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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
March 9, 10, 11, 1998

MONDAY, MARCH 9, 1998

8:30 a.m. ROLL CALL

The State Board of Pharmacy convened 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); Joseph J. Maslak, R.Ph. (Vice-President); John Hanna, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; and Nicholas Repke, Public Member.

Joining the Board were Sally Ann Steuk, Assistant Attorney General; Tim Benedict, Compliance Administrator; David Rowland, Legal Affairs Administrator; and Robert Cole, Compliance Supervisor.

RES. 98-145 The Executive Director presented a request from Dr. Frederick Pfeiffer, a candidate for licensure by reciprocity, that he be permitted to sit for the reciprocity hearing on Tuesday and that his license to practice pharmacy in Ohio be issued by the office upon receipt of the official forms and fee. A review of a faxed copy of the candidate's application by staff has determined that Dr. Pfeiffer meets all of the qualifications for licensure by reciprocity. Mr. Repke moved that the Board approve the request and that he be permitted to sit for the reciprocity hearing. The motion was seconded by Mrs. Neuber and approved (Aye-5/Nay-0).

8:35 a.m.

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

8:39 a.m.

Board member Ruth Plant, R.Ph. arrived and joined the meeting.

9:55 a.m.

RES. 98-146 The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved that the Board deny the proposal to enter into a settlement in the matter of Joy Moneme, R.Ph. and that the adjudication hearing be held as scheduled. The motion was seconded by Mr. Hanna and approved by the Board (Aye-6/Nay-0).

RES. 98-147 Mrs. Neuber moved that the Board authorize Assistant Attorney General Sally Ann Steuk to present the Board's terms for a settlement in the matter of Matthew Fisher, R.Ph. as set forth during the Executive Session. The motion was seconded by Mr. Repke and approved (Aye-6/Nay-0).

RES. 98-148 Mr. Repke moved that the Board deny the proposal to enter into a settlement in the matter of Rodney Allen Keller, R.Ph. and that the adjudication hearing be held as scheduled on Tuesday afternoon. The motion was seconded by Mr. Lamping and approved by the Board (Aye-6/Nay-0).

RES. 98-149 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. 971023-012)

In the Matter of:

SARAH ANNE HUDSON-DISALLE, R.Ph.
1197 S. Fourth Street
Columbus, Ohio 43206
(R.Ph. No. 03-2-21028)

This Settlement Agreement is entered into by and between Sarah Anne Hudson-DiSalle, 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.

Sarah Anne Hudson-DiSalle 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.

Sarah Anne Hudson-DiSalle is knowingly and voluntarily acknowledging that, in order to settle the disciplinary 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, Sarah Anne Hudson-DiSalle 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) Sarah Anne Hudson-DiSalle neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Sarah Anne Hudson-DiSalle was originally licensed in the state of Ohio on July 27, 1995, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, during the relevant time periods stated herein, Sarah Anne Hudson-DiSalle was employed as a pharmacist at Medic Discount Drug #927 located in North Royalton, Ohio.
 - (2) Sarah Anne Hudson-DiSalle did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Sarah Anne Hudson-DiSalle sold 28 units of Adipex-P 37.5mg for diet to patient #1 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill her corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx Number</u>	<u>Date</u>
91279	12/07/96
92216	12/24/96
93035	01/08/97
93717	01/22/97

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

- (3) Sarah Anne Hudson-DiSalle did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Sarah Anne Hudson-DiSalle sold 28 units of Adipex-P 37.5mg for diet to patient #2 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, and thereby failing to fulfill her corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code:

<u>Rx Number</u>	<u>Date</u>
89633	11/05/96
92480	12/30/96

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

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Sarah Anne Hudson-DiSalle knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (1) Sarah Ann Hudson-DiSalle's identification card, No. 03-2-21028, will be placed on probation for two 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 Sarah Ann Hudson-DiSalle's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (2) Sarah Ann Hudson-DiSalle must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (3) Sarah Ann Hudson-DiSalle must abide by the rules of the Ohio State Board of Pharmacy.
 - (4) Sarah Ann Hudson-DiSalle must comply with the terms of this Settlement.

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) Sarah Ann Hudson-DiSalle agrees to the imposition of a monetary penalty of seven hundred fifty dollars (\$750.00) 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, Sarah Ann Hudson-DiSalle 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.

Sarah Ann Hudson-DiSalle 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.

Sarah Ann Hudson-DiSalle 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. Sarah Ann Hudson-DiSalle waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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. Sarah Ann Hudson-DiSalle 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 date of Board President's signature below.

/s/ Sarah A Hudson DiSalle /d/ 2/11/98
Sarah Anne Hudson-DiSalle, Respondent Date

/s/ Matthew P Cincione /d/ 2/11/98
Matthew P. Cincione, Attorney for Respondent Date

/s/ Amonte B. Littlejohn /d/ 3/9/98
Amonte B. Littlejohn, President, Ohio State Board of Pharmacy Date

/s/ Sally Ann Steuk /d/ 2/17/98
Sally Ann Steuk, Ohio Assistant Attorney General Date

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-970909-004)

In The Matter Of:

MARY ELIZABETH STARR, R.Ph.
4848 Pleasant Woods Court
Gahanna, Ohio 43230
(R.Ph. No. 03-2-19409)

This Settlement Agreement is entered into by and between Mary Elizabeth Starr 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.

Mary Elizabeth Starr 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.

