

NOTE: The following Minutes are provided for informational purposes only.
If you would like to obtain an official copy of these Minutes, please contact the Ohio Board of Pharmacy at 614/466-4143 for instructions and fee.

Minutes Of The Meeting
Ohio State Board of Pharmacy
Columbus, Ohio
June 16, 17, 18, 1997

MONDAY, JUNE 16, 1997

8:22 a.m. ROLL CALL

The State Board of Pharmacy convened in Room C-11, Ohio Departments Building, 65 South Front Street, Columbus, Ohio with the following members present:

Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; John Hanna, R.Ph.; Paul Lamping, R.Ph.; Joseph Maslak, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

RES. 97-164 Mr. Maslak presided in the absence of the Board President and Vice-President. The Executive Director reported that no additional written comments were received by the Board office following the closing of the record of the public rules hearing at 4:00 p.m. on Wednesday, April 23, 1997. Mr. Cavendish moved that Ohio Administrative Code Rules 4729-5-24, 4729-5-31, and 4729-12-09 be amended as follows and effective July 1, 1997:

4729-5-24 Prescription copy.

- (A) A pharmacist may transfer a copy of a prescription; a pharmacist may refill a copy of a prescription; such actions must be in accordance with the following:
- (1) Copies of prescriptions shall be transferred only between pharmacists; copies of prescriptions for controlled substances pursuant to sections 3719.41, 3719.43, and 3719.44 of the Revised Code shall be communicated directly between two pharmacists and shall be transferred only one time.
 - (2) The copy transferred shall be an exact duplicate of the original prescription except that it shall also include:
 - (a) Serial prescription number assigned to the prescription;
 - (b) Name and address (and "D.E.A." number for controlled substance prescriptions) of the pharmacy transferring the copy;
 - (c) Date of issuance of the prescription;
 - (d) Date of original dispensing of the prescription;
 - (e) Original number of refills;
 - (f) Date of last refill;
 - (g) Number of valid refills remaining; and

- (h) The name of the transferring pharmacist.
- (3) Copies transferred for non-refillable prescriptions shall be marked on the face of the prescription or orally noted by the transferring pharmacist "For Information Purposes Only" and are not valid prescriptions for the dispensing of drugs.
- (4) The pharmacist transferring a copy of a prescription must:
 - (a) Cancel the original prescription by writing the word "void" on the face of the prescription;
 - (b) Record on the reverse side of the original written prescription:
 - (i) Date of transfer;
 - (ii) His/her signature; and
 - (iii) When transferring an oral prescription, the name and address (and "D.E.A." number for controlled substance prescriptions) and name of the pharmacist at the receiving pharmacy.
 - (c) Except, if an automated data processing system is being used as an alternate system of recordkeeping for prescriptions pursuant to rules 4729-5-27 and 4729-5-28 of the Administrative Code, copies of prescriptions may be transferred by a pharmacist if the prescription record in the system is invalidated to prevent further dispensing at the original site. The prescription record in the system must contain the date of transfer, name of pharmacist making transfer, and the name and address of the pharmacy receiving the copy. Also, original written prescriptions for controlled substances must be cancelled as required in paragraphs (A)(4)(a) and (A)(4)(b) of this rule.
- (5) The pharmacist receiving a copy of a prescription must:
 - (a) Exercise reasonable diligence to determine validity of the copy;
 - (b) Reduce an oral prescription to writing by recording all of the information transferred (must include all information required in paragraph (A)(2) of this rule) and write the word "transfer" on the face of the prescription;
 - (c) Record date of transfer on the face of the prescription.
- (B) A prescription copy may be transferred between two pharmacies if the two pharmacies are accessing the same prescription records in a centralized database or pharmacy computers linked in any other manner. The computerized systems must satisfy all information requirements of paragraphs (A)(2) and (A)(4)(c) of this rule. This shall include invalidation of the prescription record in the system to prevent further dispensing at the original site and, if a controlled substance prescription, the cancelling of the original written prescription as required in paragraphs (A)(4)(a) and (A)(4)(b) of this rule. A system must be in place that will allow only authorized access to these computerized prescription records by a pharmacist and indicate on the prescription record when and by whom such access was made.
- (C) A prescription copy may be transferred between two pharmacists by the use of a facsimile machine. This facsimile may be considered to be a copy of a prescription if all information requirements of paragraph (A) of this rule, including invalidation of the original prescription or computer records, are met. A system must be in place that will show on the facsimile positive identification of the transferring and receiving pharmacists which must become a part of the prescription record. Facsimile copies must be recorded in writing pursuant to section 4729.37 of the Revised Code, or stored in such a manner that will allow retention of the prescription record for three years from the date of the last transaction.
- (D) INFORMATION ON A PRESCRIPTION IS THE PROPERTY OF THE PATIENT AND IS INTENDED TO AUTHORIZE THE DISPENSING OF A SPECIFIC AMOUNT OF MEDICATION FOR USE BY THE PATIENT. ORIGINAL COPIES OF PRESCRIPTIONS SHALL BE MAINTAINED BY PHARMACIES FOR THE PURPOSE OF DOCUMENTING THE DISPENSING OF DRUGS TO A PARTICULAR PATIENT.

- (1) IN THE EVENT THAT THE PHARMACY IS NOT ABLE TO PROVIDE THE MEDICATION WHEN NEEDED BY THE PATIENT PURSUANT TO AN AUTHORIZED REFILL, THE PHARMACIST SHALL, UPON THE REQUEST OF THE PATIENT, TRANSFER THE PRESCRIPTION INFORMATION TO THE PHARMACY DESIGNATED BY THE PATIENT.
- (2) NO PHARMACY SHALL REFUSE TO TRANSFER INFORMATION ABOUT A PREVIOUSLY DISPENSED PRESCRIPTION TO ANOTHER PHARMACY WHEN REQUESTED BY THE PATIENT. PRESCRIPTION INFORMATION SHALL BE TRANSFERRED IN ACCORDANCE WITH THIS RULE AS SOON AS POSSIBLE IN ORDER TO ASSURE THAT THE PATIENT'S DRUG THERAPY IS NOT INTERRUPTED.

4729-5-31 Criteria for licensure by examination.

(A) Pursuant to section 4729.07 of the Revised Code:

- (1) The examination shall consist of the "~~National Association of Boards of Pharmacy~~ NORTH AMERICAN PHARMACIST Licensure Examination (~~NABPLEX~~ NAPLEX)" and a jurisprudence examination compiled by the board or the "National Association of Boards of Pharmacy."
- (2) The minimum passing grade for the "~~National Association of Boards of Pharmacy Licensure Examination (NABPLEX)~~" NAPLEX is seventy-five. Any candidate failing to attain a grade of seventy-five on the ~~NABPLEX~~ NAPLEX examination will be required to repeat the ~~NABPLEX~~ NAPLEX examination.
- (3) The minimum passing grade for the jurisprudence examination is seventy-five. Any candidate who fails to receive a grade of seventy-five on the jurisprudence examination will be required to repeat the jurisprudence examination.

(B) Pursuant to section 4729.13 of the Revised Code:

- (1) The examination shall consist of the "~~National Association of Boards of Pharmacy~~ NORTH AMERICAN PHARMACIST Licensure Examination (~~NABPLEX~~ NAPLEX)" and a jurisprudence examination compiled by the board or the "National Association of Boards of Pharmacy."
- (2) The minimum passing grades for renewal of the pharmacist's identification card is a seventy-five on each exam.
 - (a) Any candidate for renewal of an identification card who fails to receive a grade of seventy-five on the jurisprudence examination shall make application and remit the fee established by the board for re-examination.
 - (b) Any candidate for renewal of an identification card who fails to receive a grade of seventy-five on the ~~NABPLEX~~ NAPLEX examination shall make application and remit the fee established by the board for re-examination.

(C) Pursuant to section 4729.08 of the Revised Code:

Applicants for examination and registration as a pharmacist who are graduates of schools or colleges of pharmacy located outside the United States and who are using an approved examination to establish equivalency of their education shall:

- (1) Obtain a grade no lower than seventy-five on the "Foreign Pharmacy Graduate Equivalency Examination (FPGEE)"; and
- (2) Show oral proficiency in English by successful completion of the "Test of Spoken English (TSE)" or its equivalent, pursuant to rule 4729-5-34 of the Administrative Code.

4729-12-09 Exceptions.

Pursuant to division (K) of section 3719.44 of the Revised Code, each of the following products containing ephedrine, its salts, its isomers, or the salts of its isomers is declared to be ~~exempt~~ EXCEPTED from classification as a schedule V controlled substance:

- (A) All products that contain the isomer known as pseudoephedrine or its salts, but do not also contain any of the isomer known as ephedrine or its salts.
- (B) "Breathe Easy®" herb tea.
- (C) "Bronkaid® Dual Action" caplets.
- (D) "Hydrosal®" hemorrhoidal ointment.
- (E) "Primatene® Dual Action Formula" tablets.
- (F) "Primatene®" tablets.
- (G) "SNORESTOP™" TABLETS.

The motion was seconded by Mr. Lamping and approved by the Board (Aye-7/Nay-0). Staff was directed to prepare and mail a Compliance Bulletin to all Ohio Pharmacists regarding amended OAC Rules 4729-5-24 (Prescription copy) and 4729-12-09 (Exceptions).

Board member Ruth Plant then reported on the Joint Regulatory Health Boards meeting held on May 29, 1997. Mrs. Plant reported that little discussion was held regarding the PEW Commission report and the response of the combined boards since many boards had not yet had the opportunity to make an official decision regarding the proposed response of the joint group.

RES. 97-165 The request of Brian Tarcha, R.Ph. that his Board Order be modified by declaring his license to practice in good standing and authorizing him to train pharmacy interns was presented to the Board. Following discussion, Mr. Hanna moved that the request be denied and that the original Order stand as adopted by the Board. The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).

RES. 97-166 The Board then considered the request of Jerry Friedman that he be permitted to pay the \$5,000.00 monetary penalty imposed by the Board in ten \$500.00 monthly installments.. Mrs. Plant moved that the request be approved. Mr. Cavendish seconded the motion and it was approved (Aye-7/Nay-0).

RES. 97-167 The Board then considered a request received by e-mail that the Board provide a link on the Board's Website Home Page to that of a temporary staffing agency for pharmacists – RPh on the Go. Following discussion, the Board directed staff to inform RPh on the Go that they would not provide a link to any pharmacist-staffing agency in that they did not believe it to be an appropriate link. Mrs. Plant moved that the Board deny the request and adopt the policy that links not be provided on the Board's Home Page for purposes other than making it easier for the Board's customers to obtain pertinent information regarding drugs, colleges of pharmacy, continuing education resources, and laws/rules regarding health professionals and the legal distribution of drugs. The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

RES. 97-168 Staff then presented a proposal to revise Resolution 90-219 to reflect changes in Ohio's laws governing the depositing of revenue received and collected by the Board. Mr. Cavendish moved that the resolution be amended as follows:

POLICY REGARDING BOARD EMPLOYEES
GIVING TESTIMONY IN CIVIL MATTERS

Employees of the Board of Pharmacy are prohibited from giving testimony in civil matters when such testimony relates to functions or duties attendant to their Board positions, or relate to abilities or qualifications attained as a result of employment with the Board, unless the following criteria are met:

- (1) A subpoena is received.
- (2) The employee's supervisor is notified in advance of testifying.
- (3) The Legal Affairs Administrator is notified of receipt of the subpoena, and the date, time, and location of the court appearance.
- (4) The Legal Affairs Administrator is present when testimony is given at any proceeding other than in an in-court appearance (e.g., deposition, interrogatories, etc.). Depositions, interrogatories, etc. must be reviewed by the Legal Affairs Administrator after transcription but prior to final submission as is provided by law.
- (5) Witness fee of \$400.00 (\$750.00 for employees having degrees in pharmacy or law) per half day plus expenses are tendered in advance of giving testimony (which are, according to law, placed into the State's Occupational and Licensing fund); check must be made payable to the Board of Pharmacy. This fee is not to be charged when a governmental agency is the party requesting testimony.
- (6) Content of expected testimony must be reviewed with the employee's supervisor prior to the giving of such testimony, and in the case of giving of testimony by an employee pharmacist, the expected testimony must be reviewed with the Executive Director.

As used in this policy, "civil matters" include, but are not limited to, court appearances, trials, pretrials, pretrial hearings, depositions, and interrogatories.

The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

9:17 a.m.

RES. 97-169 Vice-President Amonte Littlejohn joined the meeting and presided in President Neuber's absence. Staff then presented R.Ph. Waldo Tyler's request that the Board authorize him to serve as a responsible pharmacist for a terminal distributor of dangerous drugs. Following discussion and consideration of the settlement agreement entered into with Mr. Tyler and his attorney in May 1991, Mr. Hanna moved that the request be denied. The motion was seconded by Mrs. Plant and approved (Aye-8/Nay-0).

