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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
October 6, 7, 8, 1997

MONDAY, OCTOBER 6, 1997

8:15 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

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

Mr. Maslak, Vice-President, presided in the absence of Board President Amonte Littlejohn. The Board was joined by Mary Hollern, Assistant Attorney General; William Winsley, Assistant Executive Director; Tim Benedict, Compliance Administrator; David Rowland, Legal Affairs Administrator; and Robert Cole, Compliance Supervisor. Mr. Lamping 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. Repke and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

8:30 a.m.

Board members Amonte Littlejohn and John Hanna arrived and joined the meeting.

9:33 a.m.

The Executive Session was concluded and the meeting opened to the public.

Staff reported the hearings scheduled in the matters of Mary Elizabeth Starr, R.Ph.; Gahanna (Monday - 1:00 p.m.) and Erik Scot Davis, Exam Applicant; Waverly (Tuesday - 9:00 a.m.) were continued.

RES. 98-055 The Board discussed the proposal of Med Impact regarding electronic prescriptions. Staff was directed to obtain additional information regarding the policies and procedures that are to be used if a passcode is lost and whether or not the floppy disk can be copied.

RES. 98-056 Tim Benedict presented requests from two pharmacists for Board approval to serve as the responsible pharmacist at the same time for two terminal distributor of dangerous drugs licenses. Following discussion, Mrs. Neuber moved that the Board approve the request of R.Ph. Eugene Wolke to serve as the responsible pharmacist for both Fort Hamilton Hughes Memorial Hospital Center (02-0029300) and 1010 Pharmacy, Inc. (02-0616300) until December 31, 1997. The motion was seconded by Mr. Maslak and approved (Aye-8/Nay-0).

RES. 98-057 Mrs. Plant moved that the request of R.Ph. Richard Adams to serve as the responsible pharmacist for both Harrison Community Hospital (02-0034450) and Health Connection Pharmacy (02-560300) be approved for one year. Mr. Cavendish seconded the motion and it was approved (Aye-8/Nay-0).

RES. 98-058 The Board then considered a proposal by Geodax Technology, Inc. of Greensboro, North Carolina to obtain a terminal distributor of dangerous drugs license for a relocatable nuclear pharmacy. The relocatable nuclear pharmacy would be located in a facility that could be moved if the local market does not prove to be profitable. A determination regarding the success of the pharmacy could be made within a four to six month period. Geodax is presently seeking approval from the Nuclear Regulatory Commission (NRC) since they also regulate nuclear facilities. Following discussion, the Board deferred the matter until approval has been obtained from NRC.

RES. 98-059 Following consideration of a request from the National Association of Boards of Pharmacy to pretest Multi-State Pharmacy Jurisprudence exam questions, the Board directed staff to affirmatively respond to the request.

Mrs. Plant moved that the Minutes of the September 8, 9, 10, 1997 meeting be approved as amended. The motion was seconded by Mr. Lamping and approved (Aye-8/Nay-0).

Mr. Lamping moved that the Minutes of the September 17, 1997 meeting be approved. The motion was seconded by Mr. Repke and approved (Aye-5/Nay-0).

President Littlejohn and Mrs. Neuber reported that interviews with new candidates for the Assistant Attorney General position were being conducted during the current Board meeting. A report was given on the interviews conducted to date.

Tim Benedict reported on meetings he has had with the Medical Board Prescribing Committee. One of the issues discussed was the increasing number of inquiries the Board of Pharmacy is receiving about prescribing Prozac-Phentermine for weight loss.

Board member Joseph Maslak reported on the Ohio Tuberculosis Coalition meeting which he attended on September 19, 1997.

Amonte Littlejohn announced that the Recruitment Committee would meet during lunch on Tuesday to review progress to date in attracting viable candidates for the position of Executive Director.

11:26 a.m.

The meeting was recessed for lunch and Board members Robert Cavendish, Amonte Littlejohn, Joseph Maslak, and Ruth Plant left due to business commitments.

1:27 p.m.

Board members Diane Adelman, John Hanna, Sue Neuber, Paul Lamping, and Nicholas Repke reconvened the business meeting and were joined by Tim Benedict, William Winsley, and Jeremy Irwin, a potential pharmacy student. Board and staff members discussed professional practice with the student from their individual perspectives.

Mr. Winsley reported on the September 1997 memorandum concerning revisions to the 1998 NAPLEX examination. Concerns regarding the ability of students from Ohio State University and the University of Cincinnati to meet the deadlines for qualifying to sit for the Summer, 1998 exam and the NAPLEX window cut-off date were discussed.

RES. 98-060 The Board members then discussed a proposed draft of Ohio Administrative Code Rule 4729-17-05. Following discussion and amendment, Mrs. Neuber moved that the Board propose to adopt the following new rule:

4729-17-05 CONTROLLED SUBSTANCE RECORDKEEPING.

- (A) ALL CONTROLLED SUBSTANCES MAINTAINED AS STOCK IN AREAS OUTSIDE OF THE PHARMACY PURSUANT TO PARAGRAPH (B) OF RULE 4729-17-03 OF THE ADMINISTRATIVE CODE SHALL MEET THE FOLLOWING REQUIREMENTS, UNLESS THEY ARE STORED IN A SECURE, AUTOMATED STORAGE SYSTEM THAT MEETS THE REQUIREMENTS OF PARAGRAPH (B) OF THIS RULE:
- (1) THE DRUGS SHALL BE STORED IN A SECURE LOCATION WITH ACCESS LIMITED TO AUTHORIZED INDIVIDUALS;
 - (2) A PROOF-OF-USE SHEET OR OTHER BOARD APPROVED RECORDKEEPING SYSTEM SHALL BE MAINTAINED FOR EACH DRUG AND SHALL INCLUDE AT LEAST, BUT IS NOT LIMITED TO, THE FOLLOWING INFORMATION:
 - (a) PATIENT NAME,
 - (b) DATE AND TIME OF ACCESS,
 - (c) DRUG NAME, STRENGTH, AND QUANTITY OBTAINED,
 - (d) THE POSITIVE IDENTIFICATION OF THE PERSON DOING THE ADMINISTRATION, AND, IF APPLICABLE,
 - (e) THE POSITIVE IDENTIFICATION OF BOTH THE PERSON AND THE WITNESS WHO WASTE A PARTIAL DOSE OF A CONTROLLED SUBSTANCE;
 - (3) AT EVERY CHANGE OF SHIFT, A RECONCILIATION MUST BE CONDUCTED BY BOTH THE LEAVING AND ARRIVING HEALTH CARE PROFESSIONAL RESPONSIBLE FOR THE SECURITY OF THESE DRUGS IN THE AREA IN WHICH THEY ARE STORED AND MUST INCLUDE AT LEAST THE FOLLOWING:
 - (a) A PHYSICAL COUNT AND RECONCILIATION OF THE CONTROLLED SUBSTANCES AND PROOF-OF-USE SHEETS, IF APPLICABLE, TO ENSURE THE ACCOUNTABILITY OF ALL DOSES,
 - (b) AN INSPECTION OF THE PACKAGING TO ENSURE ITS INTEGRITY,
 - (c) THE POSITIVE IDENTIFICATION OF THE PERSONS CONDUCTING THE RECONCILIATION, AND
 - (d) THE IMMEDIATE REPORTING OF ANY UNRESOLVED DISCREPANCY TO THE APPROPRIATE PEOPLE WITHIN THE INSTITUTION. THE RESPONSIBLE PERSON FOR THE TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSE MUST BE ONE OF THOSE NOTIFIED;
 - (4) ALL CONTROLLED SUBSTANCES SHALL BE PACKAGED IN TAMPER-EVIDENT CONTAINERS EXCEPT MULTIDOSE LIQUIDS AND INJECTABLES WHERE UNIT-OF-USE PACKAGING IS NOT AVAILABLE.
- (B) ALL CONTROLLED SUBSTANCES MAINTAINED AS STOCK IN AREAS OUTSIDE OF THE PHARMACY PURSUANT TO PARAGRAPH (B) OF RULE 4729-17-03 OF THE ADMINISTRATIVE CODE THAT ARE STORED IN A SECURE, AUTOMATED STORAGE SYSTEM SHALL BE HANDLED AS IN PARAGRAPH (A) OF THIS RULE UNLESS THE AUTOMATED STORAGE SYSTEM MEETS ALL OF THE FOLLOWING REQUIREMENTS:
- (1) THE DRUGS SHALL BE STORED IN A SECURE LOCATION WITH ACCESS LIMITED TO AUTHORIZED INDIVIDUALS;