Mary Elizabeth Starr is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against her and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Mary Elizabeth Starr's license to practice pharmacy in the state of Ohio, 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 4729.16 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) Mary Elizabeth Starr neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
- (1) Records of the Board indicate that Mary Elizabeth Starr was originally licensed to practice pharmacy in the state of Ohio on July 30, 1992. However, on or about September 9, 1997, the Board determined that there was clear and convincing evidence that the continuation of Mary Elizabeth Starr's professional practice and/or her method of distributing controlled substances presented a danger of immediate and serious harm to others and her license was suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
 - (2) Mary Elizabeth Starr is addicted to or abusing controlled substances to such a degree as to render her unfit to practice pharmacy within the meaning of Sections 3719.121 and 4729.16 of the Ohio Revised Code, to wit: Mary Elizabeth Starr admitted ingesting Promethazine with Codeine Syrup while practicing pharmacy; Mary Elizabeth Starr admittedly stole drugs for her own personal abuse without prescriptions from practitioners; and, Mary Elizabeth Starr admitted being "psychologically addicted".
 - (3) Mary Elizabeth Starr did, on August 13, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Big Bear Pharmacy #225, 3811 South High Street, Columbus, Ohio, beyond the express or implied consent of the owner and/or by deception, to wit: Mary Elizabeth Starr stole 383ml of Promethazine with Codeine Syrup for personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
 - (4) Mary Elizabeth Starr did, from October, 1996, through August 13, 1997, knowingly obtain or use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mary Elizabeth Starr admitted to an agent of the Ohio Board of Pharmacy that she began self-medication for the treatment of panic, anxiety and severe hypertension; that Mary Elizabeth Starr ingested 33ml of Promethazine with Codeine Syrup on August 13, 1997; and that Mary Elizabeth Starr has ingested additional quantities of Promethazine with Codeine Syrup on other dates without a prescription. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
 - (5) Mary Elizabeth Starr did, on or about August 13, 1997, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mary Elizabeth Starr was found to have in her possession the following controlled substances:

<u>Drug</u>	<u>Quantity</u>
Klonopin 2mg	10 tablets
Xanax 1mg	1 tablet
Fioricet with Codeine #3	1 capsule
Promethazine w/Codeine Syrup	350 ml

Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (6) Mary Elizabeth Starr did, from April 10, 1996, through August 12, 1997, knowingly obtain or exert control over dangerous drugs, the property of Big Bear Pharmacy #225, 3811 S. High St., Columbus, Ohio, beyond the

express or implied consent of the owner and/or by deception, to wit: Mary Elizabeth Starr stole 31,915ml of Promethazine with Codeine Syrup for personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Administrative Code.

- (7) Mary Elizabeth Starr did, from April 10, 1996, through August 12, 1997, knowingly obtain or exert control over dangerous drugs, the property of Big Bear Pharmacy #225, 3811 S. High Street, Columbus, Ohio, beyond the express or implied consent of the owner and/or by deception, to wit: Mary Elizabeth Starr stole 767 unit doses of Xanax 1mg for personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (8) Mary Elizabeth Starr did, from April 10, 1996, through August 12, 1997, knowingly obtain or exert control over dangerous drugs, the property of Big Bear Pharmacy #225, 3811 S. High Street, Columbus, Ohio, beyond the express or implied consent of the owner and/or by deception, to wit: Mary Elizabeth Starr stole 170 unit doses of Klonopin 2mg for personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (9) Mary Elizabeth Starr did, from April 10, 1996, through August 12, 1997, knowingly obtain or exert control over dangerous drugs, the property of Big Bear Pharmacy #225, 3811 S. High St., Columbus, Ohio, beyond the express or implied consent of the owner and/or by deception, to wit: Mary Elizabeth Starr stole 9 unit doses of Fioricet with Codeine #3 for personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Mary Elizabeth Starr knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The removal of the Summary Suspension Order issued September 9, 1997, pursuant to Section 3719.121(B) of the Ohio Revised Code.
- (B) The indefinite suspension of her pharmacist identification card, No. 03-2-19409.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Mary Elizabeth Starr 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.
 - (2) Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return her 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.
- (C) On September 9, 1998, or thereafter, the Board will consider any petition filed by Mary Elizabeth Starr for a hearing, pursuant to Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of her license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Mary Elizabeth Starr must successfully complete her rehabilitation program through Parkside Hospital.
 - (2) Mary Elizabeth Starr must continue and abide by her contract with Pharmacist's Rehabilitation Organization, or 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 Agreement 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 sample must be given within twelve hours of notification. The urine drug screen must report testing for alcohol and must also report 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; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.
- (3) Mary Elizabeth Starr upon petitioning the Board for reinstatement, must provide evidence of at least one year of documented sobriety including:
- (a) the results of an examination of her chemical dependency status including a proposed treatment plan;
 - (b) testimonials from support group personnel as well as friends and/or family;
 - (c) all contract(s) with treatment providers and written documentation from the treatment provider(s) regarding compliance with the program(s);
 - (d) copies of all urine screen reports; and
 - (e) all records of treatment and attendance slips of AA, NA, or similar meetings.

Mary Elizabeth Starr 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.

Mary Elizabeth Starr waives any and all claims or causes of action she may have 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. Mary Elizabeth Starr waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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. Mary Elizabeth Starr 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 date of the Board President's signature below.

/s/ Mary E. Starr
Mary Elizabeth Starr, Respondent

/d/ 3/3/98
Date of Signature

/s/ Daniel D Connor
Daniel D. Connor, Attorney for Respondent

/d/ 3-3-98
Date of Signature

/s/ Amonte B. Littlejohn
Amonte B. Littlejohn, President, Ohio State Board of Pharmacy

/d/ 3/9/98
Date of Signature

/s/ Sally Ann Steuk
Sally Ann Steuk, Ohio Assistant Attorney General

/d/ 3/9/98
Date of Signature

Staff announced that reservations have been confirmed and that the July 1998 Board meeting will be held in Mason, Ohio at the Kings Island Inn and Conference Center. The meeting of the Directors of Pharmacy Operations for corporations operating retail pharmacies in Ohio has been scheduled for Tuesday afternoon - May 5, 1998 in Room 1919 at 1:30 p.m.

10:15 a.m.

Board member Diane Adelman, R.Ph. arrived and joined the Board.

Mr. Repke and Mr. Benedict reported on their participation in the "Forum on the Regulatory Management of Chemically Dependent Health Care Practitioners" held March 5-6, 1998 in Washington, D.C. The forum was convened by The Citizen Advocacy Center located in Washington, D.C. Concern was expressed by both Mr. Repke and Mr. Benedict about the emphasis of many of the participants on the well-being of the impaired health care practitioner rather than on the protection of the public.

The Executive Director reported that a meeting was held with the new Chancellor of the Board of Regents - Mr. Roderick G. W. Chu on Wednesday afternoon, February 11, 1998. Participating in the meeting were: Ernest Boyd, Executive Director of the Ohio Pharmacists Association; Dr. Kurt A. Proctor, Senior Vice President of the National Association of Chain Drug Stores; and the Executive Director of the Ohio Board of Pharmacy. The purpose of the meeting was to discuss the decision of the Board of Regents in 1992 that the Ohio Colleges of Pharmacy could only implement programs leading to the Pharm.D. degree that were seven years in length.