RES. 97-170 The Board then considered the application submitted by Karen Jean Scott Davis to renew her license to practice pharmacy in the state of Ohio. The license lapsed September 15, 1985 and the applicant did not continuously practice pharmacy in another state since that date. A careful review of the records of the Board revealed that the only period in which the applicant did not continuously practice pharmacy was a period of approximately two months following the date that her Ohio license lapsed and that she has continuously practiced pharmacy since November, 1985. Mrs. Plant moved that the application for renewal be approved and the license to practice in Ohio for the 1996-1997 licensure year be issued. The motion was seconded by Mr. Cavendish and approved (Aye-8/Nay-0).

10:50 a.m.

Board President Sue Neuber joined the meeting and assumed her responsibilities as meeting chair.

Board member John Hanna reported on the May 19, 1997 meeting of the State Board of Nursing Formulary Committee. Copies of material forwarded to Nursing Board Formulary Committee members was distributed to the Board members for their information and review. The information consisted of a letter dated June 5, 1997 and signed by Margaret Graham urging committee members to contact state legislators and support amendments to the budget bill that would permit advanced practice nurses to personally supply a limited number of drugs to their patients and a copy of the proposed amendments.

Staff reported that the 98-99 biennial budget is in conference committee and is expected to be enacted before the end of this fiscal year.

Carl Frost, newly hired as a compliance agent with the Board, joined the meeting and was introduced by the Assistant Executive Director, William Winsley. Mr. Winsley reported that agent Frost will be responsible for Medina and Summit counties.

RES. 97-171 The Executive Director reported on a meeting with Scott Cubberly, President of Cubberly Studios, Inc. in Westerville regarding pictures of Board members. Following discussion, the Board directed that arrangements be made each year to have individual pictures taken of the Board members newly appointed to the Board as well as an annual group picture for the office. The individual pictures (3"x5") are to be placed in the Board member's file and used in a composite in the year 2034. The group picture will be hung in the Board office. The first pictures are to be taken during either the August or September board meeting.

The Executive Director reported that a meeting of the Ohio Tuberculosis Association was scheduled for tomorrow – Tuesday, June 17, 1997. The association was informed that Mr. Maslak would not be able to attend due to the Board meeting. The Executive Director also reported that Mr. Winsley and Mr. Benedict will be attending the 1997 Multistate Pharmacy Jurisprudence Examination Annual Item Pool Review meetings. Mr. Winsley will be attending the two-day meeting that will be held in conjunction with and preceding the District IV Annual meeting in Dearborn, Michigan November 5–7, 1997. Mr. Benedict will be attending the two-day meeting that will be held in Chicago at NABP headquarters December 4–5, 1997. Over eight hundred jurisprudence questions will be reviewed during the two-day sessions.

Copies of the resolutions that were adopted at the 93rd Annual Meeting of the National Association of Boards of Pharmacy May 17–21, 1997 were distributed to the Board members for their information. President Neuber, Public Member Nicholas Repke, and Board Member Paul Lamping reported on the meeting. Public Member Nicholas Repke reported that the public board member luncheon meeting that he chaired was a success and lasted well beyond the one-hour time period scheduled. Fourteen public board members from thirteen different states attended the meeting.

Staff reported that the May 1997 update of the official edition of the Drug Laws of Ohio is now available. Staff also reported that a prototype of the Drug Laws of Ohio on CD-ROM will be available for testing by Board members and staff by the end of the month.

11:10 a.m.

Mary Hollern, Assistant Attorney General; William Winsley, Assistant Executive Director; Tim Benedict, Compliance Administrator; Robert Cole, Compliance Supervisor; and David Rowland, Legal Affairs Administrator joined the Board.

Mr. Cavendish moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending and imminent court matters and the investigation of complaints regarding licensees and registrants. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

11:45 a.m.

The Executive Session was concluded and the meeting recessed for lunch.

1:08 p.m.

All of the Board members reconvened for the purpose of continuing the business meeting.

RES. 97-172 David Rowland, Legal Affairs Administrator, joined the Board and presented drafts of three Cease and Desist Orders for consideration by the Board. Following discussion and consideration, Mr. Lamping moved that the Board issue the following three Cease and Desist Orders:

CEASE AND DESIST

Joseph R. Thomas
Executive Vice President
Kmart Corporation

International Headquarters
3100 West Big Beaver Road
Troy, Michigan 48084-3163

Re: Advertisement

Dear Mr. Thomas:

Board of Pharmacy records indicate that you are the Executive Vice President & Chief Administrative Officer of Kmart which owns and operates several pharmacies throughout the state of Ohio.

It has come to the attention of the Board that advertisements issued in the *Dayton Daily News* and the *Columbus Dispatch* on January 29, 1997, appear to be in violation of Ohio's advertising laws. Specifically, Kmart has advertised prices without indicating the generic name of the drug product. A copy of each advertisement is enclosed herein.

Please be reminded that Section 4729.36(B) of the Ohio Revised Code allows for a pharmacy or pharmacist to advertise by name or therapeutic class the availability for sale or dispensing of any dangerous drug provided such advertising includes price information as defined in division (N) of Section 4729.02 of the Ohio Revised Code. Section 4729.02(N) requires the following information to be listed with an advertisement in an easily understandable manner:

- (1) The proprietary name of the drug product;
- (2) The established (generic) name of the drug product;
- (3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient;
- (4) The dosage form;
- (5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.

Any advertisement must include the entire information set forth in this statute.

YOU ARE HEREBY ADVISED that pursuant to Section 4729.25(B) of the Ohio Revised Code, the Board of Pharmacy may issue notice or warning to an alleged offender of any of the provisions of Chapter 4729. of the Ohio Revised Code; thus you are hereby notified to immediately CEASE publication of any advertisements which violate the aforementioned sections of Ohio law and DESIST from any further violations of Chapter 4729. of the Ohio Revised Code.

PHARMACY

BY ORDER OF THE STATE BOARD OF

CEASE AND DESIST

Miesse's Herbs and Collectibles
2525 Springfield-Xenia Road
Springfield, Ohio 45506-3943

Re: Advertisement

To Whom It May Concern:

It has come to the attention of the Board that advertisements issued in the Springfield area appear to be in violation Ohio's advertising laws. Specifically, Miesse's Herbs and Collectibles is advertising using the words "God's Pharmacy". A copy of one such advertisement is enclosed herein.

You are hereby advised that, pursuant to the provisions of Sections 4729.36(A) of the Ohio Revised Code, such advertising is in violation of Ohio law. This provision reads as follows:

No place except a pharmacy shall display any sign or advertise in any fashion, using the words "pharmacy," "drugs," "drug store," "drug store supplies," "pharmacist," "druggist," pharmaceutical chemist," "apothecary," "drug sundries," "medicine," or any of these words or their equivalent, in any manner.

Pursuant to Section 4729.99 of the Ohio Revised Code, a violation of this provision is a misdemeanor of the third degree, punishable by a fine up to three thousand dollars (\$3,000) and sixty (60) days imprisonment.

You are further advised that pursuant to Section 4729.25(B) of the Ohio Revised Code, the Board of Pharmacy may issue notice or warning to an alleged offender of any of the provisions of Chapter 4729. of the Ohio Revised Code; thus you are hereby notified to immediately CEASE publication of any advertisements which violate the aforementioned section of Ohio law and DESIST from any further violations of Chapter 4729. of the Ohio Revised Code.

PHARMACY

BY ORDER OF THE STATE BOARD OF

CEASE AND DESIST

Edmund P. Choroski, R.Ph.
Senior Attorney
Walgreens Corporate Offices
200 Wilmot Road
Deerfield, Illinois 60015

Re: Advertisement

Dear Mr. Choroski:

Board of Pharmacy records indicate that you are a pharmacist and the Senior Attorney for Trade and Corporate Relations at Walgreens which owns and operates several pharmacies throughout the state of Ohio.

It has come to the attention of the Board that Walgreens' advertisements appear to be in violation of Ohio's advertising laws. Specifically, Walgreens has advertised prices without indicating the generic name of the drug product. A copy of this advertisement is enclosed herein.

Please be reminded that Section 4729.36(B) of the Ohio Revised Code allows for a pharmacy or pharmacist to advertise by name or therapeutic class the availability for sale or dispensing of any dangerous drug provided such advertising includes price information as defined in division (N) of Section 4729.02 of the Ohio Revised Code. Section 4729.02(N) requires the following information to be listed with an advertisement in an easily understandable manner:

- (1) The proprietary name of the drug product;
- (2) The established (generic) name of the drug product;
- (3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient;
- (4) The dosage form;
- (5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.

Any advertisement must include the entire information set forth in this statute.

YOU ARE HEREBY ADVISED that pursuant to Section 4729.25(B) of the Ohio Revised Code, the Board of Pharmacy may issue notice or warning to an alleged offender of any of the provisions of Chapter 4729. of the Ohio Revised Code; thus you are hereby notified to immediately CEASE publication of any advertisements which violate the aforementioned sections of Ohio law and DESIST from any further violations of Chapter 4729. of the Ohio Revised Code.

This is the second such notice which Walgreens has been given regarding advertising. You should be aware that pursuant to Section 4729.99 of the Ohio Revised Code, a violation of Ohio's advertising law is a misdemeanor of the third degree, punishable by a fine up to \$3,000 and sixty days imprisonment, and will subject Walgreens to administrative disciplinary action by the Board as well.

PHARMACY BY ORDER OF THE STATE BOARD OF

1:18 p.m. The motion was seconded by Mr. Cavendish and approved (Aye-7/Nay-0/Abstain-1[Adelman]).

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Lawrence Broome, R.Ph., Wellington.

3:50 p.m.

The hearing was concluded and the Board recessed for ten minutes.

4:05 p.m.

RES. 97-173

The Board reconvened and continued to consider agenda items. A letter from LifeBanc regarding the prescribing of drugs for organ preservation by licensed nurses in Ohio was presented to the Board by staff. Following discussion and consideration, staff was directed to inform LifeBanc that orders for medications to be administered to patients may only be issued by a person authorized by his/her professional practice act to prescribe.

4:10 p.m.

Mr. Lamping moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received during the Chapter 119. hearing in the matter of Lawrence Broome, R.Ph. The motion was seconded by Mr. Maslak and President Neuber conducted a roll call vote as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

4:40 p.m.

RES. 97-174

The Executive Session was concluded and the meeting opened to the public. Mr. Maslak moved the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-970107-024)

In The Matter Of:

LAWRENCE E. BROOME, R.Ph.
205 Herrick E.
Wellington, Ohio 44090
(R.Ph. No. 03-1-08147)

INTRODUCTION

THE MATTER OF LAWRENCE E. BROOME CAME TO HEARING ON JUNE 16, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

LAWRENCE E. BROOME WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert L. Cole, Ohio State Board of Pharmacy
- (2) Joann Predina, R.Ph., Ohio State Board of Pharmacy
- (3) Paul Kover, R.Ph., Ohio State Board of Pharmacy
- (4) Lynn Mudra, Ohio State Board of Pharmacy

Respondent's Witnesses:

(1) Lawrence E. Broome, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated January 7, 1997.
- (2) Exhibit 1A--Hearing Request letter dated January 28, 1997.
- (3) Exhibit 1B--Hearing Schedule letter dated February 3, 1997.
- (4) Exhibit 1C--Notice of Appearance of David W. Grauer dated May 21, 1997.
- (5) Exhibit 1D--Pharmacist File Front Sheet of Lawrence E. Broome showing original date of registration as March 23, 1964.
- (6) Exhibit 1E--Renewal Application for Pharmacist License, No. 03-1-08147, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Lawrence E. Broome dated July 25, 1996.
- (7) Exhibit 1F--Renewal Application for DDD License, No. 02-130050, for a Terminal Distributor of Dangerous Drugs License from January 1, 1996, to December 31, 1996, of Revco Discount Drug Center #376 dated November 10, 1995; Renewal Application for DDD License, No. 02-0130050, for a Terminal Distributor of Dangerous Drugs License from January 1, 1997, to December 31, 1997, of Revco Discount Drug Center #376 dated October 8, 1996; and notification of Change of Responsible Person form of Revco Discount Drug Center #376 dated September 15, 1995.
- (8) Exhibit 1G--Copy of pages 490 through 499 of the State Board of Pharmacy Journal, No. J-861028-079, in the matter of Lawrence E. Broome dated October 28, 1986.
- (9) Exhibit 2--Copy of eight-page Investigation Report of Christopher K. Reed regarding Broome Rexall Drug dated December 29, 1988.
- (10) Exhibit 3--Copy of two-page Report of Investigation of Christopher K. Reed regarding Broome Rexall Drug dated December 23, 1988, with attached copies of two DEA Form 41s, Registrants Inventory of Drugs Surrendered, of Broome Rexall Drug Store dated December 23, 1988.
- (11) Exhibit 4--Copy of Dangerous Drug Distributor Inspection Report of Broome Drug Store dated May 9, 1985.
- (12) Exhibit 5--Four-page Dangerous Drug Distributor Inspection Report of Revco Discount Drug Center #376 dated September 18, 1995, with the following attachments: Response to Pharmacy Inspection of L. E. Broome dated October 5, 1995, and Ohio State Board of Pharmacy Prescription Room Barricade Inspection Report, T.D.D.D. No. 02-130050, dated September 18, 1995.
- (13) Exhibit 6--Copy of Notification of Change of Responsible Person form of Revco Discount Drug Center #376 dated September 15, 1995.
- (14) Exhibit 7--Nine-page Controlled Substance Inventory of Revco D.S., Inc. #376 taken by L. E. Broome dated April 16, 1996.
- (15) Exhibit 8--Two-page Dangerous Drug Distributor Inspection Report of Revco Discount Drug #376 dated April 10, 1996, with the following attachments: copies of pages 0144, 0153, and 0157 of a Prescription Refill Log Book; and copies of prescription numbers 0376-661282, 0376-695221, and 0376-683322.
- (16) Exhibit 8A--Letter from Lawrence E. Broome dated April 24, 1996, with attached copy of seven-page Dangerous Drug Distributor Inspection Report of Revco Discount Drug Center #376 dated April 15, 1996.
- (17) Exhibit 9--Handwritten statement of Karen A. Russell signed and notarized on June 5, 1996.
- (18) Exhibit 10--Seven-page Dangerous Drug Distributor Inspection Report of Revco Discount Drug Center #376 dated April 15, 1996.
- (19) Exhibit 11--Four DEA Form 222s of Revco Discount Drug Ctrs, #376 numbered as follows: 942822259, 952171932, 942822258, and 952171918; and two Revco D.S. Inc. #376 Store Order Manifest printouts, with shipped dates of November 2, 1995, and November 16, 1995.
- (20) Exhibit 12--Dangerous Drug Distributor Inspection Report of Revco Discount Drug Center #376 dated April 17, 1996.
- (21) Exhibit 13--Sealed Record-Copy of eight pages of Revco Customer Signature Log dated from March 16, 1996, through April 17, 1996.
- (22) Exhibit 14--Handwritten statement of Julie M. Cruz signed and notarized on June 5, 1996.
- (23) Exhibit 15--Revco Pharmacy bag labeled for prescription number 0376-709202 dated May 6, 1996, containing an amber vial labeled 0376-709202 dated May 6, 1996, Revco Personalized Patient Advisory Leaflet regarding prescription number 0376-709202 dated May 6, 1996, and Revco cash receipt for prescription number 0376-709202 dated May 6, 1996.
- (24) Exhibit 16--Sealed Record-Prescription No. 0376-709202.

- (25) Exhibit 17--Olympus microcassette tape recorded interview of Lawrence E. Broome dated May 6, 1996.
- (26) Exhibit 18--Sealed Record-Revco Customer Signature Log dated from May 1, 1996, through May 6, 1996.
- (27) Exhibit 19--Sealed Record-Revco #376 P.A.L. Prescription Refill Log Book dated from January 6, 1996, through April 15, 1996.
- (28) Exhibit 20--Sealed Record-Seventy-seven prescriptions numbered as follows: 0376-675774, 0376-676176, 0376-676445, 0376-676564, 0376-676638, 0376-676679, 0376-677677, 0376-678173, 0376-678182, 0376-678125, 0376-678162, 0376-678214, 0376-679109, 0376-679987, 0376-680605, 0376-680737, 0376-680769, 0376-681380, 0376-682278, 0376-682298, 0376-683028, 0376-683981, 0376-684434, 0376-685238, 0376-685111, 0376-685201, 0376-685269, 0376-685959, 0376-686640, 0376-686795, 0376-686815, 0376-687026, 0376-687447, 0376-688070, 0376-688444, 0376-689071, 0376-689173, 0376-689767, 0376-690701, 0376-690734, 0376-691147, 0376-692113, 0376-692142, 0376-692939, 0376-692981, 0376-694446, 0376-694499, 0376-695477, 0376-695933, 0376-695936, 0376-695942, 0376-695943, 0376-696962, 0376-697814, 0376-697815, 0376-697816, 0376-697817, 0376-698854, 0376-698891, 0376-699405, 0376-700075, 0376-700811, 0376-700836, 0376-701930, 0376-701976, 0376-702665, 0376-703636, 0376-703666, 0376-703880, 0376-704471, 0376-704848, 0376-705163, 0376-705723, 0376-706100, 0376-706512, 0376-706540, and 0376-704419; and one prescription, not numbered, from Comprehensive Pediatrics, Inc. dated October 25, 1995.
- (29) Exhibit 21--Three-page chart of Prescription Examples, Case No. 96-1412, produced by Paul Kover, R.Ph.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Philip E. Kunz dated June 5, 1997.
- (2) Exhibit B--Copy of seven-page Affidavit of Sandra E. Pepsin signed and notarized on June 16, 1997.
- (3) Exhibit C--Letter from Richard S. Kelling dated June 10, 1997.

FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the Board of Pharmacy indicate that Lawrence E. Broome was originally licensed in the state of Ohio on March 23, 1964, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that during the relevant time periods alleged herein Lawrence E. Broome was the Responsible Pharmacist at Broome Rexall Drug Store and Revco Discount Drug Center #376 in North Ridgeville, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-16 of the Ohio Administrative Code. Additionally, Lawrence E. Broome was disciplined by the Board of Pharmacy on or about October 28, 1986.
- (2) Lawrence E. Broome as the Responsible Pharmacist did, on or about December 23, 1988, hold or offer for sale drugs which were adulterated and/or misbranded, to wit: during an administrative inspection, numerous outdated dangerous drugs and controlled substances, and dangerous drugs which were misbranded and mislabeled were found to be interspersed throughout Broome Rexall Drug Store. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (3) Lawrence E. Broome as the Responsible Pharmacist did, on or about September 18, 1995, and dates immediately preceding, fail to manually initial original prescriptions and/or the prescription refill log book, to wit: after having been admonished by Board agents on May 9, 1985, for failing to initial prescriptions when dispensing medication, Lawrence E. Broome and/or pharmacists under his control continued to refuse to properly maintain these records. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code.
- (4) Lawrence E. Broome as the Responsible Pharmacist did, on or about September 18, 1995, and dates immediately preceding, fail to take and maintain a complete controlled substances inventory pursuant to federal regulations and Rule 4729-9-14 of the Ohio Administrative Code, to wit: when Lawrence E. Broome became the new Responsible Pharmacist just prior to May 9, 1985, he failed to take an inventory of controlled substances on hand, and he was admonished by a Board agent on May 9, 1985, for not having done so. Again, when Lawrence E. Broome became the new Responsible Pharmacist just prior to September 18,

1995, he failed to take an inventory of controlled substances on hand. Such conduct is in violation of Rule 4729-5-11(C)(2) of the Ohio Administrative Code.

- (5) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 10, 1996, and dates immediately preceding, fail to manually initial original prescriptions and/or the prescription refill log book, to wit: after having been admonished by Board agents on May 9, 1985, and again on September 18, 1995, for failing to initial prescriptions when dispensing medication, Lawrence E. Broome and/or pharmacists under his control continued to refuse to properly maintain these records. When told by his store manager to initial prescriptions in accordance with law, Lawrence E. Broome indicated that he was "too busy to do that" and that he had "other things to do". Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code.
- (6) Lawrence E. Broome as the Responsible Pharmacist did, on or about the following dates, fail to indicate on D.E.A. 222 controlled substance order forms the number of packages of controlled substances received and/or the date received, to wit: the following D.E.A. 222 forms, and others, were not properly completed:

<u>Form Number</u>	<u>Date</u>
942822259	11/09/95
952171932	02/09/96
942822258	11/02/95
952171918	11/16/95

Such conduct is in violation of Section 1305.09(e) of the Code of Federal Regulations.

- (7) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 15, 1996, and dates immediately preceding, fail to take and maintain a complete controlled substances inventory pursuant to federal regulations and Rule 4729-9-14 of the Ohio Administrative Code, to wit: when Lawrence E. Broome became the new Responsible Pharmacist just prior to May 9, 1985, Lawrence E. Broome failed to take an inventory of controlled substances on hand, and he was admonished by a Board agent on May 9, 1985, for not having done so. Again, when Lawrence E. Broome became the new Responsible Pharmacist just prior to September 18, 1995, he failed to take an inventory of controlled substances on hand. During an administrative inspection by a Board agent on April 15, 1996, the required inventory had not yet been taken after having been admonished by a Board agent on September 18, 1995. Such conduct is in violation of Rule 4729-5-11(C)(2) of the Ohio Administrative Code.
- (8) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 15, 1996, hold or offer for sale drugs which were adulterated and/or misbranded, to wit: after having been admonished for such conduct during an administrative inspection on December 23, 1988, numerous outdated dangerous drugs and controlled substances, and dangerous drugs which were misbranded and mislabeled were found to be interspersed throughout Revco Discount Drug Center #376. Further, drugs which had been dispensed but were not purchased by consumers were returned to stock without lot numbers or expiration dates. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (9) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 15, 1996, and dates immediately preceding, continuously fail to perform prospective drug utilization review and patient counseling, to wit: after having been admonished by a Board agent on September 18, 1995, for not conducting patient counseling and drug utilization and review, when dispensing medications to patients pursuant to prescriptions, Lawrence E. Broome and/or pharmacists under his control failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Lawrence E. Broome and/or pharmacists under his control failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (10) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 15, 1996, and dates immediately preceding, fail to manually initial original prescriptions and/or the prescription refill log book, to wit: after having been admonished by Board agents on May 9, 1985, September 18, 1995, and again on April 10, 1996, for failing to initial prescriptions when dispensing medication, Lawrence E. Broome and/or pharmacists under his control continued to refuse to properly maintain these records. When told by his store manager to initial prescriptions in accordance with law, Lawrence E. Broome indicated that he "did not

have time" to initial them. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code.

- (11) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 17, 1996, and dates immediately preceding, continuously fail to perform prospective drug utilization review and patient counseling, to wit: after having been admonished by a Board agent on September 18, 1995, and again on April 15, 1996, for not conducting patient counseling and drug utilization and review, when dispensing medications to patients pursuant to prescriptions, Lawrence E. Broome and/or pharmacists under his control failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Lawrence E. Broome and/or pharmacists under his control failed to offer patient counseling. On this date, the store's assistant manager was working in the pharmacy handing dispensed medications to patients, and she indicated to the inspecting Board agent that she had not been informed of the requirement for patient counseling or documentation of refusals. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (12) Lawrence E. Broome as the Responsible Pharmacist did, on or about April 17, 1996, hold or offer for sale drugs which were adulterated and/or misbranded, to wit: after having been admonished for such conduct during administrative inspections on December 23, 1988, and again on April 15, 1996, drugs which had been dispensed but were not purchased by consumers were returned to stock without lot numbers or expiration dates. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (13) Lawrence E. Broome as the Responsible Pharmacist did, on or about May 6, 1996, and dates immediately preceding, continuously fail to perform prospective drug utilization review and patient counseling, to wit: after having been admonished by a Board agent on September 18, 1995, April 15, 1996, and again on April 17, 1996, for not conducting patient counseling and drug utilization and review, when dispensing medication pursuant to prescription number 0376-709202, and others, Lawrence E. Broome and/or pharmacists under his control failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Lawrence E. Broome and/or pharmacists under his control failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (13) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (8), and (12) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Lawrence E. Broome:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-1-08147, held by Lawrence E. Broome for thirty days effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Lawrence E. Broome may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension. When Lawrence E. Broome's license is reinstated his identification card will be placed on probation for three years. The terms of probation are as follows:
 - (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Lawrence E. Broome's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.

- (2) Lawrence E. Broome may not serve as a responsible pharmacist.
- (3) Lawrence E. Broome must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Lawrence E. Broome must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Lawrence E. Broome must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Adelman and approved (Aye-6/Nay-2).

RES. 97-175 A request from Lisa Ramirez was then considered by the Board. Staff was directed to inform Ms. Ramirez that the Board will approve a program in the state of Arizona that is similar to the program she is currently following and that meets the requirements of her Board Order.

4:45 p.m. The meeting was recessed until Tuesday, June 17, 1997, at 8:00 a.m.

TUESDAY, JUNE 17, 1997

8:10 a.m. ROLL CALL

The following members of the State Board of Pharmacy reconvened in Room C-11, Ohio Departments Building, 65 South Front Street, Columbus, Ohio:

Suzanne L. Neuber, R.Ph. (President); Diane Adelman, R.Ph., Robert Cavendish, R.Ph.; John Hanna, R.Ph.; Paul Lamping, R.Ph.; Joseph Maslak, R.Ph., Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Robert J. Garrity, R.Ph.

8:36 p.m.

Board member Amonte Littlejohn joined the meeting. President Neuber noted on the hearing record that Mr. Littlejohn would not participate in the hearing nor in adjudicating the matter of Robert J. Garrity.

9:12 a.m.

The record was closed and the Board recessed for five minutes.

9:30 a.m.

The Board reconvened and Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matter of Robert J. Garrity. The motion was seconded by Mr. Lamping and President Neuber conducted a roll call vote as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

9:58 a.m.