- (2) THE SYSTEM SHALL DOCUMENT THE POSITIVE IDENTIFICATION OF EVERY PERSON ACCESSING THE SYSTEM AND SHALL RECORD THE DATE AND TIME OF ACCESS;
- (3) A RECORDKEEPING SYSTEM SHALL BE MAINTAINED THAT SHALL INCLUDE AT LEAST, BUT IS NOT LIMITED TO, THE FOLLOWING INFORMATION:
 - (a) PATIENT NAME,
 - (b) DATE AND TIME OF ACCESS,
 - (c) DRUG NAME, STRENGTH, AND QUANTITY REMOVED,
 - (d) THE POSITIVE IDENTIFICATION OF THE PERSON REMOVING THE DRUG, AND, IF APPLICABLE,
 - (e) THE POSITIVE IDENTIFICATION OF BOTH THE PERSON AND THE WITNESS WHO WASTE A PARTIAL DOSE OF A CONTROLLED SUBSTANCE;
- (4) PERIODICALLY, THE RESPONSIBLE PERSON SHALL CAUSE A RECONCILIATION OF THE AUTOMATED STORAGE SYSTEM TO BE CONDUCTED WHICH MUST INCLUDE AT LEAST THE FOLLOWING:
 - (a) A PHYSICAL COUNT AND RECONCILIATION OF THE CONTROLLED SUBSTANCES TO ENSURE THE ACCOUNTABILITY OF ALL DOSES,
 - (b) AN INSPECTION OF THE PACKAGING TO ENSURE ITS INTEGRITY,
 - (c) THE POSITIVE IDENTIFICATION OF THE PERSONS CONDUCTING THE RECONCILIATION, AND
 - (d) THE IMMEDIATE REPORTING OF ANY UNRESOLVED DISCREPANCY TO THE APPROPRIATE PEOPLE WITHIN THE INSTITUTION. THE RESPONSIBLE PERSON FOR THE TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSE MUST BE ONE OF THOSE NOTIFIED;
- (5) ACCESS TO ALL CONTROLLED SUBSTANCES STORED IN THE AUTOMATED STORAGE SYSTEM SHALL BE LIMITED TO ONE DRUG AND STRENGTH AT A TIME;
- (6) ALL CONTROLLED SUBSTANCES STORED IN THE AUTOMATED STORAGE SYSTEM SHALL BE PACKAGED IN TAMPER-EVIDENT CONTAINERS, UNLESS THE SYSTEM ONLY ALLOWS ACCESS TO ONE DOSE AT A TIME.

The motion was seconded by Mr. Lamping and approved (Aye-5/Nay-0).

RES. 98-061 Board discussion then resulted in staff being directed to have the 1998 Ad Hoc Advisory Committee on Rule Review consider a new rule requiring retail pharmacies to dispense all drugs for use by patients in long-term care facilities in unit-of-use packaging. Discussion centered around the lack of security and accountability of drugs dispensed in regular prescription vials and the amount of waste in those instances where a medication has been discontinued and cannot be returned to the pharmacy for credit.

1:44 p.m. The majority of business on the agenda having been accomplished, the meeting was recessed until 1:00 p.m. on Tuesday, October 7, 1997.

TUESDAY, OCTOBER 7, 1997

1:00 p.m. ROLL CALL

The State Board of Pharmacy reconvened in Room 1914, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Amonte B. Littlejohn, R.Ph. (President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; and Nicholas Repke, Public Member.

RES. 98-062 The Board met with the following candidates for licensure by reciprocity:

ANDERSON, SUZANNE D.	03-1-22727	NEBRASKA
CHRISTENSEN, MARC C.	03-1-22731	MICHIGAN
HAYMOND, DAVID J.	03-1-22736	SOUTH CAROLINA
KWON, SEONYEE	03-1-22709	ILLINOIS
MACK, SHARON D.	03-1-22655	TEXAS
MALOY, ANNA C.	03-1-22647	TEXAS
MEZEIVTCH, LORI A.	03-1-22653	PENNSYLVANIA
NAM, BOHYEN	03-1-22726	KENTUCKY
PETERS, MARK R.	03-1-22729	INDIANA
ROWLES, BRANDT	03-1-22676	NEW YORK
SHAH, HETAL B.	03-1-22628	NEW JERSEY
WALD, JODI M.	03-1-22723	NEW HAMPSHIRE
WHITNEY, YVETTE K.	03-1-22732	TEXAS

1:30 p.m.

Mrs. Neuber moved that the candidates be approved and their licenses to practice pharmacy in Ohio be issued, with the exception of David J. Haymond who's license will be issued pending receipt and approval of his original Official Application. The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0).

1:35 p.m.

The members of the Board reconvened and were joined by Board members John Hanna and Joseph Maslak in Room 1952 for the purpose of continuing the business meeting and reviewing agenda items not requiring formal action.