Mr. Hanna reported that the next meeting of the Nursing Board's Formulary Committee will be held March 23, 1998.

Tim Benedict reported on the status of the Medical Board proposals to revise the Ohio Administrative Code rules regarding weight management (4731-11-01; 4731-11-03; 4731-11-04). The proposals were discussed and concerns identified by Board members for staff to include in their testimony at the public hearing.

RES. 98-150

Mr. Lamping discussed a "Prescription Change Authorization" form which he had received at his pharmacy from a patient. The form was mailed to the patient by PAID Prescriptions and authorized the switching of the patient's medication from Mevacor Tabs to Zocor Tabs, 20mg. Following discussion, the Board directed staff to discuss in the next State Board Newsletter the fact that these forms may only be considered to be "for information purposes only" and that they are not in fact a legal authorization for a new prescription. The article is to stress the fact that the new drug is not to be dispensed until the pharmacist has spoken with the prescriber and obtained a new prescription.

11:17 a.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the investigation of charges and complaints against licensees and registrants. The motion was seconded by Mr. Maslak and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

11:25 a.m.

The Board recessed the Executive Session in order to obtain lunch.

- 1:00 p.m. Board member Robert Cavendish, R.Ph. arrived.
- 1:18 p.m. The Board members reconvened in Room 1914 and the Executive Session resumed.
- 1:50 p.m.
RES. 98-151 The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board deny the request of Martin Barron, R.Ph. that his Adjudication Order be modified. The motion was seconded by Mr. Hanna and approved (Aye-6/Nay-0/-Abstain-2[Adelman, Cavendish]).
- 1:55 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of Joy Egbosimba Moneme, R.Ph. pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.
- 3:08 p.m. All evidence and testimony having been entered into the record, the hearing was concluded and the record closed. The Board recessed the meeting for fifteen minutes.
- 3:37 p.m.
RES. 98-152 The Board reconvened and was joined by Tim Benedict to present the request of Tom Arkwright, R.Ph. 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 R.Ph. Arkwright's request to serve as the responsible pharmacist for the MedCentral Health System/Crestline Hospital (02-0975700) and MedCentral Health System/Mansfield Hospital (02-0031050) for ninety days. The motion was seconded by Mrs. Plant and approved (Aye-8/Nay-0).
- 3:42 p.m. Mr. Lamping moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matter of Joy Egbosimba Moneme, R.Ph. The motion was seconded by Mr. Hanna and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.
- 4:15 p.m.
RES. 98-153 The Executive Session was concluded and the meeting opened to the public. Mrs. Adelman moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-971218-027)

In The Matter Of:

JOY EGBOSIMBA MONEME, R.Ph.
194 Cottswold Drive
Delaware, Ohio 43015
(R.Ph. No. 03-3-14505)

INTRODUCTION

THE MATTER OF JOY EGBOSIMBA MONEME CAME TO HEARING ON FEBRUARY 9, 1998, 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.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOY EGBOSIMBA MONEME WAS REPRESENTED BY JANICE K. VAN DYNE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed, Ohio State Board of Pharmacy
- (2) Nancy L. Little, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Joy Egbosimba Moneme, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated December 18, 1997.
- (2) Exhibit 1A--Notice of Appearance and Request for Hearing received in the Board office on January 7, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 8, 1998.
- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Joy (Ifeoma) Egbosimba Moneme showing original date of registration as March 5, 1982.
- (5) Exhibit 2--Copy of Renewal Application for Pharmacist License, No. 03-3-14505, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Joy Egbosimba Moneme dated September 22, 1997.
- (6) Exhibit 3--Certified copy of Judgment Entry in the Delaware Municipal Court, State of Ohio vs. Joy E. Moneme, Case No. 97CRB01835, dated November 20, 1997.
- (7) Exhibit 4--Prescription number 3164-848553.
- (8) Exhibit 5--Handwritten statement of Joy E. Moneme signed and notarized on October 24, 1997.
- (9) Exhibit 6--Prescription number 3164-848563.
- (10) Exhibit 7--Prescription number 3164-848570.
- (11) Exhibit 8--Prescription number 3164-848595.
- (12) Exhibit 9--Copy of six-page Incoming Calls Log dated September 18, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of front and back of cancelled check, No. 1989, made payable to the order of Delaware Municipal Court, by Joy Moneme dated November 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 Joy Egbosimba Moneme was originally licensed in the state of Ohio on March 5, 1982, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Joy Egbosimba Moneme did, on or about September 19, 1997, while not being a registered pharmacist or pharmacy intern under the personal supervision of a registered pharmacist, dispense or sell dangerous drugs, to wit: after failing to renew her license to practice pharmacy, and after having been told by a Board of Pharmacy employee that she could not practice pharmacy without a current license to do so, Joy Egbosimba Moneme dispensed 15 unit doses of Hydrocodone with APAP 5/500 pursuant to prescription number 3164-848553. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

- (3) Joy Egbosimba Moneme did, on or about September 19, 1997, while not being a registered pharmacist or pharmacy intern under the personal supervision of a registered pharmacist, dispense or sell dangerous drugs, to wit: after failing to renew her license to practice pharmacy, and after having been told by a Board of Pharmacy employee that she could not practice pharmacy without a current license to do so, Joy Egbosimba Moneme dispensed 10 unit doses of Hydrocodone with APAP 5/500 pursuant to prescription number 3164-848563. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (4) Joy Egbosimba Moneme did, on or about September 20, 1997, while not being a registered pharmacist or pharmacy intern under the personal supervision of a registered pharmacist, dispense or sell dangerous drugs, to wit: after failing to renew her license to practice pharmacy, and after having been told by a Board of Pharmacy employee that she could not practice pharmacy without a current license to do so, Joy Egbosimba Moneme dispensed 24 unit doses of APAP with Codeine #3 pursuant to prescription number 3164-848570. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (5) Joy Egbosimba Moneme did, on or about September 20, 1997, while not being a registered pharmacist or pharmacy intern under the personal supervision of a registered pharmacist, dispense or sell dangerous drugs, to wit: after failing to renew her license to practice pharmacy, and after having been told by a Board of Pharmacy employee that she could not practice pharmacy without a current license to do so, Joy Egbosimba Moneme dispensed 30 unit doses of Hydrocodone with APAP 5/500 pursuant to prescription number 3164-848595. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (6) Joy Egbosimba Moneme was found guilty, on or about November 20, 1997, of Unlawful Selling of Drugs in violation of Section 4729.28 of the Ohio Revised Code, a misdemeanor of the third degree, in the Delaware Municipal Court, State of Ohio vs. Joy E. Moneme, Case No 97CR01835.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) 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 paragraph (6) of the Findings of Fact constitutes being convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) 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 paragraphs (2) through (5) 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 Chapter 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joy Egbosimba Moneme:

- (A) On the basis of the Findings of Fact and paragraphs (1) and (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-3-14505, of Joy Egbosimba Moneme on probation for three years, effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (1) Joy Egbosimba Moneme must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (2) Joy Egbosimba Moneme must abide by the rules of the Ohio State Board of Pharmacy.
- (3) Joy Egbosimba Moneme 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 (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) 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.