RES. 97-176

The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved the Board adopt the following Order in the matter of Robert J. Garrity's application for licensure by reciprocity:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-970228-031)

In The Matter Of:

ROBERT J. GARRITY

1196 Summit Avenue
Lakewood, Ohio 44107
(D.O.B. 11/22/59)

INTRODUCTION

THE MATTER OF ROBERT J. GARRITY CAME TO HEARING ON JUNE 17, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROBERT J. GARRITY WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert J. Garrity, Respondent

Respondent's Witnesses:

- (1) Charles Broussard, Pharmacists Rehabilitation Organization, Inc.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated February 28, 1997.
(2) Exhibit 1A--Hearing Request letter dated March 4, 1997.
(3) Exhibit 1B--Hearing Schedule letter dated March 7, 1997.
(4) Exhibit 1C--Hearing Schedule letter dated May 20, 1997.
(5) Exhibit 2--Four-page National Association of Boards of Pharmacy Official Application For Transfer Of Pharmaceutical Licensure™ to the state of Ohio of Robert James Garrity dated December 16, 1996.
(6) Exhibit 3--Copy of Illinois Department of Professional Regulation Certification by Nikki M. Zollar, dated December 11, 1996, for the attached: copy of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.

Respondent's Exhibits:

- (1) Exhibit A1--Copy of AA/NA Attendance Verification of Robert Garrity dated from May 29, 1997, through June 15, 1997.
- (2) Exhibit A2--Copy of AA/NA Attendance Verification of Robert J. Garrity dated from April 22, 1997, through May 27, 1997.
- (3) Exhibit A3--Copy of AA/NA Attendance Verification of Robert Garrity dated from March 17, 1997, through April 21, 1997.
- (4) Exhibit A4--Copy of AA/NA Attendance Verification of Robert Garrity dated from February 10, 1997, through March 16, 1997.
- (5) Exhibit A5--Copy of AA/NA Attendance Verification of Robert J. Garrity dated from January 15, 1997, through February 9, 1997.
- (6) Exhibit A6--Copy of AA/NA Attendance Verification dated from December 15, 1996, through January 13, 1997.
- (7) Exhibit A7--Copy of AA/NA Attendance Verification of Robert Garrity dated from November 7, 1996, through December 11, 1996.
- (8) Exhibit A8--Copy of AA/NA Attendance Verification dated from September 19, 1996, through November 4, 1996.
- (9) Exhibit A9--Copy of AA/NA Attendance Verification dated from August 12, 1996, through September 18, 1996.
- (10) Exhibit A10--Copy of AA/NA Attendance Verification dated from July 18, 1996, through August 10, 1996.
- (11) Exhibit A11--Copy of AA/NA Attendance Verification dated from June 16, 1996, through July 17, 1996.
- (12) Exhibit A12--Copy of AA/NA Attendance Verification dated from May 23, 1996, through June 14, 1996.
- (13) Exhibit A13--Copy of AA/NA Attendance Verification dated from May 3, 1996, through May 22, 1996.
- (14) Exhibit A14--Copy of AA/NA Attendance Verification dated from April 17, 1996, through May 2, 1996.
- (15) Exhibit A15--Copy of AA/NA Attendance Verification dated from March 17, 1996, through April 16, 1996.
- (16) Exhibit A16--Copy of AA/NA Attendance Verification dated from February 25, 1996, through March 16, 1996.
- (17) Exhibit A17--Copy of AA/NA Attendance Verification dated from January 11, 1996, through February 21, 1996.
- (18) Exhibit A18--Copy of AA/NA Attendance Verification dated from November 18, 1995, through January 8, 1996.
- (19) Exhibit A19--Copy of AA/NA Attendance Verification dated from September 30, 1995, through November 16.
- (20) Exhibit B1--Copy of urine drug screen report of Robert Garrity dated June 5, 1997.
- (21) Exhibit B2--Copy of document regarding the drug screen of Robert Garrity performed on June 3, 1997.
- (22) Exhibit B3--Copy of urine drug screen report of Robert Garrity dated February 19, 1997.
- (23) Exhibit B4--Copy of document regarding the drug screen of Robert Garrity performed on February 18, 1997.
- (24) Exhibit B5--Copy of urine drug screen report of Robert Garrity dated December 12, 1996.
- (25) Exhibit B6--Copy of document regarding the drug screen of Robert Garrity performed on December 11, 1996.
- (26) Exhibit B7--Copy of urine drug screen report of Robert Garrity dated September 24, 1996.
- (27) Exhibit B8--Copy of memorandum from Georgia D. Hatjikiakos dated January 9, 1997.
- (28) Exhibit B9--Copy of three Roche Abuscreen® ONTRACK™ Rapid Assay for Drug Abuse packages, testing for Cocaine, THC, and Amphetamines, each labeled for Robert Garrity and dated March 6, 1996.
- (29) Exhibit B10--Copy of urine drug screen report of Subject No. 344-56-4788 dated June 14, 1996.
- (30) Exhibit C1--Copy of page one of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Robert J. Garrity dated August 27, 1996.
- (31) Exhibit C2--Copy of page two of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Robert J. Garrity dated August 27, 1996, and August 30, 1996.
- (32) Exhibit C3--Copy of page one of two-page Illinois Pharmacist Recovery Program Pharmacist Recovery Contract of Robert J. Garrity, not dated.
- (33) Exhibit C4--Copy of page two of two-page Illinois Pharmacist Recovery Program Pharmacist Recovery Contract of Robert J. Garrity dated September 29, 1995.
- (34) Exhibit C5--Copy of letter from Philip Caravello dated May 17, 1996.
- (35) Exhibit C6--Copy of Continuing Care Contract of Robert Garrity dated July 24, 1995.

- (36) Exhibit C7--Copy of Notice of the State of Illinois Department of Professional Regulation, No. 95-3410, of Robert J. Garrity dated March 21, 1996.
- (37) Exhibit C8--Copy of page one of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.
- (38) Exhibit C9--Copy of page two of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.
- (39) Exhibit C10--Copy of page three of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.
- (40) Exhibit C11--Copy of page four of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.
- (41) Exhibit C12--Copy of page five of five-page Consent Order in the State of Illinois Department of Professional Regulation, No. 95-3410-LEG, of Robert J. Garrity dated March 21, 1996.
- (42) Exhibit C13--Copy of page one of two-page Sentencing Order in the Circuit Court of the 15th Judicial Circuit, Stephenson County, Illinois, Case No. 95CF255, of Robert J. Garrity dated September 25, 1995.
- (43) Exhibit C14--Copy of page two of two-page Sentencing Order in the Circuit Court of the 15th Judicial Circuit, Stephenson County, Illinois, Case No. 95CF255, of Robert J. Garrity dated September 25, 1995.
- (44) Exhibit C15--Copy of license issued by the State of Illinois Department of Professional Regulation for Registered Pharmacist, License No. 051-034443, of Robert J. Garrity, expiration date of March 31, 1998.
- (45) Exhibit D1--Copy of Certificate of Appreciation of Bob G. dated April 23, 1997.
- (46) Exhibit D2--Copy of Certificate of Appreciation of Bob Garrity dated March 31, 1997.
- (47) Exhibit D3--Copy of Certificate of Appreciation of Bob dated September 30, 1996.
- (48) Exhibit D4--Copy of letter from Jerry Walton dated December 6, 1996.
- (49) Exhibit D5--Copy of Certificate of Participation from the University of Utah College of Pharmacy, Program No. 068-999-96-004-L01, of Robert J. Garrity dated July 25, 1996.
- (50) Exhibit E1--Copy of letter from Jeffrey E. Rinda dated April 22, 1997.
- (51) Exhibit E2--Copy of letter from Nick A. Kallis dated March 31, 1997.
- (52) Exhibit E3--Copy of letter from Charles Broussard dated March 16, 1997.
- (53) Exhibit E4--Copy of letter from Bernard F. Klaus dated June 8, 1997.
- (54) Exhibit E5--Copy of letter from Jim O'Connor, not dated.
- (55) Exhibit E6--Copy of letter from Alan R. Pires dated June 12, 1997.
- (56) Exhibit E7--Copy of letter from JoDe L. Rimar dated June 9, 1997.
- (57) Exhibit E8--Copy of letter from Marianne Ausmus dated June, 1997.
- (58) Exhibit E9--Copy of letter from Ernest T. Witzke dated March 19, 1997.
- (59) Exhibit E10--Copy of letter from Judith A. Nicely dated June 16, 1997.

FINDING OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) Robert J. Garrity was, on or about March 21, 1996, disciplined by the Illinois Department of Professional Regulation pursuant to a "consent order" wherein the following was stipulated: Respondent has a history of substance abuse, involving among others, alcohol, crack cocaine, and Valium. Respondent practiced pharmacy while in an impaired condition. In addition, on or about September 25, 1995, Respondent received a felony conviction for unlawful possession of controlled substance(s).

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Finding of Fact constitutes being convicted of a felony as provided in paragraph (A) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Finding of Fact constitutes being convicted of violating any state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Finding of Fact constitutes not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code and Division (B) of Section 4729.09 of the Ohio Revised Code.

- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Findings of Fact constitutes having been disciplined by the State of Illinois Department of Professional Regulation as provided in paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.09 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, the State Board of Pharmacy hereby refuses the issuance of a certificate of registration or an identification card, and therefore denies the National Association of Boards of Pharmacy Official Application For Transfer Of Pharmaceuic Licensure™ to the state of Ohio submitted by Robert James Garrity.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Maslak and approved (Aye-5/Nay-2/Abstain-1[Littlejohn]). Mr. Littlejohn did not participate in the adjudication of this matter since he was not present for the full hearing.

Tim Benedict joined the Board for the purpose reporting on meetings held with the Prescribing Committee of the State Medical Board, Nursing Board representatives, the Joint Health Licensing Boards meeting, and legislation pending before the Ohio General Assembly.

RES. 97-177 The Executive Director reported that the following settlements were entered into by the Board following the signatures of the Board President and Assistant Attorney General:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-970121-027)

In The Matter Of:

BETHESDA HOSPITAL
c/o Joseph C. Schneider, R.Ph.
619 Oak Street
Cincinnati, Ohio 45206
(Terminal Distributor No. 02-0030200)

This Settlement Agreement is entered into by and between Bethesda Hospital and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Bethesda Hospital enters into this Agreement being fully informed of its rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Bethesda Hospital is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against Bethesda Hospital, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against Bethesda Hospital's license, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of any of the enumerated grounds.
- (B) On or about January 21, 1997, Bethesda Hospital was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, in accordance with Chapter 119. of the Ohio Revised Code, a hearing was requested and scheduled for June 18, 1997.

- (C) Bethesda Hospital stipulates to the allegations stated in the Notice of Opportunity letter dated January 21, 1997, and the Board herein adjudicates the same:
- (1) Records of the Board of Pharmacy indicate that John (*sic* Joseph) C. Schneider is the Responsible Pharmacist at Bethesda Hospital, a terminal distributor of dangerous drugs licensed with the Board, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-17-02 of the Ohio Administrative Code.
 - (2) Bethesda Hospital, an institutional pharmacy, did, on or about February 6, 1996, and dates immediately preceding, fail to have a pharmacist ensure adherence to Rule 4729-17-02 of the Ohio Administrative Code, to wit: the Responsible Pharmacist did not properly: a) assure adherence to policies and procedures for the safe and efficient distribution of drugs in all areas of the institution; b) ensure responsibility for the security and control of all drugs within the institution; c) maintain all records, required by state or federal law to be kept at the licensed location, of the acquisition, use, distribution, and disposition of all drugs; d) implement the hospital's written policies and procedures which were to be consistent with Chapter 4729-17 of the Ohio Administrative Code and other applicable federal and state laws and rules governing the legal distribution of drugs. Such conduct is in violation of Rule 4729-17-02 of the Ohio Administrative Code.
 - (3) Bethesda Hospital, an institutional pharmacy, did, on or about February 6, 1996, and dates immediately preceding, fail to maintain records of all drug orders and dispensing records for drugs for patients. Though such drug orders and dispensing records may be microfilmed or retained by any process providing an exact duplicate of the original order, the pharmacy did not maintain any such records. In addition, there was no alternate record keeping system utilized allowing such records to be stored on electronic, magnetic, light, laser, or optic media meeting industry standards for quality and stability for a period of at least three years. Records on an automated data processing system, or subsequent storage of such records, were not readily retrievable (via CRT display or hard-copy printout) within seventy-two hours. Records of drugs dispensed did not include the name, strength, and quantity of drugs dispensed; the date of dispensing; the name of the inpatient to whom, or for whose use, the drug was dispensed; or positive identification of the dispensing pharmacist. Such conduct is in violation of Rule 4729-17-04(B) of the Ohio Administrative Code and Section 3719.07 of the Ohio Revised Code.
 - (4) Bethesda Hospital, an institutional pharmacy, did, on or about February 6, 1996, and dates immediately preceding, cease to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Ohio Revised Code, to wit: adequate safeguards were not assured to prevent the sale or other distribution of dangerous drugs by persons other than a pharmacist, dentist, optometrist, physician, or veterinarian in that recordkeeping, security, and control over the dangerous drugs, and/or hospital pharmacy procedures were inadequate and/or non-existent to such a degree as to permit thefts and perpetrators of thefts of controlled substances to remain undetected. Records of drugs dispensed and/or returned to the pharmacy did not exist beyond three days after the activity of dispensing.
 - (5) Bethesda Hospital, an institutional pharmacy, did, on or about February 6, 1996, and dates immediately preceding, purchase and/or transfer schedule II controlled substances without properly executing DEA Form 222, to wit: the name and address of the supplier were omitted from 222 order forms; the name of the purchaser was omitted from 222 order forms; and, multiple purchasers used the same 222 order forms. Such conduct is in violation of Section 1305.06 of Title 21 of the Code of Federal Regulations.
 - (6) Bethesda Hospital, an institutional pharmacy, did, on or about February 6, 1996, and dates immediately preceding, knowing that a felony had been committed, knowingly fail to report such information to law enforcement authorities, to wit: pharmacy personnel, knowing that the felonious theft of drugs had occurred, or probably had occurred, failed to report the information to any law enforcement authority. Further, the pharmacy failed to notify the Board of Pharmacy and/or

