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Minutes Of The Meeting

Ohio State Board of Pharmacy

Columbus, Ohio

April 6, 7, 8, 1998

MONDAY, APRIL 6, 1998

8:15 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:

Joseph J. Maslak, R.Ph. (Vice-President); Diane Adelman, R.Ph.; John Hanna, R.Ph.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; Ruth Plant, 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; William Winsley, Assistant Executive Director; and Robert Cole, Compliance Supervisor. Mrs. Plant 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. The motion was seconded by Mr. Lamping and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

9:05 a.m.

The Board recessed for an hour and the four members of the Recruitment Committee attending this meeting met to discuss the nine candidates that were interviewed by the full committee on March 30 and 31, 1998.

10:09 a.m.

The Board reconvened in Executive Session to continue to consider the investigation of charges and complaints against licensees and registrants.

10:20 a.m.

RES. 98-166 The Executive Session was concluded and the meeting opened to the public. Mr. Lamping moved that the Board approve Ralph LeVange's request to make restitution to his former employer, Kmart, as described in his correspondence faxed to the Board office on March 31, 1998, that the Board Order be amended as follows to reflect the agreed upon proposal, and that his license to practice pharmacy in Ohio be reinstated at the time the amended Order is issued. The motion was seconded by Mr. Hanna and approved (Aye-7/Nay-0).

NOTE: *The Order in the March Minutes was amended as follows and, as a result, this Order was mailed 04/13/98.*

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.

RES. 98-167 The Board then considered the request of Edwin E. Sanders, Jr. to permit him to make payments towards the monetary penalty imposed by the Board in his Order dated April 15, 1994. Mrs. Plant moved that the proposal be denied. The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0).

RES. 98-168 Mrs. Adelman moved that the Board authorize Assistant Attorney General Sally Ann Steuk to present the Board's terms for a settlement in the matter of Thomas E. Albert, R.Ph. as set forth during the Executive Session. The motion was seconded by Mr. Hanna and approved (Aye-7/Nay-0).

RES. 98-169 Mr. Lamping moved that the Board deny the proposal to enter into a settlement in the matter of Thomas M. Kolczynski, R.Ph. and that the adjudication hearing be held as scheduled at 1:00 p.m. on August 3, 1998. The motion was seconded by Mrs. Neuber and approved by the Board (Aye-7/Nay-0).

RES. 98-170 Mr. Lamping moved that the Board authorize Assistant Attorney General Sally Ann Steuk to present the Board's terms for a settlement in the matter of Pharmacy Intern Ronald J. Marinelli (Docket No. D-980414-055) as set forth during the Executive Session. The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).

The Board considered the request of Erik Scot Davis's attorney to enter into settlement. The matter died for lack of a motion to enter into any out-of-court resolution of the appeal.

RES. 98-171 Mr. Lamping moved that the Board summarily suspend the license of Gregory G. Korte, R.Ph. (03-2-13551) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Repke and approved by the Board (Aye-7/Nay-0).

RES. 98-172 Mrs. Plant moved that the Board summarily suspend the license of Michael David Perciful, R.Ph. (03-2-16516) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Lamping and approved by the Board (Aye-7/Nay-0).

RES. 98-173 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-971210-025)

In The Matter Of:

MATTHEW EARL FISHER, R.Ph.
5351 Nectar Lane
Columbus, Ohio 43235
(R.Ph. No. 03-2-12681)

This Settlement Agreement is entered into by and between Matthew Earl Fisher 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.

Matthew Earl Fisher 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.

Matthew Earl Fisher is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against Matthew Earl Fisher and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Matthew Earl Fisher'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) Matthew Earl Fisher 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 Matthew Earl Fisher is a pharmacist registered by this Board to practice pharmacy in the state of Ohio. On or about December 12, 1997, Matthew Earl Fisher's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
 - (2) Matthew Earl Fisher is addicted to or abusing liquor or drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as set forth in Division (A)(3) of Section 4729.16 of the Ohio Revised Code, to wit: Matthew Earl Fisher admitted to an agent of

the Board that he has a serious problem with the abuse of alcohol; that he has been stealing and abusing two to six tablets per day of hydrocodone with acetaminophen 5/500; that his abuse has escalated over time; and that he is both physically and psychologically dependent on drugs and alcohol.