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

MOTION CARRIED.

SO ORDERED.

Mr. Cavendish seconded the motion and it was approved (Aye-5/Nay-3).

RES. 98-154 The Board then considered the State Board Newsletter Letter of Agreement for 1998-1999. Mrs. Plant moved that the agreement be approved by the Board. The motion was seconded by Mrs. Neuber and approved (Aye-8/Nay-0).

The Board then discussed Kmart's patient compliance program. Staff was directed to draft a Cease and Desist letter for approval by the Board.

RES. 98-155 The Board was joined by Compliance Specialist Mark Keeley, R.Ph. and the following citation presented by the Board:

RESOLUTION OF THE BOARD

WHEREAS, the investigative and analytical efforts of Mark S. Keeley, R.Ph., a Compliance Specialist with the Ohio State Board of Pharmacy, directly led to the conviction of an individual who took the lives of two innocent persons by committing aggravated vehicular homicide; and

WHEREAS, the efforts of Mark S. Keeley, R.Ph. brought praise and acclaim upon this Board from the Cuyahoga County Prosecuting Attorney's Office; and

WHEREAS, Mark S. Keeley, R.Ph. demonstrated professionalism in carrying out the responsibilities of his position by using his insight, assertiveness, and research and analytical skill; and

WHEREAS, Mark S. Keeley, R.Ph. put forth extraordinary effort and dedication to duty exerted during a time in which he was already fully engaged in other Board duties; therefore

BE IT RESOLVED that we, the undersigned Members of the Ohio State Board of Pharmacy, in its one hundred and thirteenth year, do hereby express our profound appreciation to Board Compliance Specialist Mark S. Keeley, R.Ph. for his dedication and service to the Board and the citizens of Ohio, and

BE IT FURTHER RESOLVED, that this resolution be spread upon the permanent minutes of the Ohio State Board of Pharmacy and a copy presented to:

Mark S. Keeley, R.Ph.

4:33 p.m. The Board recessed the meeting until Tuesday, March 10, 1998 at 9:00 a.m.

TUESDAY, MARCH 10, 1998

9:18 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:

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.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of P. J. McNerney & Associates' application for a wholesale distributor of dangerous drugs license pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

9:30 a.m.

Board Member Amonte Littlejohn, R.Ph. arrived and joined the meeting.

9:51 a.m.

All evidence and testimony having been entered into the record, the hearing was concluded and the record closed. The Board recessed the meeting for twenty minutes

10:12 a.m.

Mr. Lamping 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. Repke and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

10:20 a.m.

RES. 98-156

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-980122-031)

In The Matter Of:

P. J. McNERNEY AND ASSOCIATES, INC.

Patrick J. McNerney, President
440 Northland Boulevard
Cincinnati, Ohio 45240

INTRODUCTION

THE MATTER OF P. J. McNERNEY AND ASSOCIATES, INC. CAME TO HEARING ON MARCH 10, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

P. J. McNERNEY AND ASSOCIATES, INC. WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Patrick J. McNerney; P. J. McNerney & Associates, Inc.

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Proposal to Deny/Notice of Opportunity for Hearing letter dated January 22, 1998.
- (2) Exhibit 1A--Copy of Hearing Request letter dated January 26, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 28, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated January 30, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated February 26, 1998.
- (6) Exhibit 2--Copy of two-page Application for Registration as a Wholesale Distributor of Dangerous Drugs of P. J. McNerney and Associates, Inc. received in the Board office on January 9, 1998, with the following attachments: copy of Corporation Certification of Good Standing dated June 19, 1995; and copy of Record of charges, convictions and fines imposed.

Respondent's Exhibits:

- (1) Exhibit A--Copy of P. J. McNerney and Associates, Inc. Application for Employment; and copy of letter from Michael Games dated February 18, 1998, with attached P. J. McNerney and Associates, Inc. Record of charges, convictions, and fines imposed form.

FINDING OF FACT

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

- (1) The applicant has assured that adequate safeguards are in place to prevent the sale or other distribution of dangerous drugs by any person other than those named in Division (B) of Section 4729.51 of the Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.53 of the Ohio Revised Code, and the foregoing Finding of Fact, the State Board of Pharmacy hereby grants the issuance of a registration certificate, and thereby approves the Application for Registration as a Wholesale Distributor of Dangerous Drugs of P. J. McNerney and Associates, Inc.

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-7/Nay-0).

RES. 98-157 Mr. Lamping then moved that the Board adopt proposed amended rule 4729-1-01 as follows with an effective date of April 1, 1998:

4729-1-01 Public hearing notice OF HEARING TO CONSIDER PROPOSED RULE CHANGES.

(A) Reasonable public notice, as required by section 119.03 of the Revised Code, shall be as follows:

- (A) (1) ~~The board shall give public notice at least thirty days prior to the date set for the public hearing by~~ BY advertising such notice, ONE TIME, in at least one newspaper of general circulation in the state of Ohio AT LEAST THIRTY DAYS PRIOR TO THE DATE SET FOR THE PUBLIC HEARING. ~~Such notice shall include:~~
- (1) ~~A statement of the board's intention to consider the adoption, amendment, or rescission of a rule;~~
- (2) ~~A synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates;~~ BY MAILING OR FAXING SUCH NOTICE, ONE TIME, TO ALL SUBSCRIBERS ON THE BOARD'S SUNSHINE NOTICE MAILING LIST AT LEAST THIRTY DAYS PRIOR TO THE DATE SET FOR THE PUBLIC HEARING.
- (3) ~~A statement of the reason or purpose for adopting, amending, or rescinding the rule;~~ BY MAILING OR FAXING SUCH NOTICE, ONE TIME, TO ALL PERSONS WHO HAVE REQUESTED THE BOARD TO PROVIDE NOTIFICATION OF ANY PROPOSED RULE CHANGES AT LEAST THIRTY DAYS PRIOR TO THE DATE SET FOR THE PUBLIC HEARING.
- (4) ~~The date, time, and place of the hearing on the proposed action.~~ BY PLACING SUCH NOTICE ON THE BOARD'S WORLD WIDE WEB HOME PAGE AT LEAST THIRTY DAYS PRIOR TO THE DATE SET FOR THE PUBLIC HEARING, AND REMAINING THERE UNTIL THE PUBLIC HEARING RECORD IS CLOSED.