the federal Drug Enforcement Administration of drug thefts, and it failed to utilize the D.E.A. reporting form. Such conduct is in violation of Section 2921.22 of the Ohio Revised Code, Rule 4729-9-15 of the Ohio Administrative Code, and Section 1301.76(b) of Title 21 of the Code of Federal Regulations.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Bethesda Hospital knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Bethesda Hospital agrees to the imposition of a monetary penalty of nine thousand dollars (\$9,000.00) due and owing within thirty days of the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.
- (B) The Board has directed Board staff to conduct an inspection within ninety days from the effective date of this Agreement. The inspection must show compliance with Ohio and federal laws, rules, and regulations. Further inspections will be held at least annually for three years thereafter.

If, in the judgment of the Board, Bethesda Hospital appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Bethesda Hospital acknowledges that it has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Bethesda Hospital and its employees and agents waive any and all claims or causes of action they may claim against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Bethesda Hospital agrees that should the Board reject this Agreement and if this case proceeds to hearing, it will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

/s/ Joseph C. Schneider
John (*sic* Joseph) C. Schneider on behalf of Bethesda Hospital
Responsible Pharmacist

/d/ 5/29/97
Date of Signature

/s/ Kris M. Dawley
Kris M. Dawley, Attorney for Respondent

Date of Signature

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President, Ohio State Board of Pharmacy

/d/ 6/16/97
Date of Signature

/s/ Mary L. Hollern
Mary L. Hollern, Ohio Assistant Attorney General

/d/ 6/16/97
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-970121-028)

In The Matter Of:

BETHESDA HOSPITAL-NORTH

c/o Stephen Porowski, R.Ph.

10500 Montgomery Road

Cincinnati, Ohio 45242

(Terminal Distributor No. 02-0032100)

This Settlement Agreement is entered into by and between Bethesda Hospital-North and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Bethesda Hospital-North enters into this Agreement being fully informed of its rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Bethesda Hospital-North is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against Bethesda Hospital-North, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against Bethesda Hospital-North's license, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of any of the enumerated grounds.
- (B) On or about January 21, 1997, Bethesda Hospital-North was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, in accordance with Chapter 119. of the Ohio Revised Code, a hearing was requested and scheduled for June 18, 1997.
- (C) Bethesda Hospital-North stipulates to the allegations stated in the Notice of Opportunity letter dated January 21, 1997, and the Board herein adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Stephen Porowski is the Responsible Pharmacist at Bethesda Hospital-North pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-17-02 of the Ohio Administrative Code.
 - (2) Bethesda Hospital-North, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, fail to have a pharmacist ensure adherence to Rule 4729-17-02 of the Ohio Administrative Code, to wit: the Responsible Pharmacist did not properly: a) assure adherence to policies and procedures for the safe and efficient distribution of drugs in all areas of the institution; b) ensure responsibility for the security and control of all drugs within the institution; missing keys were reported to the Responsible Pharmacist but no action had been taken; c) maintain all records, required by state or federal law to be kept at the licensed location, of the acquisition, use, distribution, and disposition of all drugs; d) implement the hospital's written policies and procedures which were to be consistent with Chapter 4729-17 of the Ohio Administrative Code and other applicable federal and state laws and rules governing the legal distribution of drugs. Such conduct is in violation of Rule 4729-17-02 of the Ohio Administrative Code.
 - (3) Bethesda Hospital-North, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, fail to maintain records of all drug orders and dispensing records for drugs for patients. Though such drug orders and dispensing records may be microfilmed or retained by any process providing an exact duplicate of the original order, the pharmacy did not maintain any such records. In addition, there was no alternate recordkeeping system utilized allowing such records to be stored on electronic, magnetic, light, laser, or optic media meeting industry standards for quality and stability for a period of at least three years. Records on an automated data processing system, or subsequent

storage of such records, were not readily retrievable (via CRT display or hard-copy printout) within seventy-two hours. Records of drugs dispensed did not include the name, strength, and quantity of drugs dispensed; the date of dispensing; the name of the inpatient to whom, or for whose use, the drug was dispensed; or positive identification of the dispensing pharmacist. The pharmacy had been admonished by a Board agent for inadequate records on November 5, 1986. Such conduct is in violation of Rule 4729-17-04(B) of the Ohio Administrative Code and Section 3719.07 of the Ohio Revised Code.

- (4) Bethesda Hospital-North, an institutional pharmacy with an outpatient prescription service, did, on or about February 5, 1996, and dates immediately preceding, fail to file outpatient prescriptions in files separated by controlled substance schedule. Such conduct is in violation of Rule 4729-5-09 of the Ohio Administrative Code.
- (5) Bethesda Hospital-North, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, fail to record the information for the transfer when transferring copies of prescriptions to other pharmacies, to wit: prescriptions numbered 310751, 310317, 310915, 310245, 309644, and 310026 lacked pertinent transfer information. Such conduct is in violation of Rule 4729-5-24(A)(4) of the Ohio Administrative Code.
- (6) Bethesda Hospital-North, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, knowing that a felony had been committed, knowingly fail to report such information to law enforcement authorities, to wit: pharmacy personnel, knowing that the felonious theft of drugs had occurred, or probably had occurred, failed to report the information to any law enforcement authority. Numerous thefts of controlled substances had occurred, but the hospital did not report them. Further, the pharmacy failed to notify the Board of Pharmacy and/or the federal Drug Enforcement Administration of drug thefts, and it failed to utilize the D.E.A. reporting form. Such conduct is in violation of Section 2921.22 of the Ohio Revised Code, Rule 4729-9-15 of the Ohio Administrative Code, and Section 1301.76(b) of Title 21 of the Code of Federal Regulations.
- (7) Bethesda Hospital-North, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, cease to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Ohio Revised Code, to wit: adequate safeguards were not assured to prevent the sale or other distribution of dangerous drugs by persons other than a pharmacist, dentist, optometrist, physician, or veterinarian in that recordkeeping, security, and control over the dangerous drugs, and/or hospital pharmacy procedures were inadequate and/or non-existent to such a degree as to permit thefts and perpetrators of thefts of controlled substances to remain undetected. Records of drugs dispensed and/or returned to the pharmacy did not exist beyond three days after the activity of dispensing; cart fill records did not exist beyond one week after the activity.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Bethesda Hospital-North knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Bethesda Hospital-North agrees to the imposition of a monetary penalty of ten thousand dollars (\$10,000.00) due and owing within thirty days of the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.
- (B) The Board has directed Board staff to conduct an inspection within ninety days from the effective date of this Agreement. The inspection must show compliance with Ohio and federal laws, rules, and regulations. Further inspections will be held at least annually for three years thereafter.

If, in the judgment of the Board, Bethesda Hospital-North appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including

but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Bethesda Hospital-North acknowledges that it has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Bethesda Hospital-North and its employees and agents waive any and all claims or causes of action they may claim against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Bethesda Hospital-North agrees that should the Board reject this Agreement and if this case proceeds to hearing, it will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

<u>/s/</u> <u>Stephen Porowski</u> Stephen Porowski on behalf of Bethesda Hospital-North Responsible Pharmacist	<u>/d/</u> <u>5/30/97</u> Date of Signature
---	--

<u>/s/</u> <u>Kris M. Dawley</u> Kris M. Dawley, Attorney for Respondent	<u> </u> Date of Signature
---	--------------------------------------

<u>/s/</u> <u>Suzanne L. Neuber</u> Suzanne L. Neuber, President, Ohio State Board of Pharmacy	<u>/d/</u> <u>6/16/97</u> Date of Signature
---	--

<u>/s/</u> <u>Mary L. Hollern</u> Mary L. Hollern, Ohio Assistant Attorney General	<u>/d/</u> <u>6/16/97</u> Date of Signature
---	--

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-970121-029)

In The Matter Of:

GOOD SAMARITAN HOSPITAL
c/o Susan K. McBeth, R.Ph.
3217 Clifton Avenue
Cincinnati, Ohio 45220
(Terminal Distributor No. 02-0030650)

This Settlement Agreement is entered into by and between Good Samaritan Hospital and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Good Samaritan Hospital enters into this Agreement being fully informed of its rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Good Samaritan Hospital is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against Good Samaritan Hospital, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against Good Samaritan Hospital's license, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of any of the enumerated grounds.

- (B) On or about January 21, 1997, Good Samaritan Hospital was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, in accordance with Chapter 119. of the Ohio Revised Code, a hearing was requested and scheduled for June 18, 1997.
- (C) Good Samaritan Hospital stipulates to the allegations stated in the Notice of Opportunity letter dated January 21, 1997, and the Board herein adjudicates the same:
- (1) Records of the Board of Pharmacy indicate that Susan K. McBeth is the Responsible Pharmacist at Good Samaritan Hospital, a terminal distributor of dangerous drugs licensed with the Board, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-17-02 of the Ohio Administrative Code.
 - (2) Good Samaritan Hospital, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, fail to have a pharmacist ensure adherence to Rule 4729-17-02 of the Ohio Administrative Code, to wit: the Responsible Pharmacist did not properly: a) assure adherence to policies and procedures for the safe and efficient distribution of drugs in all areas of the institution; b) ensure responsibility for the security and control of all drugs within the institution; c) maintain all records, required by state or federal law to be kept at the licensed location, of the acquisition, use, distribution, and disposition of all drugs; d) implement written policies and procedures which were to be consistent with Chapter 4729-17 of the Ohio Administrative Code and other applicable federal and state laws and rules governing the legal distribution of drugs. Such conduct is in violation of Rule 4729-17-02 of the Ohio Administrative Code.
 - (3) Good Samaritan Hospital, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, fail to maintain records of all drug orders and dispensing records for drugs for patients. Though such drug orders and dispensing records may be microfilmed or retained by any process providing an exact duplicate of the original order, the pharmacy did not maintain any such records. In addition, there was no alternate recordkeeping system utilized allowing such records to be stored on electronic, magnetic, light, laser, or optic media meeting industry standards for quality and stability for a period of at least three years. Records on an automated data processing system, or subsequent storage of such records, were not readily retrievable (via CRT display or hard-copy printout) within seventy-two hours. Records of drugs dispensed did not include the name, strength, and quantity of drugs dispensed; the date of dispensing; the name of the inpatient to whom, or for whose use, the drug was dispensed; or positive identification of the dispensing pharmacist. Such conduct is in violation of Rule 4729-17-04(B) of the Ohio Administrative Code and Section 3719.07 of the Ohio Revised Code.
 - (4) Good Samaritan Hospital, an institutional pharmacy, did, on or about February 5, 1996, and dates immediately preceding, cease to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Ohio Revised Code, to wit: adequate safeguards were not assured to prevent the sale or other distribution of dangerous drugs by persons other than a pharmacist, dentist, optometrist, physician, or veterinarian in that recordkeeping, security, and control over the dangerous drugs, and/or hospital pharmacy procedures were inadequate and/or non-existent to such a degree as to permit thefts and perpetrators of thefts of controlled substances to remain undetected. Records of drugs dispensed and/or returned to the pharmacy did not exist beyond three days after the activity of dispensing. Dispensing records consisted of copies of Medication Administration Records sent to the pharmacy, created by nursing on the floor at the time of administration, but did not actually record the number of doses dispensed by or returned to the pharmacy.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Good Samaritan Hospital knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Good Samaritan Hospital agrees to the imposition of a monetary penalty of six thousand dollars (\$6,000.00) due and owing within thirty days of the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed

with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

- (B) The Board has directed Board staff to conduct an inspection within ninety days from the effective date of this Agreement. The inspection must show compliance with Ohio and federal laws, rules, and regulations. Further inspections will be held at least annually for three years thereafter.

