondent fails to comply with this provision, the Board under the authority of Iowa Code section 155A.15(2)(c) may refuse to issue a renewal of Respondent's license.

b. Within thirty (30) days of the Board's approval of this Settlement Agreement and Final Order, the Respondent will construct a secure, physical barrier separating the Respondent's pharmacy department from the remainder of the business. This secure barrier shall meet the requirements set forth in Iowa Administrative Code rules 657-6.7 and 657-8.5(3). Board compliance officers shall verify compliance.

c. Upon the Board's approval of this Settlement Agreement and Final Order, the Respondent pharmacy shall be immediately inspected by Board compliance officers. Respondent's pharmacist-in-charge and consultant shall work with Board compliance officers to ensure any deficiencies are remedied within thirty (30) days.

d. Respondent shall comply with the terms of its probation set forth in the Board's April 5, 2013 Decision and Order and reaffirmed in its Decision and Order following remand from the district court. Respondent and Respondent's pharmacist-in-charge shall work with Board compliance officers and the consultant to ensure compliance with the terms of Respondent's probation.

e. Respondent shall be prohibited from applying for a Controlled Substances Registration for three (3) months from the date of the Board's approval of this Settlement Agreement and Final Order. Respondent may only apply for a Controlled Substances Registration if: (1) it is in compliance with the terms of its probation, (2) has successfully passed the inspection referenced in subparagraph (c) and a second inspection upon application, and (3) a new pharmacist-in-charge is appointed prior to application and said PIC agrees to remain as PIC for nine months after the grant of a Controlled Substances Registration. The decision to grant or deny the Respondent's Controlled Substances Registration remains in the full discretion of the Board.

f. Respondent shall be prohibited from engaging in sterile compounding until such time as it passes a USP 797 inspection by a Board-approved inspector/s or inspection agency.

g. Respondent agrees to dismiss with prejudice the judicial review of the Board's prior disciplinary order, Iowa Supreme Court Case Number 14-0987.

h. The terms of Respondent's probation and this settlement agreement survive the change in ownership and issuance of a new pharmacy license to the Respondent.

7. Should Respondent violate or fail to comply with any of the terms and conditions of this Settlement Agreement and Final Order, the Board—in addition to the penalty described in paragraph a—may initiate action to revoke or suspend Respondent's Iowa pharmacy license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and Iowa Administrative Code 657 chapter 36.

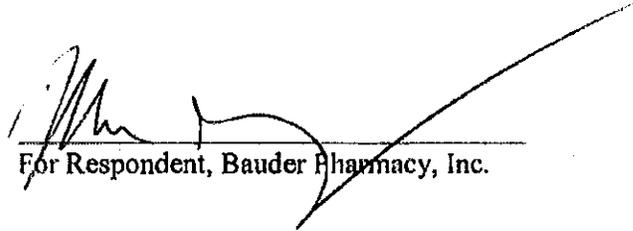
8. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Settlement Agreement and Final Order.

9. The State's legal counsel may present this Settlement Agreement and Final Order to the Board *ex parte*.

10. This Settlement Agreement and Final Order is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Settlement Agreement and Final Order, it shall be the full and final resolution of this matter.

11. The Board's approval of this Settlement Agreement and Final Order shall constitute a **FINAL ORDER** of the Board. As a final order, this Settlement Agreement is a public document available for inspection under Iowa Code chapter 22.

This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 21 day of October 2014.



For Respondent, Bauder Pharmacy, Inc.

By this signature, Mark Graziano acknowledges s/he is the Representative for Respondent Bauder Pharmacy, Inc. and is authorized to sign this Settlement Agreement and Final Order on behalf of Respondent.

This Settlement Agreement and Final Order is accepted by the Iowa Board of Pharmacy on the 28<sup>th</sup> day of October 2014.



EDWARD MAIER, R.Ph.  
Chairperson, Iowa Board of Pharmacy

- cc: Meghan Gavin  
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ATTORNEY FOR RESPONDENT