(B) The board shall furnish the ~~public notice required under section 119.03 of the Revised Code and as described in paragraph (A) of this rule~~ FULL TEXT OF THE PROPOSED RULES AS FOLLOWS:

- (1) BY MAILING to any person who requests SUCH in writing a copy of such notice and who pays a reasonable fee, ~~not to exceed~~ the cost of copying and mailing.
- (2) BY POSTING ON THE BOARD'S WORLD WIDE WEB HOME PAGE AND REMAINING THERE UNTIL THE PUBLIC HEARING RECORD IS CLOSED.

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

RES. 98-158 The Board then considered the renewal application of pharmacy intern Mariane Letargo (06-0-01337). Following discussion and a review of the Board records, Mrs. Plant moved that the Board approve the application for renewal. The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

10:47 a.m.

RES. 98-159 Jeff Gibbs, Esq. of Hyman, Phelps & McNamara; and Mark Waldman (Marketing Manager) and Tony Martino (Quality Assurance) for Vital Signs, 20 Campus Road, Totowa, New Jersey joined the Board for the purpose of discussing the company's product marketed as "Vasceze". The Board was informed that the product has been classified as a "device" by the federal Food and Drug Administration (FDA) even though it contains the dangerous drug Heparin. The Board noted that Heparin is a drug as defined in Ohio Revised Code Chapter 3715. and a dangerous drug as defined in Ohio Revised Code Chapter 4729. due to the fact that it is a "drug intended for administration by injection into the human body other than through a natural orifice of the human body". The federal law regulating the sale of medical devices bearing the FDA legend has no meaning in Ohio since the law is not enforced by the federal government and products bearing the federal device legend are sold and purchased by anyone without the order of a physician. This is not the case with dangerous drugs. Laws governing the legal distribution of dangerous drugs in Ohio are enforced by local drug law enforcement agencies and the Ohio Board of Pharmacy. The

presentation was concluded and the Board directed staff to determine whether or not any case law on point was available for their consideration prior to making a decision regarding the sale of this product in Ohio.

11:23 a.m.

The meeting was recessed for lunch.

12:00 p.m.

Board member John Hanna arrived.

1:00 p.m.

RES. 98-160

The State Board of Pharmacy reconvened, with all members present, in Room 1919, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio for the purpose of meeting with the following candidates for licensure by reciprocity:

BASTONE, MICHAEL B.	03-1-22855	ILLINOIS
CHRISTIANSEN, ANN M.	03-1-22743	NEW JERSEY
DANIELS, KENNETH D.	03-1-22612	IOWA
FREDERICK, RYAN L.	03-1-22846	ARIZONA
HOOGLAND, DENNIS R.	03-1-22857	MINNESOTA
PARKE, LARRY S.	03-1-22853	ILLINOIS
PFEIFFER, FREDERICK G.		MISSOURI
PROSSER, RODNEY W.	03-1-22856	ARIZONA
PRUSIK, THOMAS J.	03-1-22858	NEW YORK
SHANK, JULIENNE R.	03-1-22860	DELAWARE
YASGUR, JAY A.	03-1-22862	PENNSYLVANIA

1:38 p.m.

Mr. Cavendish moved that the candidates be approved and their licenses to practice pharmacy in Ohio be issued, with the exception of Frederick G. Pfeiffer whose license will be issued pending receipt and approval of his original Official Application. The motion was seconded by Mr. Lamping and approved (Aye-8/Nay-0).

1:40 p.m.

The Board reconvened in Room 1914 and was joined by the Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of Rodney Allen Keller, R.Ph. pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

4:05 p.m.

The hearing was recessed for 60 minutes and the Board members moved to Room 1919 for the purpose of attending a presentation by Dr. Alan Escovitz regarding the Council of Ohio Colleges of Pharmacy's Non-traditional Pharm.D. degree program on the Internet. Board members Paul Lamping and Joseph Maslak excused themselves and left due to personal business commitments.

5:17 p.m.

The hearing was reconvened without the two Board members who excused themselves from further participation in the meeting (Lamping and Maslak).

7:38 p.m.

The hearing was concluded and the record closed. The meeting was recessed until Wednesday, March 11, 1998, at 8:00 a.m.

WEDNESDAY, MARCH 11, 1998

8:20 a.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); Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; Robert Cavendish, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

8:22 a.m.

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

9:01 a.m.

RES. 98-161

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 Nos. D-971124-022 and D-980210-040)

In The Matter Of:

RODNEY ALLEN KELLER, R.Ph.

37 Schonhardt Street
Tiffin, Ohio 44483
(R.Ph. No. 03-2-16459)

INTRODUCTION

THE MATTER OF RODNEY ALLEN KELLER CAME TO HEARING ON MARCH 10, 1998, 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.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RODNEY ALLEN KELLER WAS REPRESENTED BY ELSEBETH M. BAUMGARTNER AND MARY BETH CIOCCO, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Kevin J. Kinneer, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Rodney Allen Keller, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of five-page Notice of Opportunity for Hearing letter dated November 24, 1997.
- (2) Exhibit 1A--Copy of Hearing Request letter dated December 23, 1997.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 30, 1998.
- (4) Exhibit 1C--Copy of three-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated February 10, 1998.
- (5) Exhibit 1D--Copy of Pharmacist File Front Sheet of Rodney Allen Keller showing original date of registration as August 6, 1986, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-16459, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Rodney Allen Keller dated August 8, 1997.
- (6) Exhibit 2--Copies of four Daily Audit Listing reports of The Pharm #924 dated as follows: December 24, 1995; January 25, 1996; February 22, 1996; and April 18, 1996.
- (7) Exhibit 3--Copy of prescriptions numbered 4401663 and 4401664.
- (8) Exhibit 4--Copy of The Pharm #924 Medical Expenses report for Richard Keller dated from January 1, 1995, to July 30, 1996.