- (3) Matthew Earl Fisher did, during unknown times between 1988 and 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Rite Aid, beyond the express or implied consent of the owner, to wit: Matthew Earl Fisher admittedly stole approximately 160 tablets of hydrocodone with acetaminophen 5/500 from Rite Aid pharmacies in the state of Oregon and unknown amounts from Rite Aid pharmacies in Ohio. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Matthew Earl Fisher did, during unknown times between 1991 and 1992, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Bucyrus Community Hospital, beyond the express or implied consent of the owner, to wit: Matthew Earl Fisher admittedly stole an unknown quantity of hydrocodone with acetaminophen 5/500 from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Matthew Earl Fisher did, on or about November 18, 1997, obtain or possess a controlled substance when the conduct was not in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, to wit: when confronted for theft of merchandise by Rite Aid Loss Prevention in Woodburn, Oregon, Matthew Earl Fisher consented to a search of his brief case, and in it he possessed without a prescription 24 tablets of hydrocodone with acetaminophen 5/500. Such conduct is in violation of Section 2925.11 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, Matthew Earl Fisher knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The removal of the Summary Suspension Order issued December 12, 1997, pursuant to Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (B) The indefinite suspension of his pharmacist identification card, No. 03-2-12681.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Matthew Earl Fisher 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 his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of the notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.
- (C) December 1, 1998, or thereafter, the Board will consider any petition filed by Matthew Earl Fisher for a hearing, pursuant to Revised Code Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Matthew Earl Fisher must enter into a new contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this 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 month. The urine sample must be given within eight hours of notification. The urine drug screen must report testing for alcohol, hydrocodone, and other drugs of abuse; and, the testing must be performed within 48 hours from the time the sample is given. The urine drug screen 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.
- (2) Matthew Earl Fisher 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 his chemical dependency status including a proposed treatment plan;
 - (b) any testimonials from others;
 - (c) all contract(s) with treatment providers and written documentation from the treatment provider(s) regarding compliance with the program(s); and
 - (d) copies of all urine screen reports.

Matthew Earl Fisher 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, Matthew Earl Fisher 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.

Matthew Earl Fisher 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.

Matthew Earl Fisher 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. Matthew Earl Fisher 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. Matthew Earl Fisher 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 the Board President's signature below.

/s/ Matthew E Fisher
Matthew Earl Fisher, Respondent

/d/ April 2, 1998
Date of Signature

/s/ Douglas E Graff
Douglas E. Graff, Attorney for Respondent

/d/ 4/2/98
Date of Signature

/s/ Joseph J. Maslak
Joseph J. Maslak, Vice-President, Ohio State Board of Pharmacy

/d/ 4/6/98
Date of Signature

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

/d/ 4-6-98
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-971023-013)

In The Matter Of:

JOANN P. WALTZ GOLDEN, R.Ph.
320 Stanley Park Lane
Franklin, TN 37069
(R.Ph. No. 03-1-20744)

This Settlement Agreement is entered into by and between Joann P. Waltz Golden 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.

Joann P. Waltz Golden 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.