If, in the judgment of the Board, Good Samaritan Hospital appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Good Samaritan Hospital acknowledges that it has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Good Samaritan Hospital and its employees and agents waive any and all claims or causes of action they may claim against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Good Samaritan Hospital agrees that should the Board reject this Agreement and if this case proceeds to hearing, it will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

/s/ Susan K. McBeth
Susan K. McBeth on behalf of Good Samaritan Hospital
Responsible Pharmacist

/d/ 5/27/97
Date of Signature

/s/ Kris M. Dawley
Kris M. Dawley, Attorney for Respondent

Date of Signature

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President, Ohio State Board of Pharmacy

/d/ 6/16/97
Date of Signature

/s/ Mary L. Hollern
Mary L. Hollern, Ohio Assistant Attorney General

/d/ 6/16/97
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-950809-010)

In the Matter of:

RUTH E. PARENT, R.Ph.
500 South Lane
Anchorage, Alaska 99508
(R.Ph. No. 03-1-14772)

This Settlement Agreement is entered into by and between Ruth E. Parent, R.Ph. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Ruth E. Parent enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Ruth E. Parent is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against her, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against her license to practice pharmacy in the state of Ohio, Ruth E. Parent enters into this Agreement on the basis of the following stipulations, admissions, and understandings:

- (1) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (2) Records of the Board of Pharmacy indicate that Ruth E. Parent was originally licensed to practice pharmacy in the state of Ohio on August 6, 1982, pursuant to examination, and her license lapsed on September 15, 1992. Ruth E. Parent applied for renewal on or about July 24, 1995. On or about August 9, 1995, the Board proposed to deny Ruth E. Parent's application for renewal in accordance with Section 4729.12 of the Ohio Revised Code. On August 28, 1995, Ruth E. Parent requested a hearing, and a hearing was scheduled in accordance with Chapter 119. of the Ohio Revised Code. However, the hearing was continued indefinitely, per agreement between Ruth E. Parent and the Ohio State Board of Pharmacy.
- (3) Ruth E. Parent did, on or about March 11, 1992, sign a Memorandum of Agreement with the Alaska Department of Commerce & Economic Development, Division of Occupational Licensing, due to the following facts:
 - (a) Ruth E. Parent suffers from depression which adversely affects her ability to practice safely as a registered pharmacist;
 - (b) while employed at Pay n' Save Pharmacy, Eagle River, Alaska, Ruth E. Parent admitted that she became physically and mentally unable to continue to practice pharmacy;
 - (c) Ruth E. Parent has had difficulty with drinking excessively in the past and she has had episodes of excessive consumption of alcoholic beverages; and
 - (d) Ruth E. Parent admitted that, as a result of the above mentioned facts, grounds existed for possible suspension or revocation of her license to practice pharmacy in the state of Alaska. Ruth E. Parent further admitted that her use of alcohol and her medical condition could pose a significant risk to the health and safety of the public.

As a result of these findings of fact, Ruth E. Parent was placed on probation for a period of three years with several stipulations and conditions.

- (4) Ruth E. Parent did, on or about April 15, 1992, surrender her license to practice pharmacy in Alaska with the understanding that the Division of Occupational Licensing was conducting an active investigation on behalf of the Alaska Pharmacy Board concerning her inability to function safely while employed at the Pay n' Save Pharmacy on May 5, 1992. On that date, Ruth E. Parent's supervisor immediately suspended her employment during her shift due to his concern for public safety. Urine and blood test samples taken from Ruth E. Parent on May 5, 1992, proved positive for barbiturates, which is a violation of Ms. Parent's Memorandum of Agreement signed by her on March 11, 1992, and officially adopted on March 25, 1992. Ruth E. Parent surrendered her license in lieu of the initiation of a summary suspension proceeding. The surrender of her license was officially accepted by the state of Alaska on September 30, 1992.
- (5) On or about March 5, 1997, the Ohio State Board of Pharmacy received the Memorandum of Agreement with the State of Alaska Board of Pharmacy in the matter of Ruth E. Parent dated August 9, 1996; and since that date, Ruth E. Parent has requested reinstatement of her license to practice pharmacy in Ohio.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Ruth E. Parent knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Ruth E. Parent's license to practice pharmacy in Ohio is hereby placed on probation until February 21, 2000. The terms of probation are as follows:
- (1) Ruth E. Parent must abide by the conditions as set forth in the Memorandum of Agreement with the State of Alaska Board of Pharmacy dated August 9, 1996.
 - (2) Ruth E. Parent must immediately notify the Ohio Board of Pharmacy, in writing, should there be a change in the status of her license to practice pharmacy in Alaska.
 - (3) Ruth E. Parent must notify the Ohio Board of Pharmacy, in writing, prior to returning to Ohio to practice pharmacy.
- (B) If Ruth E. Parent intends to return to Ohio to practice pharmacy, prior to February 21, 2000, she shall submit to the Ohio Pharmacy Board copies of all reports (i.e., employer reports, counselor reports, etc.), and copies of all correspondence and/or documentation to, from, or with the State of Alaska Board of Pharmacy for review prior to beginning practice in Ohio.
- (C) Ruth E. Parent is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

If, in the judgment of the Board, Ruth E. Parent appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Ruth E. Parent acknowledges that she has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Ruth E. Parent waives any and all claims or causes of action she may have against the State of Ohio or the Board, and its members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not approve this Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Ruth E. Parent agrees that should the Board reject this Agreement and if this case proceeds to hearing, she will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the Board President's signature below.

/s/ Ruth E. Parent
Ruth E. Parent, Respondent

/d/ 5/16/97
Date of Signature

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President, Ohio State Board of Pharmacy

/d/ 6/16/97
Date of Signature

/s/ Mary L. Hollern
Mary L. Hollern, Ohio Assistant Attorney General

/d/ 6/16/97
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-960322-048)

In the Matter of:

FREDERICK J. WEIK, R.Ph.
3641 Fordway Drive
Lambertville, Michigan 48144
(R.Ph. No. 03-2-09437)

This Settlement Agreement is entered into by and between Frederick J. Weik, R.Ph. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Frederick J. Weik enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Frederick J. Weik is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against him, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against his license to practice pharmacy in the state of Ohio, Frederick J. Weik enters into this Agreement on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) On or about March 22, 1996, as amended on September 9, 1996, pursuant to Chapter 119. of the Ohio Revised Code, Frederick J. Weik was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Further, a hearing was requested and scheduled for April 21, 1997.
- (C) Frederick J. Weik stipulates to the allegations stated in the Notice of Opportunity for Hearing letter dated September 9, 1996, and the Board herein adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Frederick J. Weik was originally licensed in the state of Ohio on February 25, 1970, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that on or about October 25, 1991, Frederick J. Weik was disciplined by the Board for having practiced pharmacy during periods of lapsed licensure.
 - (2) Frederick J. Weik did, from October 22, 1991, through July 13, 1992, knowingly sell a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Frederick J. Weik sold 7 preparations of exempt narcotics to patient #66 when the patient received a total of 41 preparations from the pharmacy over a 325-day time period and not for a legitimate medical purpose:

<u>Date</u>	<u>Drug</u>
10/22/91	Novadyne Expectorant
11/25/91	Novadyne Expectorant
01/24/92	Novadyne Expectorant
02/07/92	Novadyne Expectorant
03/01/92	Novadyne Expectorant
04/13/92	Novadyne Expectorant
07/13/92	Novadyne Expectorant

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (3) Frederick J. Weik did, from October 22, 1991, through July 23, 1992, knowingly sell a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Frederick J. Weik sold 14 preparations of exempt narcotics to patient #99 when the patient received a total of 62 preparations from the pharmacy over a 377-day time period and not for a legitimate medical purpose:

<u>Date</u>	<u>Drug</u>
10/22/91	Cheracol
10/25/91	Cheracol

10/31/91	Cheracol
01/19/92	Cheracol
01/22/92	Cheracol
02/14/92	Cheracol
02/24/92	Cheracol
03/09/92	Cheracol
03/26/92	Cheracol
05/22/92	Cheracol
05/29/92	Cheracol
06/14/92	Cheracol
06/22/92	Cheracol
07/23/92	Cheracol

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (4) Frederick J. Weik did, from December 13, 1991, through July 22, 1992, knowingly sell a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Frederick J. Weik sold 14 preparations of exempt narcotics to patient #111 when the patient received a total of 37 preparations from the pharmacy over a 373-day time period and not for a legitimate medical purpose:

<u>Date</u>	<u>Drug</u>
12/13/91	Cheracol
01/10/92	Cheracol
02/03/92	Cheracol
02/11/92	Cheracol
02/17/92	Cheracol
02/24/92	Cheracol
03/15/92	Cheracol
03/22/92	Cheracol
03/28/92	Cheracol
04/10/92	Cheracol
07/03/92	Cheracol
07/12/92	Cheracol
07/17/92	Cheracol
07/22/92	Cheracol

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Frederick J. Weik knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Frederick J. Weik's pharmacist identification card, No. 03-2-09437, will be placed on probation for two years, as of the effective date of this Agreement. The terms of probation are as follows:
- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Frederick J. Weik's pharmacist identification card is not in good standing for one year from the effective date of this Agreement.
 - (2) Frederick J. Weik may not serve as a responsible pharmacist for one year from the effective date of this Agreement.
 - (3) Frederick J. Weik must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (4) Frederick J. Weik must abide by the rules of the Ohio State Board of Pharmacy.
 - (5) Frederick J. Weik must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

- (B) Frederick J. Weik agrees to the imposition of a monetary penalty of two hundred fifty dollars (\$250.00) due and owing within thirty days from the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Frederick J. Weik appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Frederick J. Weik acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Frederick J. Weik waives any and all claims or causes of action he may have against the State of Ohio or the Board, and its members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not approve this Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Frederick J. Weik agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the Board President's signature below.

/s/ Frederick J. Weik
Frederick J. Weik, Respondent

/d/ 5/23/97
Date of Signature

/s/ Michael W. O'Donnell
Michael W. O'Donnell, Attorney for Respondent

/d/ 5/23/97
Date of Signature

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President, Ohio State Board of Pharmacy

/d/ 6/16/97
Date of Signature

/s/ Mary L. Hollern
Mary L. Hollern, Ohio Assistant Attorney General

/d/ 6/16/97
Date of Signature

10:10 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of R.Ph. Kent W. Schindler, Mansfield, Ohio

12:15 p.m.

Board member Robert Cavendish excused himself from the hearing due to a previous commitment.

1:30 p.m.

The hearing was concluded and the Board recessed the business meeting for the purpose of meeting with the candidates for licensure by reciprocity in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio.

2:00 p.m.

RES. 97-178

Mr. Repke moved that the following candidates be approved and their licenses to practice pharmacy in Ohio be issued. The motion was seconded by Mr. Maslak and approved (Aye-7/Nay-0).

ACOSTA, LYNN A.
ADESULU, BIOLA K.
AMINI, JOHN M.
ANETAKIS, KRISTINA J.

03-3-22457
03-3-22438
03-3-22326
03-3-22608

MICHIGAN
TEXAS
WASHINGTON
WEST VIRGINIA

BALLIRO, JOHN F.	03-3-22285	MASSACHUSETTS
BATES, JOLENE R.	03-3-22283	NEW YORK
CARLE, LIESA K.	03-3-22613	KENTUCKY
CARON, JR., DAVID T.	03-3-22401	MASSACHUSETTS
CASEY, BARBARA A.	03-3-22288	MICHIGAN
CERRY, SOPHIA W.	03-3-22329	GEORGIA
CORNWELL, DAVID S.	03-3-22600	MISSOURI
DORAN, HEIDE A.	03-3-22417	OREGON
EZMAN, CHERYL M.	03-3-22424	PENNSYLVANIA
FRANCIS, TAMARA L.	03-3-22599	PENNSYLVANIA
GERONIMO, WILLIAM F.	03-3-22323	NEW YORK
HARRIS, CHARLES F.	03-3-22437	TEXAS
HARRISON, JENNIFER S.	03-3-22416	TENNESSEE
HRESCAK, GREGOR J.	03-3-22235	PENNSYLVANIA
HUKILL, BERNARD	03-3-22436	TEXAS
JOHNIGAN, CHERYL E.	03-3-22439	TEXAS
KLUEMPER, TINA M.	03-3-22263	GEORGIA
LAMBERT, CYNTHIA C.	03-3-22614	INDIANA
LOVE, BRYAN L.	03-3-22609	SOUTH CAROLINA
MAYNARD, LESLIE C.	03-3-22245	MASSACHUSETTS
McCANN, SHERI L.	03-3-22587	MICHIGAN
MONÉ, MICHAEL A.	03-3-22289	TEXAS
MONTGOMERY, SCOTT W.	03-3-22363	PENNSYLVANIA
MURDAUGH, LEE B.	03-3-22527	TENNESSEE
NANDA, SHOBHNA S.	03-3-22423	TEXAS
PERRY, DENISE M.	03-3-22284	MASSACHUSETTS
RUPERT, SHARON A.	03-3-22422	MICHIGAN
PIERCE, MAUREEN F.	03-3-22489	TEXAS
RUFF, CHRISTINE A.	03-3-22455	MICHIGAN
SANSONE, ELIZABETH A.	03-3-22490	KENTUCKY
SCHMIDT, RONIE E.	03-3-22435	MASSACHUSETTS
SHAH, SEJAL D.	03-3-22325	NEW JERSEY
SMITH, SUSAN C.	03-3-22239	NEW YORK
SONI, KAUSHIK N.	03-3-22111	MARYLAND
TURNER, MADELYNNE D.	03-3-22476	VIRGINIA
WALKER, JOSEPH K.	03-3-22573	WEST VIRGINIA

2:05 p.m. The Board members recessed the business meeting until Wednesday, June 18, 1997, at 8:00 a.m.