1:55 p.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 Joseph Claire Salmen, R.Ph.; Leetonia, Ohio.

3:43 p.m.

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

3:55 p.m.

RES. 98-063

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

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-970909-005)

In The Matter Of:

JOSEPH CLAIRE SALMEN, R.Ph.
5150 Lower Elkton Road
Leetonia, Ohio 44431
(R.Ph. No. 03-3-14577)

INTRODUCTION

THE MATTER OF JOSEPH CLAIRE SALMEN CAME TO HEARING ON OCTOBER 7, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, 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.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH CLAIRE SALMEN WAS REPRESENTED BY THOMAS W. HESS, 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) Joseph Claire Salmen, Respondent
- (2) Carol Noble, R.Ph., Pharmacists Rehabilitation Organization, Inc.
- (3) Sherry Salmen, Respondent's Spouse

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of six-page Order of the State Board of Pharmacy, Docket No. D-950629-069, in the matter of Joseph Claire Salmen dated April 29, 1996.
- (2) Exhibit 1A--Hearing Request letter dated September 3, 1997; and copy of two-page Judgment Entry in the Mahoning County Common Pleas Court, Case No. 95 CR 726, of Joseph P. Salmen (sic) dated August 14, 1997.
- (3) Exhibit 1B--Hearing Schedule letter dated September 9, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of page one of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Joseph C. Salmen dated September 18, 1995.
- (2) Exhibit B--Copy of urine drug screen chain of custody request of Joseph Salmen dated October 10, 1995; copy of urine drug screen chain of custody request of Joseph Salmen dated September 19, 1995; copy of urine drug screen report of Joseph Salmen dated October 12, 1995; copy of urine drug screen report of Joseph Salmen dated September 22, 1995; and copy of urine drug screen report of Joseph Salmen dated May 28, 1995.
- (3) Exhibit C--Copy of letter from Marilyn Lane dated March 31, 1995.
- (4) Exhibit D--Copy of five Self-Help Meeting attendance verification sheets of Joe Salmen dated from March 30, 1995, to October 12, 1995.
- (5) Exhibit E--Copy of letter from Robert G. Wilson, not dated.
- (6) Exhibit F--Copy of letter from Wellington W. Hager dated February 5, 1996.
- (7) Exhibit G--Copy of two-page letter from Joseph C. Salmen dated January 10, 1996.
- (8) Exhibit H--Copy of two-page Judgment Entry in the Mahoning County Court of Common Pleas, Case No. 95 CV 726, of Joseph Claire Salmen dated January 11, 1996.
- (9) Exhibit I--Copy of letter from Chris Sotter dated December 28, 1995; copy of five-page Treatment in Lieu of Conviction of Joseph C. Salmen, Case No. 95 CR 726, submitted by Chris Sotter and approved by Richard J. Billak, report dated December 15, 1995.
- (10) Exhibit J--Copy of referral to the Ohio Adult Parole Authority for Presentence Investigation of Joseph Claire Salmen by Hon. Maureen A. Cronin dated January 11, 1996; Grievance Procedures and Guide to Special Conditions of Supervision, Ohio Adult Parole Authority, for Joseph C. Salmen dated January 12, 1996.
- (11) Exhibit K--Copy of four chain of custody requests of Joseph Salmen dated February 13, 1996; January 30, 1996; December 21, 1995; and November 30, 1995; and copies of four urine drug screen reports of Joseph Salmen dated February 16, 1996; February 6, 1996; December 22, 1995; and December 4, 1995.
- (12) Exhibit L--Copy of three pages of Self-Help Meeting attendance verification sheets of Joe Salmen dated from October 16, 1995, through February 29, 1996.
- (13) Exhibit M--Copy of letter from Carol M. Noble dated February 18, 1996.

- (14) Exhibit N--Copy of list of five names and telephone numbers.
- (15) Exhibit O--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Joseph C. Salmen dated May 20, 1996.
- (16) Exhibit P--Six chain of custody requests of Joseph Salmen dated August 20, 1997; May 29, 1997; February 11, 1997; December 4, 1996; August 19, 1996; and May 31, 1996; one copy of chain of custody request of Joseph Salmen dated March 5, 1996; and copies of seven urine drug screen reports of Joseph Salmen dated August 24, 1997; June 3, 1997; February 14, 1997; December 3, 1996; August 21, 1996; June 4, 1996; and March 13, 1996.
- (17) Exhibit Q--Twelve AA/NA meeting attendance verification sheets of Joseph Salmen dated from March 4, 1996, through September 25, 1997.
- (18) Exhibit R--Copies of three Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheets of Client Case No. 102 for the periods of January 1, 1997, to March 31, 1997; October 1, 1996, to December 31, 1996; and July 1, 1996, to September 30, 1996; and copies of three Pharmacists Rehabilitation Organization, Inc. Client Monitoring Sheets of Client Case No. 102 dated for the weeks of January 4, 1997, through April 1, 1997; September 28, 1996, through December 28, 1996; and June 29, 1996, through September 28, 1996.
- (19) Exhibit S--Letter from Joseph Salmen, not dated; letter from Joseph C. Salmen dated June 30, 1997; letter from Joseph Salmen dated April 1, 1997; letter from Joseph C. Salmen, not dated; two-page letter from Joseph C. Salmen, not dated; letter from Joseph C. Salmen dated December 26, 1996; and letter from Joseph Salmen, not dated.
- (20) Exhibit T--Copy of two-page Judgment Entry in the Mahoning County Common Pleas Court, Case No. 95 CR 726, of Joseph P. Salmen (sic) dated August 14, 1997.
- (21) Exhibit U--Copy of two-page Neil Kennedy Recovery Clinic Discharge Summary of Joseph Salmen discharged on March 25, 1995; copy of two-page Discharge From Aftercare of Joseph Salmen discharged on June 21, 1995; and copy of four-page Neil Kennedy Recovery Clinic Initial Assessment of Joseph Salmen dated February 21, 1995.
- (22) Exhibit V--Thirteen pages of copies of thirty-two continuing education certificates of Joseph C. Salmen dated from October 24, 1995, through April 23, 1997.
- (23) Exhibit W--Letter from David M. Boyer, not signed, dated September 22, 1997; letter from J. Wilson Peake dated September 22, 1997; and letter from Barbara J. Peake dated September 20, 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) Joseph Claire Salmen is in compliance with the Order of the Board, Docket No. D-950629-069, dated April 29, 1996.