- (9) Exhibit 5--Copy of four-page statement of Rodney Keller signed and notarized on December 10, 1996.
- (10) Exhibit 5A--Copy of four-page statement of Jeffrey A. Biro, D.O. signed and notarized on August 9, 1996.
- (11) Exhibit 6--Copy of prescription number 6609824.
- (12) Exhibit 7--Copy of prescription number 6609272.
- (13) Exhibit 8--Copy of prescription number 6609710.
- (14) Exhibit 9--Copy of prescriptions numbered 6609822, 6609823, and 8800264.
- (15) Exhibit 10--Copy of prescription number 8800318.
- (16) Exhibit 11--Copy of prescription number 6610075.
- (17) Exhibit 11A--Copy of The Pharm #924 Medical Expenses report for Joann Keller dated from January 1, 1995, to July 30, 1996.
- (18) Exhibit 11B--Copy of four-page statement of Bhaskar Vourganti, M.D. signed and notarized on November 21, 1996.
- (19) Exhibit 12--Copy of prescriptions numbered 6609331, 6609332, and 6609333.
- (20) Exhibit 13--Copy of prescription number 6611405.
- (21) Exhibit 14--Copy of prescription number 6614016.
- (22) Exhibit 15--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Talwin NX dated January 12, 1995.
- (23) Exhibit 16--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Oxycodone/ASA dated January 12, 1995.
- (24) Exhibit 17--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Percocet dated January 12, 1995.
- (25) Exhibit 18--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Demerol 50mg dated January 12, 1995.
- (26) Exhibit 19--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 2mg dated January 12, 1995.
- (27) Exhibit 20--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 5mg dated January 12, 1995.
- (28) Exhibit 21--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Valium 5mg dated January 12, 1995.
- (29) Exhibit 22--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 10mg dated January 12, 1995.
- (30) Exhibit 23--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Demerol HCl 50mg/5ml syrup dated October 18, 1996.
- (31) Exhibit 24--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Demerol 50mg dated January 12, 1995.
- (32) Exhibit 25--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Roxicet 5/325mg dated October 18, 1996.
- (33) Exhibit 26--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Percocet dated October 18, 1996.
- (34) Exhibit 26 (Corrected)--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Percocet dated October 18, 1996.
- (35) Exhibit 27--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Lorcet Plus dated October 18, 1996.
- (36) Exhibit 28--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Lorcet 10/650mg dated October 18, 1996.
- (37) Exhibit 29--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Hydrocodone/APAP 5/500 dated October 18, 1996.
- (38) Exhibit 30--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Vicodin dated January 12, 1995.
- (39) Exhibit 31--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Diazepam 10mg dated January 12, 1995.
- (40) Exhibit 32--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Diazepam 5mg dated January 12, 1995.
- (41) Exhibit 33--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Valium 10mg dated January 12, 1995.
- (42) Exhibit 34--Copy of two-page handwritten statement of Joni R. Smith signed and notarized on September 18, 1996.
- (43) Exhibit 35--Copy of letter to Lucy from Rod dated April 10, 1996.
- (44) Exhibit 36--Partial copy of a cash register tape dated May 20, 1996.

- (45) Exhibit 37--Two-page copy of Judgment Entry in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller, Case No. 97 CR-0097, dated January 21, 1998.

Respondent's Exhibits:

- (1) Exhibit 1--Copy of Two Count Indictment in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller dated November 10, 1997.
- (2) Exhibit 3--Copy of letter from Hope M. Sweeney and S. Renee Gerome dated March 9, 1998.
- (3) Exhibit 4--Copy of twenty-four-page Report of Investigation of Kevin J. Kinneer regarding Rodney Allen Keller, Case No. 96-1738, dated December 30, 1996.

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 Rodney Allen Keller was originally licensed in the state of Ohio on August 6, 1986. However, on or about February 10, 1998, Rodney Allen Keller's license to practice pharmacy in the state of Ohio was summarily suspended pursuant to Section 3719.121(C) of the Ohio Revised Code.
- (2) Rodney Allen Keller did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Rodney Allen Keller sold the following drugs to his father on the following occasions without having valid prescriptions:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
4401664	12-23-95	Ambien 10mg	35
4401664	01-24-96	Ambien 10mg	35
4401664	02-21-96	Ambien 10mg	35
4401664	04-17-96	Ambien 10mg	35

Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

- (3) Rodney Allen Keller did, on or about December 23, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: Rodney Allen Keller created and possessed on file in the pharmacy a document assigned prescription number 4401664 purporting to be a prescription so as to cover for his sale of the drugs on four separate occasions. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Rodney Allen Keller did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Rodney Allen Keller created the following documents purporting to be prescriptions to cover for the sales of the drugs to his father when the drugs had not been prescribed:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6609824	11-06-95	Quinine Sulfate 260mg	30
6609272	10-11-95	Zocor 20mg	30
6609710	11-01-95	Feldene 20mg	35
6609822	11-06-95	Desyrel 150mg	30
8800264	11-06-95	Zostrix 0.25%	90gm
8800318	01-24-96	Zostrix 0.25%	90gm
6609823	11-06-95	Norgesic Forte	50

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

- (5) Rodney Allen Keller did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Rodney Allen Keller created the following

documents purporting to be prescriptions to cover for the sales of the drugs to his mother when the drugs had not been prescribed:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6610075	11-16-95	Hemorrhoid HC 25mg	24ml
6609332	11-21-95	Carafate 1mg	100
6611405	04-14-96	Premarin 0.25mg	100
6614016	05-10-96	Reglan 10mg	100

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

- (6) Rodney Allen Keller did, on or about January 20, 1998, plead guilty to Theft (Dangerous Drugs) in violation of Section 2913.02 of the Ohio Revised Code, a fourth degree felony, and to Illegal Processing of Drug Documents in violation of Section 2925.23 of the Ohio Revised Code, a fourth degree felony, in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller, Case No. 97 CR-0097.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) 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 (5) 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) 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 Chapter 2925. or 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 February 10, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Rodney Allen Keller:

- (A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends, for a minimum of six months, the pharmacist identification card, No. 03-2-16459, held by Rodney Allen Keller and such suspension is effective as of the date of the mailing of this Order.
- (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Rodney Allen Keller may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is under suspension.
- (2) Six months after the effective date of this Order, the Board will reinstate Rodney Allen Keller's license to practice pharmacy in Ohio provided that he takes and successfully completes the Jurisprudence Examination offered by the Board prior to that date. If Rodney Allen Keller has not successfully completed the examination prior to six months from the effective date of this Order, his license will remain under suspension until this condition has been achieved.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "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 notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

(B) From the date of reinstatement, Rodney Allen Keller's pharmacist identification card, No. 03-2-16459, will be placed on probation for five years. The terms of probation are as follows:

- (1) The State Board of Pharmacy hereby declares that Rodney Allen Keller's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Rodney Allen Keller may not serve as a responsible pharmacist.
- (3) Rodney Allen Keller must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Rodney Allen Keller must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Rodney Allen Keller 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.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Neuber and approved (Aye-4/Nay-1/Abstain-1[Maslak]).

Mrs. Neuber moved that the Minutes of the February 9, 10, 11, 1998 meeting be approved. The motion was seconded by Mr. Cavendish and approved (Aye-5/Nay-0/Abstain-1[Adelman]).

RES. 98-162 Tim Benedict presented a request from Toby Silhavy, R.Ph. for Board approval to serve as the responsible pharmacist at the same time for two terminal distributor of dangerous drugs licenses. Following discussion, Mr. Maslak moved that the Board approve R.Ph. Silhavy's request to serve as the responsible pharmacist for Brown County General Hospital (02-0033100) and Brown County General Hospital Diversified Services (02-0936750) for one year. The motion was seconded by Mrs. Neuber and approved (Aye-6/Nay-0).

RES. 98-163 Mr. Repke presented the meeting announcement for the 47th Annual Session of the University of Utah School on Alcoholism and Other Drug Dependencies. The meeting is to be held June 14-19, 1998 in Salt Lake City. Mr. Repke discussed the value of having a board member attend the school to learn more about the drug dependent health professional. Mr. Repke moved that the Board approve the attendance of a Board member at the school and that the Board member be reimbursed for all expenses pursuant to state law and Office of Budget and Management rules. The motion was seconded by Mr. Cavendish and approved (Aye-6/Nay-0).

9:13 a.m.

The meeting was recessed for ten minutes. Board member John Hanna arrived to participate in the remainder of the meeting.

9:24 a.m.

The meeting was reconvened and the Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting a reinstatement hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Ralph Lee LeVange, R.Ph.

10:41 a.m.

The reinstatement hearing was concluded and the record closed. 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. Maslak and a roll call vote was conducted by President Littlejohn as follows: Adelman-Yes, Cavendish-Yes, Hanna-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

11:25 a.m.

RES. 98-164

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

NOTE: *The following amended Order was approved at the Board meeting on April 6, 1998.*

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-971223-029)

In The Matter Of:

RALPH LEE LeVANGE, R.Ph.

200 W. Adams

P.O. Box 353

Danforth, Illinois 60930

(R.Ph. No. 03-1-12771)

INTRODUCTION

THE MATTER OF RALPH LEE LeVANGE CAME TO HEARING ON MARCH 11, 1998, 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.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RALPH LEE LeVANGE WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joseph Holliday, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Ralph Lee LeVange, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1A--Hearing Request letter dated December 17, 1997.
- (2) Exhibit 1B--Copy of Hearing Schedule letter dated December 23, 1997.
- (3) Exhibit 2--Copy of ten-page Settlement Agreement with the Ohio State Board of Pharmacy, Docket No. D-960730-004, in the matter of Ralph Lee LeVange, made effective on April 21, 1997.
- (4) Exhibit 3--Copy of two-page letter from J. D. Cash dated February 1, 1989, with attached copy of Exhibit A, Recap of Prescription Hard Copies Unable To Be Located and Recap of Prescription Claims Prepared by "PMO."

- (5) Exhibit 4A--Notarized letter of Stephen N. Buffington dated April 19, 1990.
- (6) Exhibit 4B--Notarized letter of Robert N. Downer dated April 10, 1990.
- (7) Exhibit 4C--Notarized letter of Gerald A. Dysert dated June 5, 1989.
- (8) Exhibit 4D--Notarized letter of Kevin A. Horvath dated April 9, 1990.
- (9) Exhibit 4E--Notarized letter of Stephen B. Levitt dated May 30, 1989.
- (10) Exhibit 4F--Letter from Bruce Nordquist dated December 5, 1988.
- (11) Exhibit 4G--Notarized letter from Bruce Nordquist dated June 5, 1989.
- (12) Exhibit 4H--Notarized letter from Cyrus Rahimi dated May 20, 1990.
- (13) Exhibit 5--Copy of Kmart Corporation Loss Prevention Department Statement Form of Ralph LeVange dated December 23, 1988.
- (14) Exhibit 6A--Copy of Indictment in the Miami County Common Pleas Court, State of Ohio vs. Ralph LeVange, Case No. 90CR111, dated June 6, 1990.
- (15) Exhibit 6B--Certified copy of Journal Entry in the Miami County Municipal Court, State of Ohio vs. Ralph LeVange dated February 11, 1998.
- (16) Exhibit 7--Letter from D. A. Vandercher dated February 13, 1998.
- (17) Exhibit 8--Letter from D. A. Vandercher dated March 5, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Ralph LeVange, not dated.

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) Ralph Lee LeVange has complied with the terms of his Settlement Agreement with the State Board of Pharmacy, Docket No. D-960730-004.

ACTION OF THE BOARD

The State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card of Ralph Lee LeVange to practice pharmacy in the state of Ohio with the following conditions:

- (A) Prior to the identification card to practice pharmacy in the state of Ohio being issued, Ralph Lee LeVange must provide evidence that restitution will be made to Kmart Corporation.
- (B) Upon the issuance of his identification card, Ralph Lee LeVange will be placed on probation for five years. The terms of probation are as follows:
 - (1) Ralph Lee LeVange must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (2) Ralph Lee LeVange must abide by the rules of the Ohio State Board of Pharmacy.
 - (3) Ralph Lee LeVange must comply with the terms of this Order.
 - (4) Ralph Lee LeVange must comply with the terms of the agreement with Kmart Corporation dated March 27, 1998.