WEDNESDAY, JUNE 18, 1997

8:10 a.m. ROLL CALL

The following members of the State Board of Pharmacy reconvened in Room C-11, Ohio Departments Building, 65 South Front Street, Columbus, Ohio:

Suzanne L. Neuber, R.Ph. (President); Amonte B. Littlejohn, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; John Hanna, R.Ph.; Paul Lamping, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

Mrs. Plant moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony submitted during the hearing in the matter of R.Ph. Kent W. Schindler. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Neuber as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Plant-Yes, and Repke-Yes.

9:00 a.m.

RES. 97-179 The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved that the Board adopt the following Order

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-970307-032)

In The Matter Of:

KENT W. SCHINDLER, R.Ph.
105 Harvard Avenue
Mansfield, Ohio 44906
(R.Ph. No. 03-3-08430)

INTRODUCTION

THE MATTER OF KENT W. SCHINDLER CAME TO HEARING ON JUNE 17, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KENT W. SCHINDLER WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Michele Grubaugh, Medicine Shoppe, Mt. Vernon, Ohio
- (2) Peggy Lamb, Medicine Shoppe, Mt. Vernon, Ohio
- (3) Kevin Kinneer, Ohio State Board of Pharmacy
- (4) Paul Kover, R.Ph., Compliance Specialist

Respondent's Witnesses:

- (1) Kent W. Schindler, R.Ph., Respondent
- (2) Ruth Schindler, R.N., Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated March 7, 1997.
- (2) Exhibit 1A--Hearing Request letter, not dated.
- (3) Exhibit 1B--Hearing Schedule letter dated March 21, 1997.
- (4) Exhibit 1C--Hearing Schedule letter dated May 20, 1997.
- (5) Exhibit 2--Thirty-nine prescriptions numbered as follows: 6818775, 6821618, 4428485, 6823995, 6805610, 4426401, 4426402, 6811421, 6814397, 6799794, 4425499, 4425903, 4426020, 6803920, 4424209, 4424636, 6792678, 4425214, 4423182, 6787238, 4423933, 6789543, 4421758, 4421978, 4421977, 6770896, 4421213 dated November 28, 1995, 6766966, 4421204, 4421213 dated January 5, 1996, 4421759, 4420889, 4420939, 4421013, 4421214, 6748969, 4419457, 4419456, and 4420550.
- (6) Exhibit 3--Two-page handwritten statement of Mary Lou Montenery signed and notarized on March 3, 1997.
- (7) Exhibit 4--Handwritten statement of Michele L. Grubaugh signed and notarized on March 4, 1997.
- (8) Exhibit 5--Handwritten statement of Peggy Lamb signed and notarized on March 3, 1997.
- (9) Exhibit 6--Five-page Walmart Pharmacy Medical Expenses report of Kent Schindler dated from November 1, 1990, to March 3, 1997.
- (10) Exhibit 7--Five-page copy of notes of Kent Schindler received in the Board office on March 4, 1997.
- (11) Exhibit 8--Four-page letter from Felipe N. Fernandez, M.D. dated March 25, 1997.
- (12) Exhibit 9--Copy of pages 2649 through 2653 of the *1996 Physicians' Desk Reference*.
- (13) Exhibit 10--Three-page Revco Prescription Access Link Patient Medical Profile of Kent W. Schindler dated from June 3, 1994, through June 3, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Walmart prescription vial, No. 4426401, dated February 18, 1997, containing 2 unit doses of Alprazolam 2mg and handwritten note of Kent Schindler attached to 9" x 14" white mailing envelope.
- (2) Exhibit B--Walmart Medical Expenses report of Kent Schindler dated from October 28, 1996, to April 11, 1997.
- (3) Exhibit C--Copy of Progress Notes of Kent Schindler dated April 2, 1996, and October 15, 1996.
- (4) Exhibit D--Four-page copy of Summary Suspension Order/Notice of Opportunity for Hearing letter of Kent W. Schindler dated March 7, 1997, and copy of MedCentral Health System Outpatient Test Request Form of Kent Schindler by Felipe N. Fernandez, M.D. dated February 21, 1997.
- (5) Exhibit E--Four-page copy of letter from Felipe N. Fernandez, M.D. dated March 25, 1997.
- (6) Exhibit F--Copy of Time Line of Kent Schindler dated from 1993, to March 21, 1997.

FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the Board indicate that Kent W. Schindler is a pharmacist registered by the Board to practice pharmacy in the state of Ohio. On March 7, 1997, the Board summarily suspended Kent W. Schindler's license in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code
- (2) Kent W. Schindler is impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; to wit:
 - (a) Kent W. Schindler admittedly loses his memory in stressful situations, to wit: on or about February 19, 1997, when hired as a relief pharmacist, Kent W. Schindler got lost when commuting to an area with which he had once been familiar, arriving one-half hour late to work; Kent W. Schindler brought seven cups of coffee to work for three employees who had told him they did not drink coffee; and, on February 27, 1997, Kent W. Schindler indicated to Board agents that his physician told him that due to his ingestion of Benzodiazepines (e.g., Xanax and Limbitrol) the frontal lobes of his brain shut down, causing memory loss and hand tremors.
 - (b) Kent W. Schindler is being prescribed Xanax in the amount of 9mg per day and one dosage unit of Limbitrol 10/25 at bedtime which, due to the effect on his memory and hand tremors as described by his physician, is a dangerous dosage level of Benzodiazepines with which to carry on normal daily activity or practice pharmacy. The use of these drugs in such quantities has resulted in Kent W. Schindler's inability to practice pharmacy.
 - (c) When practicing pharmacy on or about February 19, 1997, Kent W. Schindler had slurred speech, he appeared confused, and he could not maintain complete thought processes; Kent W. Schindler had to leave the pharmacy to smoke during times he deemed stressful; Kent W. Schindler was observed placing labels over labels when dispensing, some being upside-down; Kent W. Schindler was observed mislabeling prescriptions and repeatedly dispensed the same prescription; and Kent W. Schindler was observed to be confused and unable to identify the generic equivalents for brand-name drugs.
 - (d) When practicing pharmacy on or about February 19, 1997, Kent W. Schindler was observed by pharmacy personnel ignoring ringing phones.
 - (e) On or about February 19, 1997, Kent W. Schindler cut his finger, yet instead of bandaging it he put on a latex glove when practicing pharmacy. When Kent W. Schindler cut the glove, he taped it.
 - (f) Kent W. Schindler was observed by Board agents on or about February 27, 1997, as having uncontrollable tremors in one hand, and he gave several different explanations for it, but he failed to maintain a complete thought process throughout, unable to stay focused on a line of questioning. Further, Kent W.

Schindler gave three answers regarding the directions for use of his own Xanax prescription while viewing the prescription vial label.

Such conduct indicates that Kent W. Schindler is incompetent to practice pharmacy within the meaning of Sections 3719.121(B) and 4729.16(A)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being impaired mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued March 7, 1997.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Kent W. Schindler:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-3-08430, held by Kent W. Schindler indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Kent W. Schindler may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) The Board will consider any petition filed by Kent W. Schindler for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if Kent W. Schindler provides proof to the Board that he is capable of practicing pharmacy. As part of this proof, Kent W. Schindler must obtain two independent, full psychiatric and/or psychological evaluations, by licensed psychiatrists and/or psychologists unfamiliar to Mr. Schindler's history, that include a recommended treatment plan. Both evaluations must state that Mr. Schindler is of sound mental capability, sound memory, and able to manage stress on a day-to-day basis. Further, the evaluations must state the professional's opinion regarding whether or not Kent W. Schindler could function safely and efficiently as a pharmacist.

Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/Nay-0/Abstain-1[Cavendish]). Mr. Cavendish did not participate in adjudicating this matter since he was not able to be present for the full hearing.

Board member Joseph Maslak arrived and joined the meeting.

RES. 97-180 The Board then considered Robert O. Urfer's request that the Board approve a payment plan for the monetary penalties imposed by the Board in his Adjudication Order and the Adjudication Order issued in the matter of Orchard Drugs. Mr. Hanna moved that the request be denied and

that Mr. Urfer be informed that the monetary penalties must be paid within thirty days or they will be certified to the Attorney General's office for collection.

9:15 a.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing in the matter of R.Ph. Richard Anthony Holdorf; Weirton, West Virginia pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

11:25 a.m.

The hearing was concluded and Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the hearing. The motion was seconded by Mr. Littlejohn and President Neuber conducted a roll call vote as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

11:30 a.m.

RES. 97-181

The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board adopt the following Order.

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960918-016)

In The Matter Of:

RICHARD ANTHONY HOLDORF, R.Ph.
161 Beverly Drive
Weirton, West Virginia 26062
(R.Ph. No. 03-2-12786)

INTRODUCTION

THE MATTER OF RICHARD ANTHONY HOLDORF CAME TO HEARING ON JUNE 18, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RICHARD ANTHONY HOLDORF WAS REPRESENTED BY MICHAEL D. BAKER AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Officer Tom Malone, Special Investigations, Youngstown Police Department
- (2) Richard Anthony Holdorf, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity for Hearing letter dated September 18, 1996.
- (2) Exhibit 1A--Letter from Stewart I. Mandel dated October 14, 1996, and attached Request for Hearing in the matter of Richard Anthony Holdorf.
- (3) Exhibit 1B--Hearing Schedule letter dated October 17, 1996.
- (4) Exhibit 1C--Letter from Stewart I. Mandel dated March 3, 1997, and attached Request for Continuance of Hearing in the matter of Richard Anthony Holdorf.
- (5) Exhibit 1D--Hearing Schedule letter dated March 7, 1997.
- (6) Exhibit 1E--Hearing Schedule letter dated March 21, 1997.

- (7) Exhibit 1F--Pharmacist File Front Sheet of Richard Anthony Holdorf showing original date of registration as June 25, 1979; and Renewal Application for Pharmacist License, No. 03-2-12786, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Richard Anthony Holdorf dated September 10, 1996.
- (8) Exhibit 2--Copy of Receipt for Property form of the Mahoning County Drug Task Force, Case No. NL-0056, in the matter of Richard A. Holdorf dated September 16, 1996.
- (9) Exhibit 2A--Sealed, plastic evidence bag, Case No. NL-56, containing an amber vial, Revco prescription number 1606-084604, label written for Ibuprofen 800mg, however, vial contains 44 unit doses of Lorcet 10/650; white stock bottle containing 48 unit doses of Lodine (etodolac) 400mg, from the Wyeth-Ayerst Labs., Lot No. 9960161, Exp. 1/98; and small, glass, amber vial containing approximately 26 Nitrostat. Exhibit is in the possession of the Youngstown Police Department.
- (10) Exhibit 2B--Sealed, plastic evidence bag, Case No. NL-56, containing an amber vial, Revco prescription number 1606-084606, label written for Cephalexin 500mg, however, vial contains 29 unit doses of Xanax 1mg, 9 unit doses of Redux, and 1 Motrin. Exhibit is in the possession of the Youngstown Police Department.
- (11) Exhibit 2C--Sealed, plastic evidence bag, Case No. NL-56, containing 8 unit doses of Lorcet 10/650. Exhibit is in the possession of the Youngstown Police Department.
- (12) Exhibit 3--Copy of Bureau of Criminal Identification and Investigation report, BCI Lab Number 96-35527, in the matter of Richard A. Holdorf dated November 15, 1996; Evidence Submission Sheet, BCI Lab No. 96-35527, dated November 14, 1996; and attached Affidavit of Laura M. Risdon signed and notarized on November 27, 1996.
- (13) Exhibit 4--Youngstown Police Department Your Rights and Waiver form signed by Richard A. Holdorf on September 16, 1996.
- (14) Exhibit 5--Eight-page handwritten statement of Richard A. Holdorf signed and notarized on September 16, 1996.
- (15) Exhibit 6--Arrest Report, Case No. 96-1864, of Richard Holdorf dated September 20, 1996; and two-page copy of Trumbull County Arrest Sheet of Richard Anthony Holdorf dated September 16, 1996.