Joann P. Waltz Golden 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 Joann P. Waltz Golden'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) Joann P. Waltz Golden 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 Joann P. Waltz Golden was originally licensed in the state of Ohio on August 2, 1994, pursuant to reciprocity, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that during the relevant time periods stated herein, Joann P. Waltz Golden was the Responsible Pharmacist at Rite Aid #3056, Westlake, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio Administrative Code.
 - (2) Joann P. Waltz Golden 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 of the following occasions Joann P. Waltz Golden 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>
21924	07-13-96
22389	07-27-96
23499	08-29-96
24729	10-03-96
25433	10-21-96
28604	01-07-97

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, Joann P. Waltz Golden knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Joann P. Waltz Golden's pharmacist identification card, No. 03-1-20744, will be placed on probation for two years, from the effective date of the Agreement. The terms of probation are as follows:
- (1) The State Board of pharmacy hereby declares that Joann P. Waltz Golden'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) Joann P. Waltz Golden must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (3) Joann P. Waltz Golden must abide by the rules of the Ohio State Board of Pharmacy.
 - (4) Joann P. Waltz Golden 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) Joann P. Waltz Golden 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. 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.

Joann P. Waltz Golden 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, Joann P. Waltz Golden 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.

Joann P. Waltz Golden 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.

Joann P. Waltz Golden 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. Joann P. Waltz Golden 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. Joann P. Waltz Golden 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.

<u>/s/ JoAnn P. Waltz Golden</u> Joann P. Waltz Golden, Respondent	<u>/d/ 3/19/98</u> Date of Signature
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<u>/s/ David W. Grauer</u> David W. Grauer, Attorney for Respondent	<u>/d/ 3/24/98</u> Date of Signature
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<u>/s/ Joseph J. Maslak</u> Joseph J. Maslak, Vice-President, Ohio State Board of Pharmacy	<u>/d/ 4/6/98</u> Date of Signature
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<u>/s/ Sally Ann Steuk</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 4-6-98</u> Date of Signature
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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-971021-010)

In The Matter Of:

MARY P. MALOOF, R.Ph.
30904 Pebble Beach Oval
Westlake, Ohio 44145
(R.Ph. No. 03-1-14975)

This Settlement Agreement is entered into by and between Mary P. Maloof 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 P. Maloof enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code that are applicable to the allegations set forth in the Notice of Opportunity for Hearing letter dated October 21, 1997, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Mary P. Maloof 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 P. Maloof'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 P. Maloof 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 Mary P. Maloof was originally licensed in the state of Ohio on March 2, 1983, pursuant to examination, and are currently licensed to practice pharmacy in the state of Ohio.
- (2) Mary P. Maloof 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 Mary P. Maloof sold 84 units of Bontril PDM 35mg for diet to patient #1 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
569408	01/09/96	01/08/96
571143	01/22/96	01/22/96
572909	02/05/96	02/05/96
574676	02/19/96	02/19/96
576397	03/04/96	03/04/96
578382	03/18/96	03/18/96
580214	04/01/96	04/01/96
584651	05/07/96	05/07/96
586244	05/21/96	05/20/96
589614	06/17/96	06/17/96
591273	07/01/96	07/01/96
592830	07/15/96	07/15/96
594750	08/01/96	08/01/96
609720	12/10/96	12/09/96
611580	12/23/96	12/23/96
613285	01/07/97	01/06/97
615054	01/20/97	01/20/97
618122	02/13/97	02/13/97

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (3) Mary P. Maloof 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 Mary P. Maloof sold 28 units of Phentermine 37.5mg for diet to patient #2 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
584900	05/07/96	05/09/96
612697	12/20/96	01/02/97

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (4) Mary P. Maloof 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 Mary P. Maloof sold 28 units of Phentermine 37.5mg for diet to patient #3 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule

4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
599919	09/16/96	09/16/96
601536	09/30/96	10/01/96

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (5) Mary P. Maloof 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 Mary P. Maloof sold 28 units of a controlled substance stimulant for diet to patient #4 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>	<u>Drug</u>
573779	02/10/96	02/12/96	Phentermine 37.5mg
624911	09/30/96	04/05/97	Adipex-P 37.5mg
603090	10/12/96	10/14/96	Adipex-P 37.5mg