ACTION OF THE BOARD

The State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card of Joseph Claire Salmen to practice pharmacy in the state of Ohio and places him on probation for five years from the date his identification card is issued, with the following conditions:

- (A) Joseph Claire Salmen must enter into a new contract, after the effective date of this Order, with a treatment provider acceptable to the Board, for a period of not less than five years and submit a copy of the signed contract to the Board office with the renewal application. The contract must provide that:
 - (1) random, **observed** urine screens shall be conducted at least once every three months. The urine drug screens must report testing for alcohol and must also report testing for creatinine as the dilutional standard or specific gravity;
 - (2) regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required during outpatient treatment and/or during aftercare;

- (3) the intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion; and
 - (4) the program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (B) Joseph Claire Salmen must submit quarterly progress reports to the Board; due January 10; April 10; July 10; and October 10; of each year of probation, that include:
- (1) the written report and documentation provided by the treatment program pursuant to the contract, and
 - (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 Joseph Claire Salmen is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (2) Joseph Claire Salmen may not serve as a responsible pharmacist.
 - (3) Joseph Claire Salmen may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) Joseph Claire Salmen must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) Joseph Claire Salmen must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (6) Joseph Claire Salmen must abide by the rules of the Ohio State Board of Pharmacy.
 - (7) Joseph Claire Salmen must comply with the terms of this Order.

Joseph Claire Salmen 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. Cavendish and approved (Aye-6/Nay-1).

4:00 p.m.

Mrs. Neuber left for personal reasons.

RES. 98-064 Following a review of Kappa Epsilon of Greater Cleveland's application for approval as an in-state provider of continuing pharmacy education, Mr. Cavendish moved that it be approved. The motion was seconded by Mr. Lamping and approved (Aye-6/Nay-0).

The Board then discussed Resolution 83-095 (last amended April 25, 1996) regarding conditions where a new license is or is not required for dangerous drug distributors. Board

member Joseph Maslak requested that the Board policy be reconsidered due to the fact that Penn Traffic did not obtain new licenses pursuant to this policy when they became the new owners of two of the pharmacies purchased from Hart Stores, Inc. several years ago.

The fact that new licenses were not obtained when these two pharmacies changed ownership became apparent to Board staff upon receipt of new applications on September 15, 1997. The new applications were submitted due to the fact that Penn Traffic was changing the name under which they will be doing business at these two pharmacies and a change in addresses of the two pharmacies. The official records of the Board continued to indicate that the owner and operator of these two pharmacies was Hart Stores, Inc. for several years when in fact they were owned and operated by the Penn Traffic Company during that time interval.

RES. 98-065 Mr. Lamping moved that Resolution 83-095 be rescinded and that Penn Traffic not be issued new identification numbers for these pharmacies. The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0/Abstain-1[Maslak]). A committee to draft a new policy and revise pertinent Administrative Code rules was then formed by the Board. The committee will be chaired by Mr. Maslak. Other members of the committee are John Hanna, Amonte Littlejohn, and appropriate Board staff.

4:45 p.m.

The Board was joined by David Rowland, Legal Affairs Administrator, and Assistant Attorney General Mary Hollern. Board member Paul Lamping moved that the Board go into Executive Session for the purpose of conferring with the Assistant Attorney General regarding pending or imminent court action.

5:15 p.m.

RES. 98-066 The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board not appeal the Eleventh District Court of Appeals decision rendered in the matter of R.Ph. Carl S. Mowery. The motion was seconded by Mr. Maslak and approved (Aye-6/Nay-0).

5: 20 p.m. The meeting was recessed until Wednesday, October 8, 1997, at 8:00 a.m.

WEDNESDAY, OCTOBER 8, 1997

8:05 a.m. ROLL CALL

The State Board of Pharmacy reconvened in Room 1952, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

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

9:00 a.m.

Board member Amonte Littlejohn, R.Ph. (President) arrived and joined the meeting. The Board members were joined by the following individuals: Barry M. Krelitz, R.Ph., Executive Director of Wholesale Alliance, L.L.C.; Kenneth M. Roberts, Esq., Schiff Hardin & Waite; Gary O. Gold, Executive Vice President, Pace, Inc.; Bruce G. Briggs, R.Ph., Vice President, Network Development and Operations, MedAdvisor; and Donald A. Dee, R.Ph., Consultant. The purpose of meeting with these industry representatives was to discuss Wholesale Alliance's PharmacyFirst Program and contract with community pharmacies.

9:23 a.m.

Following discussion and questions by Board members and staff regarding confidential patient data maintained by pharmacies and the proposed contract, the meeting was concluded. Representatives of Wholesale Alliance, L.L.C. assured the Board members that the program had not and would not be implemented in Ohio until the concerns of the Board had been addressed and their program would be in compliance with Ohio's laws and regulations.

- 9:25 a.m. Board members Paul Lamping and Suzanne Neuber left to conduct interviews with candidates for the Assistant Attorney General position.
- 9:51 a.m. The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code in the matter of Mark Lang and his application to sit for the licensure exam.
- 9:54 a.m. Board members Paul Lamping and Suzanne Neuber returned and joined the Board. Receiving no objections, both will be participating in the hearing.
- 11:00 a.m. The hearing was concluded. Mr. Hanna moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony submitted during the hearing. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, and Repke-Yes.
- 11:05 a.m. *RES. 98-067* The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-970701-002)

In The Matter Of:

MARK STEVEN LANG
6320 Meis Avenue
Cincinnati, Ohio 45224
(D.O.B. 2/9/61)

INTRODUCTION

THE MATTER OF MARK STEVEN LANG CAME TO HEARING ON OCTOBER 8, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, 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.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARK STEVEN LANG 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) Christopher K. Reed, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Mark Steven Lang, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated July 1, 1997.
(2) Exhibit 1A--Hearing Request letter dated July 3, 1997.
(3) Exhibit 1B--Hearing Schedule letter dated July 8, 1997.