Respondent's Exhibits:

- (1) Two-page list of Hearing Exhibits of Respondent Richard A. Holdorf dated June 18, 1997.
- (2) Exhibit A--Copy of Indictment in the Trumbull County Court of Common Pleas of Richard Holdorf dated December 27, 1996.
- (3) Exhibit B--Copy of Journal Entry in the Trumbull County Court of Common Pleas, Case No. 96-CR-773, of Richard A. Holdorf dated March 13, 1997.
- (4) Exhibit C--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Richard A. Holdorf dated April 28, 1997.
- (5) Exhibit D--Two-page letter from Don Ogden dated June 10, 1997.
- (6) Exhibit E--Letter from Anne Stimmel dated June 9, 1997.
- (7) Exhibit F--Two-page copy of calendar for December, 1996, and January through June, 1997, showing meeting attendance of Richard Holdorf.
- (8) Exhibit G--Letter from Elizabeth Gordon dated October 30, 1996.
- (9) Exhibit H--Two-page letter from Warren C. Elliott, Jr. dated June 9, 1997.
- (10) Exhibit I--Copy of letter from John J. Egan dated June 9, 1997.
- (11) Exhibit J--Copy of letter from Steven M. DiBacco dated June 9, 1997.
- (12) Exhibit K--Copy of letter from Robert J. Marino dated June 7, 1997.
- (13) Exhibit L--Copy of cover letter and two-page letter from Susan Adams, fax-dated June 12, 1997.
- (14) Exhibit M--Copy of letter from Anthony Pietro dated June 11, 1997.
- (15) Exhibit N--Letter from Vincent D. Placek dated June 7, 1997.
- (16) Exhibit O--Copy of letter from Lolita "Snookie" Plaso dated June 9, 1997.
- (17) Exhibit P--Copy of letter from Alan Cox, not dated.
- (18) Exhibit Q--Copy of letter from James T. Sperlazza dated June 9, 1997.
- (19) Exhibit R--Letter from James A. Cavalier dated June 8, 1997.
- (20) Exhibit S--Six-page Chemical Dependency History of Richard Holdorf written by Rich Holdorf, dated February 15, 1997.
- (21) Four-page Hearing Brief of Richard A. Holdorf and Certificate of Service dated June 18, 1997.

FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the Board indicate that Richard Anthony Holdorf was originally licensed to practice pharmacy in the state of Ohio on June 25, 1979, and on September 18, 1996, his

license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.

- (2) Richard Anthony Holdorf did, on or about September 16, 1996, knowingly obtain or possess a controlled substance in an amount exceeding the bulk amount, but less than five times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while practicing pharmacy, Richard Anthony Holdorf possessed without a prescription 44 tablets of Lorcet 10/650, 29 tablets of Xanax 1mg, and 9 capsules of Redux in his vehicle and 8 tablets of Lorcet 10/650 in his pants pocket. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (3) Richard Anthony Holdorf did, on or about September 16, 1996, possess dangerous drugs when the conduct was not in accordance with Chapters 4729. and 4731. of the Ohio Revised Code, to wit: while practicing pharmacy, Richard Anthony Holdorf possessed without a prescription 1 tablet of Naprosyn, 5 tablets of Motrin 800mg, 30 tablets of Nitrostat 0.6mg, and 48 tablets of Lodine 400mg in his vehicle. Such conduct is in violation of Section 4729.51(C)(3) of the Ohio Revised Code.
- (4) Richard Anthony Holdorf did, from March 1996 through September 1996, with the purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco #1606, beyond the express or implied consent of the owner, to wit: while practicing pharmacy, Richard Anthony Holdorf admittedly stole 200 tablets of Lorcet 10/650, 100 tablets of Nitrostat 0.6mg, and 60 capsules of Redux. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 2925. and 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued Richard Anthony Holdorf.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Richard Anthony Holdorf:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Richard Anthony Holdorf, No. 03-2-12786, indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Richard Anthony Holdorf may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Twelve months from the effective date of this Order, or thereafter, the Board will consider any petition filed by Richard Anthony Holdorf for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Richard Anthony Holdorf must obtain a full psychiatric or psychological evaluation, by a licensed psychiatrist or psychologist, that includes a

recommended treatment plan. Richard Anthony Holdorf must seek counseling, if necessary, and abide by the treatment plan as designed by the professional.

- (2) Richard Anthony Holdorf must enter into a new contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Order and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) random, **observed** urine drug screens shall be conducted at least every three months. The urine drug screens must include testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare;
 - (c) the program shall immediately report to the Board of Pharmacy any violations of the contract.
- (3) At the time of petitioning the Board for reinstatement, Richard Anthony Holdorf must provide:
 - (a) written documentation from his treatment provider regarding compliance with the program pursuant to the contract including all urine drug screen reports and meeting attendance verification;
 - (b) results of his full psychiatric or psychological evaluation; and
 - (c) documentation of and compliance with the recommended treatment plan resulting from the psychiatric or psychological evaluation.

Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Repke and approved (Aye-8/Nay-0).

RES. 97-182 The Board then reviewed a draft of new language regarding the definition of pharmacy practice for their consideration and approval. The Board did not have any problems with the proposed language and it was accepted by the Board.

Tim Benedict then presented a proposal from Merck-Medco regarding new protocols and procedures for the labeling of inhalers, external creams, large ophthalmic/otic drops, syringes, and large injectables as well as maintaining records of the dispensing pharmacist. Staff was directed to address the issues by drafting language to amend the appropriate Administrative Code rules. The language is to take into consideration the Board's concerns expressed during discussion regarding Merck-Medco's proposal and be presented to the Board for their consideration during the July 1997 Board meeting.

12:00 p.m.

The Board recessed for lunch. Mr. Repke excused himself from participating in the remainder of the meeting and left to attend to personal matters.

1:10 p.m.

The Board reconvened without Mr. Repke and was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing in the matter of John S.

Yaskanich, R.Ph.; Sheffield, Lake, Ohio pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

1:53 p.m.

The hearing was concluded and Mr. Hanna moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the hearing. The motion was seconded by Mr. Maslak and President Neuber conducted a roll call vote as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, and Plant-Yes.

2:07 p.m.

RES. 97-183

The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-970506-039)

In The Matter Of:

JOHN S. YASKANICH, R.Ph.

5020 Richelieu Avenue
Sheffield Lake, Ohio 44054
(R.Ph. No. 03-3-11655)

INTRODUCTION

THE MATTER OF JOHN S. YASKANICH CAME TO HEARING ON JUNE 18, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; AND RUTH A. PLANT, R.Ph.

JOHN S. YASKANICH WAS REPRESENTED BY BRIAN F. McNAMEE, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

(1) John S. Yaskanich, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Six-page Order of the State Board of Pharmacy, Docket No. D-940701-001, in the matter of John S. Yaskanich dated December 12, 1994.
- (2) Exhibit 1A--Letter from Michael J. Duff dated April 24, 1997; two-page Petition for Hearing to Reinstate Pharmacy License of John S. Yaskanich dated April 24, 1997; copy of letter from Detective Joseph J. Palmer dated January 8, 1996; and copy of letter from Francis L. McCafferty dated February 3, 1997.
- (3) Exhibit 1B--Two-page Hearing Schedule letter dated May 6, 1997.
- (4) Exhibit 1C--Continuance Request letter dated May 8, 1997.
- (5) Exhibit 1D--Hearing Schedule letter dated May 13, 1997.
- (6) Exhibit 1E--Letter from Michael J. Duff dated May 16, 1997.
- (7) Exhibit 1F--Hearing Schedule letter dated May 16, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Francis L. McCafferty dated February 3, 1997.
- (2) Exhibit B--Copy of letter from Detective Joseph J. Palmer dated January 8, 1996.
- (3) Exhibit C--Copy of letter from Francis L. McCafferty dated June 17, 1997.
- (4) Exhibit D--Letter from Sharon Sweda dated June 17, 1997.

FINDING OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) John S. Yaskanich is in compliance with the Order of the Board, Docket No. D-940701-001, dated December 12, 1994.

ACTION OF THE BOARD

The State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card of John S. Yaskanich to practice pharmacy in the state of Ohio upon meeting the requirements for renewal, including any continuing pharmacy education, and places him on probation for five years from the date his identification card is issued, with the following conditions:

- (A) John S. Yaskanich must continue his ongoing therapy with Dr. Francis McCafferty or another licensed psychiatrist and abide by his/her recommended treatment program.
- (B) John S. Yaskanich must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10) through the end of probation, which include:
 - (1) The written report and documentation provided by Dr. McCafferty or other licensed psychiatrist.
 - (2) A written description of his progress towards recovery and what he has been doing during the previous three months.
- (C) Other terms of probation are as follows:
 - (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that the pharmacist identification card of John S. Yaskanich is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (2) John S. Yaskanich may not serve as a responsible pharmacist.
 - (3) John S. Yaskanich must abide by the recommended treatment plan of Dr. McCafferty or other licensed psychiatrist and any violation must be reported to the Board immediately.
 - (4) John S. Yaskanich must not violate the Anti-Stalking Protection Order of the Oberlin Municipal Court dated June 14, 1994.
 - (5) John S. Yaskanich must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (6) John S. Yaskanich must abide by the rules of the Ohio State Board of Pharmacy.
 - (7) John S. Yaskanich must comply with the terms of this Order.

John S. Yaskanich is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Lamping and approved (Aye-5/Nay-2).

RES. 97-184 Mrs. Plant moved that the Board rescind its Order adopted on April 22, 1997 in the matter of Charles R. Mohr, R.Ph.; Wadsworth, Ohio in order to afford Mr. Mohr a hearing. Though the

Board had no record of a request for a hearing, Mr. Mohr has subsequently submitted evidence that he did in fact request a hearing pursuant to Chapter 119. of the Ohio Revised Code. The motion was seconded by Mr. Cavendish and approved (Aye-7/Nay-0).

Mr. Hanna moved that the Minutes of the April 21, 22, 23, 1997 meeting be approved as amended. The motion was seconded by Mr. Littlejohn and approved (Aye-7/Nay-0).

RES. 97-185 Mr. Littlejohn moved that the Board direct Board Member Ruth Plant to attend the Continued Competency Summit being held in Chicago, Illinois July 25 & 26, 1997 and that she be reimbursed for all expenses pursuant to the provisions of the Ohio Revised Code and the Ohio Administrative Code. The motion was seconded by Mr. Lamping and approved (Aye-6/Nay-0/Abstain-1[Plant]).

RES. 97-186 The application of Margaret Grace Strate to renew her lapsed license was then considered by the Board. Mrs. Plant moved that the application be approved and Ms. Strate's license to practice pharmacy in Ohio be renewed. The motion was seconded by Mr. Maslak and approved (Aye-7/Nay-0).

The Board then directed staff to submit comments supporting the proposed regulations by the Federal Food and Drug Administration regarding dietary supplements containing ephedrine.

RES. 97-187 Mrs. Plant moved that the following continuing pharmacy education providers be approved by the Board:

New	Diabetes Assn. of Greater Cleveland; Cleveland
New	Marymount Hospital Pharmacy Dept.; Garfield Heights
New	Middletown Regional Hospital; Middletown
New	Skilled Care Pharmacy; Mason
036-254	East Liverpool City Hospital

Mr. Cavendish seconded the motion and it was approved (Aye-7/Nay-0).

RES. 97-188 Mrs. Plant moved that the Board support, in concept, the proposed interdisciplinary response to the PEW Commission's report by the Joint Health Licensing Boards committee. The motion was seconded by Mr. Cavendish and approved (Aye-7/Nay-0).

RES. 97-189 The Board then discussed McKesson's revised CareMax program. Following consideration of the revisions as noted in McKesson's response to the Board's concerns (fax dated May 5, 1997), the Board directed that the program be carefully reviewed by the Board's Legal Affairs Administrator. The Board requested that this careful review occur following receipt of a copy of the written authorization form that will be used for both cash and insured patients by Valu-Rite/CareMax pharmacies participating in the "Patient Care Enhancing Program".

RES. 97-190 President Suzanne Neuber administered the Oath of Office to both Amonte Littlejohn, President and Joseph Maslak, Vice-President of the Board for Fiscal Year 98.

Mr. Cavendish moved that the Board receive Per Diem as follows:

PER DIEM	<u>03/21</u>	<u>04/30</u>	<u>05/15</u>	<u>05/29</u>	<u>06/12</u>	<u>06/16</u>	<u>06/17</u>	<u>06/18</u>	<u>Total</u>
Adelman	-	-	-	-	-	1	1	1	3
Cavendish	-	-	1	1	1	1	1	1	6
Hanna	-	-	-	-	-	1	1	1	3
Lamping	-	-	-	-	-	1	1	1	3
Littlejohn	-	-	-	-	-	1	1	1	3
Maslak	1	-	-	-	-	1	1	1	4
Neuber	-	1	-	-	-	1	1	1	4
Plant	-	-	-	1	-	1	1	1	4
Repke	-	-	-	-	-	1	1	1	3

The motion was seconded by Mrs. Adelman and approved by the Board (Aye-7/Nay-0).

2:52 p.m. Mr. Maslak moved that the meeting be adjourned. Mrs. Plant seconded the motion and it was approved (Aye-7/Nay-0).

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President

/d/ 7/16/97
Date

/s/ Franklin Z. Wickham
Franklin Z. Wickham, Executive Director