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (6) Mary P. Maloof did, on or about March 9, 1996, 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: Mary P. Maloof sold 28 units of Phentermine 37.5mg for diet to patient #5 pursuant to prescription number 577241, written on December 24, 1996, when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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.
- (7) Mary P. Maloof 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 Mary P. Maloof sold 28 units of Phentermine 37.5mg for diet to patient #6 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
577240	02/10/96	03/09/96
583682	04/13/96	04/30/96

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (8) Mary P. Maloof 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 Mary P. Maloof sold 28 units of a controlled substance stimulant for diet to patient #8 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filed</u>	<u>Drug</u>
577456	02/16/96	03/11/96	Phentermine 37.5mg
579295	03/01/96	03/26/96	Adipex-P 37.5mg
583683	04/27/96	04/30/96	Adipex-P 37.5mg
618135	02/04/97	02/13/97	Phentermine 37.5mg

Consequently, 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 to avoid the necessity of a formal hearing, Mary P. Maloof knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Mary P. Maloof's pharmacist identification card, No. 03-1-14975, will be placed on probation for two years, as of the effective date of this agreement. The terms of probation are as follows:

- (1) The State Board of pharmacy hereby declares that Mary P. Maloof'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) Mary P. Maloof must take and successfully complete the jurisprudence examination offered by the Board prior to one year from the effective date of this Agreement. If Mary P. Maloof has not successfully completed the examination prior that date, her license will be suspended until this condition has been achieved.
- (3) Mary P. Maloof must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Mary P. Maloof must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Mary P. Maloof must comply with the terms of this Agreement.

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) Mary P. Maloof agrees to the imposition of a monetary penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to be 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 form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Mary P. Maloof 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.

Mary P. Maloof 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 P. Maloof 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. If this Agreement is adopted by the Board, Mary P. Maloof 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 P. Maloof 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 P Maloof
Mary P. Maloof, Respondent

/d/ 3-17-98
Date of Signature

/s/ Stephen T Parisi
Stephen T. Parisi, Attorney for Respondent

/d/ 3-17-98
Date of Signature

/s/ Joseph J. Maslak
Joseph J. Maslak, Vice-President, Ohio State Board of Pharmacy

/d/ 4/6/98
Date of Signature

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

/d/ 4-6-98
Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-971021-011)

In The Matter Of:

JOHN THOMAS MILLWARD, R.Ph.
6740 Crocker Road
Valley City, Ohio 44280
(R.Ph. No. 03-1-10791)

This Settlement Agreement is entered into by and between John Thomas Millward 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.

John Thomas Millward enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code that are applicable to the allegations set forth in the Notice of Opportunity for Hearing letter dated October 21, 1997, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

John Thomas Millward is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against John Thomas Millward'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) John Thomas Millward 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 John Thomas Millward was originally licensed in the state of Ohio on July 30, 1974, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that John Thomas Millward is the Responsible Pharmacist at Medic Drug located at 17430 Lorain Avenue in Cleveland, Ohio pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) John Thomas Millward 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 John Thomas Millward sold 84 units of Bontril PDM 35mg for diet to patient #1 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filled</u>
583129	04/26/96	04/25/96
596581	08/15/96	08/16/96
599406	09/12/96	09/11/96
600871	09/24/96	09/24/96
603587	10/11/96	10/18/96
605229	11/01/96	11/01/96
606721	11/15/96	11/14/96
608186	11/26/96	11/26/96
616681	02/03/97	02/02/97
621923	03/13/97	03/13/97
623038	03/27/97	03/21/97
625324	04/08/97	04/08/97
629762	05/12/97	05/12/97
631318	05/26/97	05/23/97

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (3) John Thomas Millward 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 John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #2 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filled</u>
616356	01/03/97	01/30/97
619724	01/31/97	02/25/97

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (4) John Thomas Millward 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 John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #3 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filed</u>
602979	10/12/96	10/14/96
605277	10/26/96	11/02/96