- (4) Exhibit 2--Application for Examination as a Pharmacist of Mark Steven Lang signed and notarized on March 19, 1997, with the following attachments: explanation regarding charges/convictions of Mark Lang dated March 19, 1997; and copy of United States Probation Department Southern District of Ohio, Notice of Termination, Docket No. CR 1-94-079-001, of Mark Lang dated January 26, 1997.
- (5) Exhibit 3--Pharmacist File Front Sheet of Mark Steven Lang showing original date of registration as August 6, 1986.
- (6) Exhibit 4--Copy of ten-page Order of the State Board of Pharmacy, Docket No. D-950307-039, in the matter of Mark Steven Lang, R.Ph. dated December 8, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Joseph A. Caruso dated July, 1996; and copy of certificate for being named to the University of Cincinnati McMicken College of Arts and Sciences Dean's List of Mark Steven Lang for the spring quarter of the 1995-96 academic year.
- (2) Exhibit B--Copy of United States Probation Department Southern District of Ohio Notice of Termination, Docket No. CR 1-94-079-001, of Mark Lang dated January 26, 1997.
- (3) Exhibit C--Affidavit of Nicholas S. Johnson signed and notarized on January 29, 1997.
- (4) Exhibit D--Affidavit of Herbert (last name illegible) signed and notarized on February 26, 1996.
- (5) Exhibit E--Affidavit of Jerome Frantz signed and notarized on January 31, 1997.
- (6) Exhibit F--Affidavit of William D. Betz signed and notarized on January 15, 1997.
- (7) Exhibit G--Affidavit of David J. Ryan signed and notarized on January 21, 1997.
- (8) Exhibit H--Copy of two certificates of continuing pharmaceutical education dated June 28, 1997, of Mark Lang numbered as follows: 05699997001H01 and 05699996012H01.
- (9) Exhibit I--Copy of three certificates of continuing pharmaceutical education dated June 28, 1997, of Mark Lang numbered as follows: 05699996008H04, 05699996011H01, and 05699996010H02.
- (10) Exhibit J--Copy of three certificates of continuing pharmaceutical education dated June 28, 1997, of Mark Lang numbered as follows: 05699997005H01, 05699997006H01, and 05699996119H01.
- (11) Exhibit K--Copy of three certificates of continuing pharmaceutical education dated June 30, 1997, of Mark Lang numbered as follows: XX-999-97-011-H04, XX-999-97-037-H01, and XX-999-96-024-H01.
- (12) Exhibit L--Copy of three certificates of continuing pharmaceutical education dated June 28, 1997, of Mark Lang numbered as follows: 05699996007H01, 05699996006H01, and 68005696002.

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 Mark Steven Lang submitted an application for examination as a pharmacist on or about April 1, 1997.
- (2) Records further indicate that Mark Steven Lang was originally licensed to practice pharmacy in the state of Ohio on August 6, 1986, pursuant to examination.
- (3) On or about December 8, 1995, the Board found the following to be fact:
 - (a) Records of the Board of Pharmacy indicate that Mark Steven Lang was originally licensed in the state of Ohio on August 6, 1986, pursuant to examination, and was currently licensed to practice pharmacy in the state of Ohio. Records further reflect that during the relevant time periods stated herein, to wit: September 17, 1987, through August 21, 1991, Mark Steven Lang was the Responsible Pharmacist at Westwood Pharmacy in Cincinnati, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio Administrative Code.

- (b) Mark Steven Lang was, on or about October 7, 1994, found guilty pursuant to a plea of one count of Wire Fraud in violation of Section 1343 of the United States Code in the United States District Court, Southern District of Ohio, Western Division, a class D felony.
- (c) Mark Steven Lang as the Responsible Pharmacist did, on or about April 3, 1991, and dates immediately preceding, permit persons other than a registered pharmacist to possess keys to a pharmacy which was not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: Mark Steven Lang allowed Jean Russ, not a registered pharmacist, to possess a key to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (d) Mark Steven Lang as the Responsible Pharmacist did, on or about April 3, 1991, and dates immediately preceding, hold or offer for sale drugs which were adulterated and/or misbranded, to wit: Mark Steven Lang possessed for sale, interspersed throughout the stock shelves of Westwood Pharmacy, 409 containers of outdated dangerous drugs, 59 containers of controlled substances, and 17 containers or bags of dangerous drugs which were either not labeled or did not have the required lot numbers, expiration dates, or manufacturers' names. Such conduct is in violation of Section 3715.52(A) of the Ohio Revised Code.
- (e) Mark Steven Lang as the Responsible Pharmacist did, from December 30, 1987, through April 3, 1991, knowingly sell a controlled substance in an amount 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: Mark Steven Lang or persons under his control sold 4,713 unit doses of Oxycodone with APAP 325mg (32.4% of the stock); 732 unit doses of Oxycodone with ASA 325mg (20.6% of the stock); and 183 unit doses of Seconal 100mg (17% of the stock) without prescription and not for legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (f) Mark Steven Lang as the Responsible Pharmacist did, from December 30, 1987, through April 3, 1991, knowingly sell a controlled substance in an amount exceeding the bulk amount, but in an amount less than three times that amount, when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Steven Lang or persons under his control sold 88 unit doses of Tylox (2.5% of the stock); 58 unit doses of Preludin 75mg (58% of the stock); and 57 unit doses of Dilaudid 4mg (14.3% of the stock) without prescription and not for legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (g) Mark Steven Lang as the Responsible Pharmacist did, from December 30, 1987, through April 3, 1991, knowingly sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Steven Lang or persons under his control sold 90 unit doses of Methylphenidate 10mg (3.8% of the stock) without prescription and not for legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (h) Mark Steven Lang as the Responsible Pharmacist did, from February 27, 1991, through April 3, 1991, fail to take a physical inventory of Westwood Pharmacy's schedule III controlled substance anabolic steroids after the Ohio Legislature enacted law which scheduled anabolic steroids as schedule III and after having been instructed by compliance bulletin

issued by this Board to do so. Such conduct is in violation of Section 3719.07(G) of the Ohio Revised Code.

- (i) Mark Steven Lang as the Responsible Pharmacist did, on or about April 3, 1991, and dates prior thereto, intentionally make and/or knowingly possess false or forged uncompleted pre-printed prescription blanks used for writing prescriptions, to wit: Mark Steven Lang created and subsequently possessed the following eleven prescriptions written for controlled substances, grouped together with a rubber band, which Mr. Lang admitted to Board agents that he created for future assignment of prescription numbers and billing to third party carriers to obtain reimbursement for claims that had been rejected from prior billings:

Two prescriptions for Valium 10mg (100 u.d.) w/five refills.
Two prescriptions for Valium 10mg (38 u.d.) w/five refills.
One prescription for Valium 5mg (100 u.d.) w/five refills.
One prescription for Darvocet N-100 (60 u.d.) w/five refills.
One prescription for Lomotil (40 u.d.) w/two refills.
One prescription for Tylenol #3 (30 u.d.) w/one refill.
One prescription for Vicodin ES (60 u.d.) w/no refills.
One prescription for Xanax 0.5mg (100 u.d.) w/five refills.
One prescription for Tranxene 3.75mg (120 u.d.) w/five refills.

Such conduct is in violation of Section 2925.23(B)(2) of the Ohio Revised Code.

- (j) Mark Steven Lang as the Responsible Pharmacist did, on or about April 3, 1991, and dates prior thereto, make false or forged prescriptions, to wit: Mark Steven Lang created and subsequently possessed the following 101 prescriptions written for dangerous drugs, grouped together with a rubber band, which Mr. Lang admitted to Board agents that he created for future assignment of prescription numbers and billing to third party carriers to obtain reimbursement for claims that had been rejected from prior billings:

One prescription for Tuss Ornade (50 u.d.) w/five refills.
One prescription for Norgesic (100 u.d.) w/five refills.
Two prescriptions for Ceclor 250mg (28 u.d.) w/no refills.
One prescription for Ceclor 250mg (32 u.d.) w/no refills.
Three prescriptions for Flexeril 100mg (100 u.d.) w/five refills.
One prescription for Flexeril 100mg (60 u.d.) w/two refills.
One prescription for Flexeril 100mg (60 u.d.) w/five refills.
Five prescriptions for Prozac 20mg (48 u.d.) w/five refills.
Thirteen prescriptions for Prozac 20mg (68 u.d.) w/ five refills.
One prescription for Prozac 20mg (68 u.d.) w/six refills.
One prescription for Vasotec 10mg (100 u.d.) w/five refills.
One prescription for Vasotec 10mg (60 u.d.) w/five refills.
One prescription for Vasotec 20mg (60 u.d.) w/five refills.
Two prescriptions for Ioptin SR 240mg (30 u.d.) w/five refills.
Two prescriptions for Diamox 250mg (100 u.d.) w/five refills.
Two prescriptions for Materna 1+60 (100 u.d.) w/five refills.
Four prescriptions for Buspar 10mg (100 u.d.) w/five refills.
One prescriptions for Buspar 10mg (68 u.d.) w/five refills.
Two prescriptions for Elavil 50mg (60 u.d.) w/five refills.
Two prescriptions for Axid CP (30 u.d.) w/five refills.
Two prescriptions for Zovirax 200mg (100 u.d.) w/six refills.
One prescription for Rufen 600mg (100 u.d.) w/five refills.
Seven prescriptions for Feldene 20mg (30 u.d.) w/five refills.
One prescription for Proventil 8mg (60 u.d.) w/five refills.
Five prescriptions for Mevacor 20mg (60 u.d.) w/five refills.
Two prescriptions for Proventil Inhalers w/five refills.
Two prescriptions for Procardia 20mg (100 u.d.) w/five refills.

One prescriptions for Reglan 10mg (100 u.d.) w/five refills.
 One prescriptions for Augmentin 250mg (30 u.d.) w/no refills.
 One prescription for Augmentin 500mg (30 u.d.) w/one refill.
 Two prescriptions for Tagamet 300mg (125 u.d.) w/five refills.
 One prescription for Tagamet 300mg (125 u.d.) w/six refills.
 One prescription for Tagamet 300mg (60 u.d.) w/five refills.
 Two prescriptions for Tagamet 400mg (125 u.d.) w/five refills.
 Two prescriptions for Tolectin DS (100 u.d.) w/five refills.
 Two prescriptions for Voltaren 75mg (120 u.d.) w/five refills.
 One prescription for Voltaren 75mg (100 u.d.) w/five refills.
 One prescription for Suprax 400mg (15 u.d.) w/no refills.
 Two prescriptions for Dilatrate SR (100 u.d.) w/five refills.
 Two prescriptions for Ceclor 500mg (28 u.d.) w/no refills.
 Two prescriptions for Carnitor (90 u.d.) w/five refills.
 One prescriptions for Carnitor (90 u.d.) w/six refills.
 One prescription for Cipro 500mg (20 u.d.) w/no refills.
 One prescription for Naprosyn 500mg (60 u.d.) w/five refills.
 One prescription for Psorcon (60 u.d.) w/four refills.
 One prescription for Seldane 60mg (60 u.d.) w/six refills.
 One prescription for Seldane 60mg (60 u.d.) w/ five refills.
 One prescription for Lasix 40mg (60 u.d.) w/five refills.
 One prescription for Hismanal 10mg (34 u.d.) w/six refills.
 One prescription for K-Tab 10mg (60 u.d.) w/five refills.
 One prescription for Cleocin-T (60 u.d.) w/five refills.
 One prescription for Asendin 100mg (60 u.d.) w/five refills.
 One prescription for Vibratab 100mg (30 u.d.) w/three refills.
 One prescription for Mucomyst 30ml vial w/five refills.

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (k) Mark Steven Lang as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Mark Steven Lang possessed in the files of Westwood Pharmacy the following pre-printed prescriptions which were possessed and filled in violation of Section 1306.05 of the Code of Federal Regulations:

<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Dispensing Date</u>
468653	Nembutal 100mg	1	02/13/88
468738	Tylox	15	02/17/88
468735	Tylox	20	02/17/88
471494	Nembutal 100mg	1	05/06/88
471495	Mepergan Fortis	1	05/06/88
474619	Demerol 50mg	18	07/12/88
479144	Tylox	15	09/28/88
494405	Mepergan Fortis	1	07/24/89
494404	Nembutal 100mg	1	07/24/89
None	Tylox	20	09/11/89
498???	Tylox	20	10/20/89
504869	Demerol 50mg	18	04/03/90

Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (l) Mark Steven Lang as the Responsible Pharmacist did, on or about the following dates knowingly sell a controlled substance in an amount 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: Mark Steven Lang or persons under his control sold the following drugs pursuant to prescriptions written for a schedule II controlled substance for

weight control when such had been prohibited and was not for legitimate medical purpose:

<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Dispensing Date</u>
460353	Preludin 75mg	14	06/15/87
460867	Preludin 75mg	14	06/30/87
461305	Preludin 75mg	14	07/14/87
462403	Preludin 75mg	14	08/18/87
462771	Preludin 75mg	14	08/31/87
463850	Preludin 75mg	14	10/02/87
464367	Preludin 75mg	14	10/16/87
464966	Preludin 75mg	14	11/02/87
465512	Preludin 75mg	14	11/17/87
466534	Preludin 75mg	14	12/17/87
467058	Preludin 75mg	14	12/31/87
467946	Preludin 75mg	14	01/26/88

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

- (m) Mark Steven Lang as the Responsible Pharmacist did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Mark Steven Lang created and possessed in the files of Westwood Pharmacy the following telephone prescriptions which were dispensed in violation of Sections 3719.05 of the Ohio Revised Code and 1306.11 of the Code of Federal Regulations, dispensed in quantities greater than that necessary to adequately treat the patient during an emergency period, and dispensed without having the phrase "Authorization for Emergency Dispensing" indicated thereon:

<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Dispensing Date</u>
474046	Dilaudid 4mg	100	06/29/88
480977	Percocet	60	10/28/88
481874	Percocet	100	11/14/88
482283	Percocet	60	11/21/88
483018	Percocet	100	12/02/88
483912	Percocet	60	12/17/88
484134	Oxycodone/APAP 325	100	12/20/88
485176	Oxycodone/APAP 325	100	01/09/89
485487	Oxycodone/APAP 325	60	01/13/89
486040	Oxycodone/APAP 325	100	01/23/89
486869	Oxycodone/APAP 325	100	02/07/90
487665	Oxycodone/APAP 325	100	02/23/89
488271	Oxycodone/APAP 325	100	03/08/90
488503	Demerol 50mg	50	03/13/89
48??74	Percocet	100	03/25/89
493534	Percocet	100	07/03/89
495915	Dilaudid 4mg	50	08/30/89
497755	Ritalin 10mg	100	10/06/89
505783	Percocet	100	05/01/90
511978	Percocet	100	02/26/91

Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

The Board concluded that Mark Steven Lang was guilty of a felony; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; and 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 or Chapter 2925., 3719., or 4729. of the Revised Code. For these reasons, Mark Steven Lang's license, No. 03-2-16472, was revoked.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3)(b) of the Findings of Fact constitutes being guilty 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 paragraph (3)(b) of the Findings of Fact constitutes having been convicted of violating state or federal pharmacy or drug laws 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 paragraphs (3)(b) through (3)(m) of the Findings of Fact constitute not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by Mark Steven Lang.

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

MOTION CARRIED.

SO ORDERED.

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

Following discussion regarding the proposed PharmacyFirst contract submitted to Ohio pharmacies by Wholesale Alliance, L.L.C. and other instances where patients' confidentiality regarding their drug therapy is being compromised through similar pharmaceutical marketing programs throughout the country, the Board instructed staff to set aside additional time during the January meeting to discuss pertinent issues with representatives of the Attorney General's office.

12:30 p.m.

The Board recessed for lunch.

1:08 p.m.

The Board meeting was reconvened and Board members Diane Adelman, Robert Cavendish, John Hanna, Paul Lamping, Suzanne Neuber, and Nicholas Repke were joined by the following representatives of the Ohio Colleges of Pharmacy: Dean John Cassady, Ohio State University; Dean Thomas Gossel, Ohio Northern University; Dean Daniel Acosta, University of Cincinnati; Dean Norman Billups, University of Toledo; Dr. Alan Escovitz, Executive Director of the Ohio Council of Colleges of Pharmacy; Dr. Metta Lou Henderson, Ohio Northern University; Dr. Robert Lee, University of Cincinnati; Kurt Black, University of Toledo; and Ken Hale, Ohio State University. Board members and staff reported on the NAPLEX examination experiences to date, the Multi-State Pharmacy Jurisprudence Examination that will be implemented in 1999; recommendations of the 1997 Ad Hoc Advisory Committee on Rule Review; and the status of the search for a new executive director. Following questions by the college representatives, they reported on each school's plans for the non-traditional Pharm.D. degree program and the status of the entry-level Pharm.D. degree program. Also discussed was the status of the revisions to the Pharmacy Practice Act (S.B. 66).

2:10 p.m.

Board President Amonte Littlejohn arrived and joined the meeting.

2:35 p.m.

The meeting with the college representatives was concluded and Board Member John Hanna excused himself from the remainder of the meeting due to business commitments.

2:37 p.m.

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting an adjudication hearing pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code in the matter of R.Ph. Leslie O. Schneider, Concord Township, Ohio.

2:50 p.m.

Mr. Cavendish moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony submitted. The motion was seconded by Mr. Lamping and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Neuber-Yes, and Repke-Yes.

3:25 p.m.

RES. 98-068

The Executive Session was concluded and the hearing continued. Mrs. Neuber moved that the Board continue the hearing in the matter of Leslie O. Schneider for six months in order to provide the respondent with the opportunity to obtain documentation that she is in compliance with the Board's Order issued January 31, 1995. A new treatment provider contract requiring monthly random observed urine screens with specific gravity/creatinine, and attendance three times a week at support group meetings will be acceptable evidence as having complied with the Board's Order. The motion was seconded by Mr. Lamping and approved (Aye-5/Nay-0).

RES. 98-069

Mr. Lamping moved that the Board revise Proposed Amended Rules 4729-5-01 and 4729-9-01, which were proposed to be adopted at the Board's September meeting, to read as follows in order to place the definition of "certified diabetes educator" into the proper Administrative Code chapter:

4729-5-01 Definitions.

As used in Chapter 4729. of the Revised Code:

- (A) To "practice pharmacy" is as defined in division (B) of section 4729.02 of the Revised Code.
- (B) The term "dispense" means the final association of a drug with a particular patient pursuant to the prescription, drug order, or other lawful order of a ~~practitioner~~ PRESCRIBER and the professional judgment of and the responsibility for: interpreting, preparing, compounding, labeling, and packaging a specific drug.

- (C) "Compound" means the professional judgment of a pharmacist associated with the measuring and mixing of one or more drugs, and also includes the reconstitution of a drug by the measuring and mixing of a diluent, pursuant to a prescription.
- (D) "Interpret prescriptions" means the professional judgment of a pharmacist when reviewing a prescription order of a ~~practitioner~~ PRESCRIBER for a patient.
- (E) "To participate in drug selection" means selecting and dispensing a drug product pursuant to sections 4729.38 and 4729.381 of the Revised Code.
- (F) "To participate with ~~practitioners~~ PRESCRIBERS in reviews of drug utilization" means monitoring the appropriate use of drugs through communication with the ~~practitioner(s)~~ PRESCRIBER(S) involved.
- (G) "Pharmacist" means an individual who holds a current pharmacist identification card pursuant to section 4729.08 or 4729.09 of the Revised Code; or, pursuant to section 4729.12 of the Revised Code ~~and, where applicable, has met the continuing pharmacy education requirements in accordance with Chapter 4729-7 of the Administrative Code.~~
- (H) "Original prescription" means the prescription issued by the ~~practitioner~~ PRESCRIBER in writing, an oral or electronically transmitted prescription recorded in writing by the pharmacist, or a prescription transmitted by use of a facsimile machine, each of which is pursuant to rule 4729-5-30 of the Administrative Code.
- (I) "Personal supervision" means a pharmacist shall be physically present in the pharmacy and provide personal review and approval of all professional pharmaceutical activities.
- (J) "Preprinted order" is defined as a patient-specific, definitive set of drug treatment directives to be administered to an individual patient who has been examined by a ~~practitioner~~ PRESCRIBER and for whom the ~~practitioner~~ PRESCRIBER has determined that the drug therapy is appropriate and safe when used pursuant to the conditions set forth in the preprinted order. Preprinted orders may be used only for inpatients in an institutional facility as defined in Chapter 4729-17 of the Administrative Code.
- (K) "Standing order" will mean the same as the term "protocol".
- (L) "Protocol" is defined as:
 - (1) A definitive set of treatment guidelines that include definitive orders for drugs and their specified dosages which have been authorized by a ~~practitioner~~ PRESCRIBER as defined in rule 4729-5-15 of the Administrative Code and have been approved by the board of pharmacy to be used by certified or licensed health care professionals when providing limited medical services to individuals in an emergency situation when the services of a ~~practitioner~~ PRESCRIBER are not immediately available; or
 - (2) A definitive set of treatment guidelines that include definitive orders for drugs and their specified dosages which have been authorized by a ~~practitioner~~ PRESCRIBER as defined in rule 4729-5-15 of the Administrative Code and have been approved by the board of pharmacy to be used by certified or licensed health care professionals when administering biologicals or vaccines to individuals for the purpose of preventing diseases.

A protocol may be used only by licensed or certified individuals acting within the scope of their license or certification who have been adequately trained in the safe administration and use of the drugs and other procedures included in the protocol.

Protocols submitted for approval by the board of pharmacy may be reviewed with the medical and/or nursing board, as appropriate, prior to any approval by the board of pharmacy.

- (M) "Prescriber" means any person authorized by the Revised Code to prescribe dangerous drugs as part of their professional practice.
- (N) "Positive identification" means a method of identifying an individual who prescribes, administers, or dispenses a dangerous drug. Such method may include a password access to a mechanical or automated system, but must also include a physical means of identification such as, but not limited to, the following:
 - (1) A manual signature on a hard-copy record;
 - (2) A magnetic card reader;
 - (3) A bar code reader;
 - (4) A thumbprint reader or other biometric method; or
 - (5) A daily printout of every transaction that is verified and manually signed within twenty-four hours by the individual who prescribed, administered, or dispensed the dangerous drug. The printout must be maintained for three years and made available on request to those individuals authorized by law to review such records.
- ~~(O) "Certified diabetic educator", as used in Chapters 3719. and 4729. of the Revised Code, means a person who has been certified to conduct diabetes education by the "National Certification Board for Diabetes Educators (NCBDE)".~~

4729-9-01 Definitions.

- (A) "Dangerous drug," as defined in division (D)(1) of section 4729.02 of the Revised Code, means any drug or drug product whose commercial package bears a label containing the legend "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Licensed Veterinarian" or any similar restrictive statement.
- (B) A dangerous drug is adulterated if beyond the expiration date as stated by the manufacturer, packer, or distributor in its labeling or if it is not stored or dispensed according to the requirement of the federal act as indicated in the product labeling.
- (C) "Psychiatric outpatient facility" means a facility where psychiatric evaluation and treatment is provided on an outpatient basis.
- (D) "Registered" and "licensed", as used in Chapters 3719. and 4729. of the Revised Code, have the same meaning. "Registered" and "licensed" mean that an individual or facility has met the initial qualifications for registration and licensure with the board of pharmacy and, if they are still actively practicing pharmacy or distributing drugs, have complied with annual renewal procedures, including payment of applicable fees.
- (E) "Revoke", as used in Chapters 3719. and 4729. of the Revised Code, means to take action against a license which renders such license void and such license may not be reissued. "Revoke" is an action which is permanent against the license and licensee ~~except that after twelve months or such period of time as the individual board order may require, a licensee whose license has been revoked may make application to the board for issuance of a new license. A pharmacist whose license has been revoked must pass any examination required by the board prior to the issuance of any new license.~~
- (F) "Suspend", as used in Chapters 3719. and 4729. of the Revised Code, means to take action against a license which renders such license without force and effect for a period of time as determined by the board of pharmacy. The board may require that an individual whose license has been suspended 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.

- (G) "Place on probation", as used in Chapter 4729. of the Revised Code, means to take action against a license which suspends the sanctions imposed by the board of pharmacy during a period of good behavior for a period of time and under such conditions as determined by the board of pharmacy.
- (H) "Refuse to grant or renew", as used in Chapter 4729. of the Revised Code, means to deny original or continued licensure for a period of at least twelve months. After twelve months or such period of time as the individual board order may require, a pharmacist, a pharmacy intern, a terminal distributor of dangerous drugs, a wholesale distributor of dangerous drugs, a wholesaler of controlled substances, a manufacturer of controlled substances, or an individual or facility who desires to attain such status by licensure, and whose license the board of pharmacy has refused to grant or renew, may make application to the board for issuance of a new license. A pharmacist, or an individual who desires to attain such status by licensure, whose license the board of pharmacy has refused to grant or renew must meet any requirements established by the board or must pass any examination required by the board.
- (I) "CAMPUS", AS USED TO DESCRIBE A TYPE OF TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSE ISSUED PURSUANT TO DIVISION (E) OF SECTION 4729.51 OF THE REVISED CODE, MEANS AN ESTABLISHMENT OR PLACE CONSISTING OF MULTIPLE BUILDINGS WHERE DANGEROUS DRUGS ARE STORED THAT ARE LOCATED ON A CONTIGUOUS PLOT OF LAND. ALL SUCH BUILDINGS AND STOCKS OF DANGEROUS DRUGS SHALL BE UNDER COMMON OWNERSHIP AND CONTROL.
- (J) "CERTIFIED DIABETES EDUCATOR", AS USED IN CHAPTERS 3719. AND 4729. OF THE REVISED CODE, MEANS A PERSON WHO HAS BEEN CERTIFIED TO CONDUCT DIABETES EDUCATION BY THE "NATIONAL CERTIFICATION BOARD FOR DIABETES EDUCATORS (NCBDE)".

The motion was seconded by Mrs. Adelman and approved (Aye-5/Nay-0).

RES. 98-070 A proposed Cease and Desist Order was presented to the Board for their consideration. Following discussion, Mr. Cavendish moved that it not be issued except as a last resort and that the Medical Board be contacted in order to see if they can resolve the problem with Dr. Desai's prescribing of controlled substances in violation of Rule 4729-5-30 of the Ohio Administrative Code. The motion was seconded by Mr. Lamping and approved (Aye-5/Nay-0).

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

PER DIEM	<u>9/17</u>	<u>9/19</u>	<u>10/06</u>	<u>10/07</u>	<u>10/08</u>	<u>Total</u>
Adelman	1	-	1	1	1	4
Cavendish	1	-	1	1	1	4
Hanna	-	-	1	1	1	3
Lamping	-	-	1	1	1	3
Littlejohn	-	-	1	1	1	3
Maslak	1	1	1	1	1	5
Neuber	1	-	1	1	1	4
Plant	-	-	1	-	-	1
Repke	1	-	1	1	1	4

The motion was seconded by Mr. Repke and approved by the Board (Aye-5/Nay-0).

3:55 p.m. Mr. Repke moved that the meeting be adjourned. Mrs. Adelman seconded the motion and it was approved (Aye-5/Nay-0).

/s/ Amonte B. Littlejohn
Amonte B. Littlejohn, President

/d/ 12/9/97
Date

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