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 Mrs. Adelman and approved (Aye-7/Nay-0).

RES. 98-165 Staff reported that the following settlements had been entered into by the Board in the following matters:

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-971024-017)

In The Matter Of:

BRENT DOUGLAS SALISBURY, R.Ph.

4587 Turney Road

Madison, Ohio 44507

(R.Ph. No. 03-1-20580)

This Settlement Agreement is entered into by and between Brent Douglas Salisbury 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.

Brent Douglas Salisbury 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.

Brent Douglas Salisbury is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against Brent Douglas Salisbury and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Brent Douglas Salisbury's license to practice pharmacy in the state of Ohio, 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 4729.16 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) Brent Douglas Salisbury neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Brent Douglas Salisbury was originally licensed in the state of Ohio on November 2, 1994, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, Brent Douglas Salisbury is presently employed as a pharmacist at Revco Discount Drug Center #3169, 170 East Main Street, Geneva, Ohio.
 - (2) Brent Douglas Salisbury did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Brent Douglas Salisbury sold 28 units of Adipex-P 37.5mg for diet to patient #1 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, thereby engaging in unprofessional conduct:

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
036498	01/27/96	01/30/96
039302	03/01/96	03/03/96
041320	03/25/96	03/27/96
043744	04/27/96	04/27/96
049646	07/20/96	07/20/96
054702	09/28/96	09/28/96
056876	10/26/96	10/27/96
061429	12/21/96	12/21/96
063749	01/18/97	01/18/97

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

- (3) Brent Douglas Salisbury did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Brent Douglas Salisbury sold 28 units of Adipex-P 37.5mg for diet to patient #2 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, thereby engaging in unprofessional conduct.

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
036500	01/27/96	01/30/96
039300	03/01/96	03/03/96
041321	03/23/96	03/27/96
043741	04/27/96	04/27/96
049644	07/20/96	07/20/96
054706	09/28/96	09/28/96
056878	10/26/96	10/27/96
061427	12/21/96	12/21/96
063747	01/18/97	01/18/97

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

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Brent Douglas Salisbury knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Brent Douglas Salisbury's pharmacist identification card, No. 03-1-20580, will be placed on probation for two years from the effective date of this Agreement. The terms of probation are as follows:
- (1) The State Board of pharmacy hereby declares that Brent Douglas Salisbury's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
 - (2) Brent Douglas Salisbury must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (3) Brent Douglas Salisbury must abide by the rules of the Ohio State Board of Pharmacy.
 - (4) Brent Douglas Salisbury must comply with the terms of this Agreement.

For cause, the Board may at any time revoke probation, 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) Brent Douglas Salisbury agrees to the imposition of a monetary penalty of Five Hundred Dollars (\$500.00) due and owing within thirty days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

Brent Douglas Salisbury 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 shall revoke probation for any violation of the terms of this Agreement occurring during the probation period.

If, in the judgment of the Board, Brent Douglas Salisbury 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, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may 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.

Brent Douglas Salisbury 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.

Brent Douglas Salisbury waives any and all claims or causes of action he may have 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. Brent Douglas Salisbury waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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. Brent Douglas Salisbury 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 date of Board President's signature below.

/s/ Brent D. Salisbury
Brent Douglas Salisbury, Respondent

/d/ 3/4/98
Date of Signature

/s/ Ralph E. Breitfeller
Ralph E. Breitfeller, Attorney for Respondent

/d/ March 9, 1998
Date of Signature

/s/ Amonte B. Littlejohn
Amonte B. Littlejohn, President, Ohio State Board of Pharmacy

/d/ 3/11/98
Date of Signature

/s/ Sally Ann Steuk
Sally Ann Steuk, Ohio Assistant Attorney General

/d/ 3/11/98
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-971024-016)

In the Matter of:

THOMAS W. SCHULTZ, R.Ph.

5648 West Maple Avenue

Geneva, Ohio 44041

(R.Ph. No. 03-3-10425)

This Settlement Agreement is entered into by and between Thomas W. Schultz, 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.

Thomas W. Schultz 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.

Thomas W. Schultz 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, Thomas W. Schultz 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) Thomas W. Schultz neither admits nor denies the allegations stated in the Notice; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Thomas W. Schultz was originally licensed in the state of Ohio on July 30, 1973, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, Thomas W. Schultz is presently employed as a pharmacist at Revco Discount Drug Center #3169, 170 East Main Street, Geneva, Ohio.
 - (2) Thomas W. Schultz did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Thomas W. Schultz sold 28 units of Adipex-P 37.5mg for diet to patient #1 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to Rule 4731-11-04 of the Ohio Administrative Code, thereby engaging in unprofessional conduct:

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
045778	05/25/96	05/25/96
047745	06/22/96	06/22/96
051644	08/17/96	08/19/96
059131	11/23/96	11/25/96

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

- (3) Thomas W. Schultz did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Thomas W. Schultz sold 28 units of Adipex-P 37.5mg for diet to patient #2 pursuant to the following prescriptions which were not issued for a legitimate medical purpose pursuant to

Rule 4731-11-04 of the Ohio Administrative Code, thereby engaging in unprofessional conduct:

<u>Rx Number</u>	<u>Written</u>	<u>Filled</u>
045780	05/25/96	05/25/96
047742	06/22/96	06/22/96
051645	08/17/96	08/19/96
059129	11/23/96	11/25/96

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

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Thomas W. Schultz knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Thomas W. Schultz's pharmacist identification card, No. 03-3-10425, will be placed on probation for two years from the effective date of this Agreement. The terms of probation are as follows:

- (1) The State Board of pharmacy hereby declares that Thomas W. Schultz's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Thomas W. Schultz must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (3) Thomas W. Schultz must abide by the rules of the Ohio State Board of Pharmacy.
- (4) Thomas W. Schultz must comply with the terms of this Agreement.

For cause, the Board may at any time revoke probation, 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) Thomas W. Schultz agrees to the imposition of a monetary penalty of Five Hundred Dollars (\$500.00) due and owing within thirty days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

Thomas W. Schultz 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 shall revoke probation for any violation of the terms of this Agreement occurring during the probation period.

If, in the judgment of the Board, Thomas W. Schultz 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, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may 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.

Thomas W. Schultz 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.

Thomas W. Schultz waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising