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (5) John Thomas Millward 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 John Thomas Millward sold 28 units of a controlled substance stimulant for diet to patient #4 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filed</u>	<u>Drug</u>
576331	02/24/96	03/03/96	Phentermine 37.5mg
582023	04/13/96	04/16/96	Phentermine 37.5mg
587186	05/11/96	05/28/96	Adipex-P 37.5mg
593726	06/25/96	07/23/96	Adipex-P 37.5mg

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (6) John Thomas Millward did, on or about February 3, 1997, 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: John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #5 pursuant to prescription number 572659 when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.
- (7) John Thomas Millward did, on or about February 3, 1996, 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: John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #6 pursuant to prescription number 572661 when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his corresponding responsibility pursuant to Section 1306.04 of the Code of Federal Regulations and Rule 4729-5-30 of the Ohio Administrative Code. Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.
- (8) John Thomas Millward 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 John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #7 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filled</u>
572707	12/02/95	02/04/96
592540	06/24/96	07/12/96

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (9) John Thomas Millward 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 John Thomas Millward sold 28 units of Phentermine 37.5mg for diet to patient #8 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus failing to fulfill his 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>Written</u>	<u>Filled</u>
574459	01/26/96	02/17/96
585602	05/10/96	05/14/96
588050	05/31/96	06/04/96
599286	09/10/96	09/10/96
602679	09/24/96	10/10/96
615228	01/21/97	01/21/97

Consequently, 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 to avoid the necessity of a formal hearing, John Thomas Millward knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) John Thomas Millward's pharmacist identification card, No. 03-1-10791, will be placed on probation for two years from the effective date of the Agreement. The terms of probation are as follows:
- (1) The State Board of pharmacy hereby declares that John Thomas Millward'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) John Thomas Millward must take and successfully complete the jurisprudence examination offered by the Board prior to one year from the effective date of this Agreement. If John Thomas Millward has not successfully completed the examination prior that date, his license will be suspended until this condition has been achieved.
 - (3) John Thomas Millward must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (4) John Thomas Millward must abide by the rules of the Ohio State Board of Pharmacy.
 - (5) John Thomas Millward must comply with the terms of this Agreement.

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 any violation of the terms of this Agreement occurring during the probation period.

- (B) John Thomas Millward agrees to the imposition of a monetary penalty of Two Thousand Five Hundred Dollars (\$2,500.00) 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 form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, John Thomas Millward 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.

John Thomas Millward 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.

John Thomas Millward 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. If this Agreement is adopted, John Thomas Millward 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. John Thomas Millward 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 the Board President's signature below.

<u>/s/ <i>John Thomas Millward</i></u> John Thomas Millward, Respondent	<u>/d/ 3/18/98</u> Date of Signature
<u>/s/ <i>Stephen T Parisi</i></u> Stephen T. Parisi, Attorney for Respondent	<u>/d/ 3/18/98</u> Date of Signature
<u>/s/ <i>Joseph J. Maslak</i></u> Joseph J. Maslak, Vice-President, Ohio State Board of Pharmacy	<u>/d/ 4/6/98</u> Date of Signature
<u>/s/ <i>Sally Ann Steuk</i></u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 4-6-98</u> Date of Signature

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-971021-009)

In The Matter Of:

ELIZABETH A. PETIT, R.Ph.
20019 Ellsworth Drive
Strongsville, Ohio 44136
(R.Ph. No. 03-1-14784)

This Settlement Agreement is entered into by and between Elizabeth Anne Petit 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.

Elizabeth Anne Petit enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code that are applicable to the allegations set forth in the Notice of Opportunity for Hearing letter dated October 21, 1997, including the right to

representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Elizabeth Anne Petit 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 Elizabeth Anne Petit'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) Elizabeth Anne Petit 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 Elizabeth Anne Petit was originally licensed in the state of Ohio on August 6, 1982, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Elizabeth A. Petit is a pharmacist at Medic Drug located at 17430 Lorain Avenue in Cleveland, Ohio pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code.
 - (2) Elizabeth Anne Petit 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 Elizabeth Anne Petit sold 84 units of Bontril PDM 35mg for diet to patient #1 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
619801	02/27/97	02/26/97
632868	06/05/97	06/06/97

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (3) Elizabeth Anne Petit did, on or about April 24, 1996, 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: Elizabeth Anne Petit sold 28 units of Phentermine 37.5mg for diet to patient #2 pursuant to prescription number 582905 when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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. Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.
- (4) Elizabeth Anne Petit 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 Elizabeth Anne Petit sold 28 units of Phentermine 37.5mg for diet to patient #5 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
570186	01/13/96	01/14/96
580391	02/10/96	04/03/96

Consequently, such conduct is in violation of Section 2925.03(A) of the Ohio Revised Code.

- (5) Elizabeth Anne Petit 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 Elizabeth Anne Petit sold 28 units of Phentermine 37.5mg for diet to patient #6 pursuant to the following prescriptions when not for a legitimate medical purpose and contrary to Rule 4731-11-04 of the Ohio Administrative Code, thus 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>Written</u>	<u>Filled</u>
570183	01/13/96	01/14/96
580388	08/24/96	04/03/96

Consequently, 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 to avoid the necessity of formal hearing at this time, Elizabeth Anne Petit knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Elizabeth Anne Petit's pharmacist identification card, No. 03-1-14784, will be placed on probation for two years, as of the effective date of this Agreement. The terms of probation are as follows:
- (1) The State Board of pharmacy hereby declares that Elizabeth Anne Petit'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.
 - (4) Elizabeth Anne Petit must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (5) Elizabeth Anne Petit must abide by the rules of the Ohio State Board of Pharmacy.
 - (6) Elizabeth Anne Petit must comply with the terms of this Agreement.

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) Elizabeth Anne Petit 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 form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Elizabeth Anne Petit 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.

Elizabeth Anne Petit 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.

Elizabeth Anne Petit 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. If this Agreement is adopted by the Board, Elizabeth Anne Petit 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. Elizabeth Anne Petit 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.

<u>/s/ Elizabeth Anne Petit</u> Elizabeth Anne Petit, Respondent	<u>/d/ 3/17/98</u> Date of Signature
<u>/s/ Stephen T. Parisi</u> Stephen T. Parisi, Attorney for Respondent	<u>/d/ 3/17/98</u> Date of Signature
<u>/s/ Joseph J. Maslak</u> Joseph J. Maslak, Vice-President, Ohio State Board of Pharmacy	<u>/d/ 4/6/98</u> Date of Signature
<u>/s/ Sally Ann Steuk</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 4-6-98</u> Date of Signature

10:26 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in the matter of John P. Tekulve, R.Ph., Dayton pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

12:09 p.m.

All evidence and testimony having been received and entered into the record, the hearing was concluded and the record closed. The Board recessed the meeting until 1:00 p.m.

1:10 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 William John Hocevar, R.Ph., Madison pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

4:04 p.m.

All evidence and testimony having been received and entered into the record, the hearing was concluded and the record closed. The Board recessed the meeting for 15 minutes.

The Board then discussed "therapeutic switch" issues and the problems reported by a pharmacist and patient's caregiver. The text of the May 1998 issue of the State Board Newsletter was also reviewed and suggestions made to include additional language.

4:25 p.m.

Mrs. Plant moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matters of John P. Tekulve, R.Ph. and William John Hocevar, R.Ph. The motion was seconded by Mr. Lamping and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

5:10 p.m.

RES. 98-174 The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980127-032)

In The Matter Of:

JOHN PAUL TEKULVE, R.Ph.
6702 Merwin Avenue
Cincinnati, Ohio 45227
(R.Ph. No. 03-3-21594)

INTRODUCTION

THE MATTER OF JOHN PAUL TELKULVE CAME TO HEARING ON APRIL 6, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOHN PAUL TEKULVE WAS REPRESENTED BY CHARLES J. TEKULVE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Elaine Jones, R.Ph., Ohio State Board of Pharmacy
- (2) Detective Rick Hahn, Cincinnati Police Department, Drug Diversion Unit

Respondent's Witnesses:

- (1) John Paul Tekulve, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated January 27, 1998.
- (2) Exhibit 1A--Copy of Hearing Request letter dated February 3, 1997 (sic 1998).
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated February 5, 1998.
- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of John Paul Tekulve showing original date of registration as October 16, 1996; and two-page copy of Renewal Application for Intern License, for a license to practice pharmacy as an intern in Ohio from September 15, 1996, to September 15, 1997, of John Paul Tekulve dated August 13, 1996.
- (5) Exhibit 2
- (6) Exhibit 3
- (7) Exhibit 4
- (8) Exhibit 4A
- (9) Exhibit 5
- (10) Exhibit 6
- (11) Exhibit 7
- (12) Exhibit 8
- (13) Exhibit 9
- (14) Exhibit 10
- (15) Exhibit 11
- (16) Exhibit 12
- (17) Exhibit 13

Respondent's Exhibits:

- (1) None

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 John Paul Tekulve was originally licensed in the state of Ohio on October 16, 1996, pursuant to examination, and on January 27, 1998, his license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2)
- (3) John Paul Tekulve did, on or about July 18, 1997, knowingly obtain, possess, and/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: John Paul Tekulve obtained and possessed marijuana, a schedule I controlled substance. Further, John Paul Tekulve admitted on numerous occasions of marijuana use. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (4) John Paul Tekulve is addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: John Paul Tekulve arrived at the pharmacy to begin his shift unexplainably late on several occasions; John Paul Tekulve committed numerous errors while practicing pharmacy during the chosen time period of October 28, 1996, through August 4, 1997; and John Paul Tekulve has used the pharmacy's telephone to make arrangements to obtain marijuana.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes _____ of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute 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 paragraph (4) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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. 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 January 27, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of John Paul Tekulve:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No.

03-3-21594, held by John Paul Tekulve indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, John Paul Tekulve may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (B) November, 1999, or thereafter, the Board will consider any petition filed by John Paul Tekulve for a hearing, pursuant to Revised Code Chapter 119., regarding the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) John Paul Tekulve must enter into a new contract with a treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Order and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) Random, **observed** urine samples shall be provided to, and conducted in, a certified Ohio Department of Alcohol and Drug Addiction Service (ODADAS) facility at least once a month for one year, and once every three months for the remaining four years. Each urine screen must comply to the following standards:
 - (i) The samples must be given within eight hours of random notification.
 - (ii) Chain of custody must be maintained and documented for each sample/screen.
 - (iii) Reports must include testing the sample for alcohol and marijuana and must also report testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (iv) Sample analysis and reports must be completed within forty-eight (48) hours from the urine collection time.
 - (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.
 - (2) John Paul Tekulve must take and successfully complete the jurisprudence examination offered by the Board prior to petitioning the Board for reinstatement.
 - (3) John Paul Tekulve must provide, at the time of petitioning the Board for reinstatement, written documentation from his treatment provider regarding compliance with the program pursuant to the contract including all urine drug screen reports.

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.

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

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mr. Maslak and approved (Aye-6/Nay-0/Abstain-1[Lamping]).

RES. 98-175 Mr. Lamping moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-971125-023)

In The Matter Of:

WILLIAM JOHN HOCEVAR, JR., R.Ph.
259 East Parkway Drive
Madison, Ohio 44057
(R.Ph. No. 03-1-19075)

INTRODUCTION

THE MATTER OF WILLIAM JOHN HOCEVAR, JR. CAME TO HEARING ON APRIL 6, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

WILLIAM JOHN HOCEVAR, JR. WAS REPRESENTED BY DENNIS A. ROTH AND PAUL A. LANG, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William John Hocevar, Jr., Respondent

Respondent's Witnesses:

- (1) William John Hocevar, Jr., Respondent
(2) Richard Janco, Madison, Ohio
(3) Stephanie Hocevar, Wife of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of six-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated November 25, 1997.
(2) Exhibit 1A--Copy of Hearing Request letter dated December 22, 1997.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated December 23, 1997.
(4) Exhibit 1C--Copy of Continuance Request letter dated February 17, 1998.
(5) Exhibit 1D--Hearing Schedule letter dated February 17, 1998.
(6) Exhibit 1E--Two-page copy of Renewal Application for Pharmacist License, No. 03-1-19075, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of William John Hocevar, Jr. dated July 17, 1997; and copy of Pharmacist File Front sheet of William John Hocevar, Jr. showing original date of registration as July 29, 1991.
(7) Exhibit 2--One stock bottle containing 100 unit doses of Halotestin 10mg, Lot No. 42ART, Expiration 5/2001.
(8) Exhibit 3--Three-page handwritten statement of William John Hocevar, Jr. signed and notarized on January 17, 1997.

- (9) Exhibit 5--Aruta's Drugarama Prescription Log for Halotestin dated from September 1, 1996, to September 30, 1996.
- (10) Exhibit 6--Two Aruta's Drugarama receipts for \$9.94 dated January 17, 1997, and a prescription blank of Vincent B. Cibella, D.P.M., D.A.B.P.O. with notations regarding Ambien and Amantadine Syrup.
- (11) Exhibit 7--Copy of Aruta's Drugarama Tax Insurance Summary for Charlie Walters dated from January 1, 1990, to January 22, 1997; and Aruta's Drugarama Prescription Log for Nandrolone dated from January 1, 1996, to January 31, 1996.
- (12) Exhibit 8--Three-page handwritten statement of William Hocevar signed and notarized on January 28, 1997.
- (13) Exhibit 8A--One-page handwritten statement of William Hocevar signed and notarized on January 28, 1997.
- (14) Exhibit 9--Pages 8, 28, 29, 34, 71, 72, 74, 78, 81, and 90 of a computer printout of sales made to Aruta's Drugarama dated January 1, 1995, to January 26, 1997.
- (15) Exhibit 10--Two-page statement of Dr. Wayne Risius, M.D. signed and notarized on April 9, 1997.
- (16) Exhibit 11--Copies of nine invoices from Great Lakes Wholesale with invoice dates as follows: two dated September 6, 1996; October 16, 1996; February 16, 1996; November 20, 1995; June 4, 1996; February 2, 1996; January 19, 1996; and December 19, 1995.
- (17) Exhibit 11A--Copy of two-page Ohio State Board of Pharmacy Report of Investigation, Case No. 97-1068, of Agent Frank J. Bodi dated March 27, 1998.
- (18) Exhibit 12--Certified copy of Bill of Information in the Lake County Common Pleas Court, Case No. 97CR000518, State of Ohio vs. William J. Hocevar, dated November 12, 1997.
- (19) Exhibit 13--Certified copy of four-page Written Plea of Guilty and Judgment Entry in the Lake County Common Pleas Court, Case No. 97-CR-000518, State of Ohio vs. William J. Hocevar, dated November 12, 1997.
- (20) Exhibit 14--Certified copy of three-page Judgment Entry of Sentence in the Lake County Common Pleas Court, Case No. 97-CR-000518, State of Ohio vs. William J. Hocevar, dated January 28, 1998.

Respondent's Exhibits:

- (1) Exhibit A1--Copy of two-page letter June Kangas dated February 5, 1998.
- (2) Exhibit A2--Copy of letter from Mimi Tramte dated February 5, 1998.
- (3) Exhibit A3--Copy of letter from Albert L. Wright, Jr. dated February 5, 1998.
- (4) Exhibit A4--Copy of letter from Frederick C. Dively dated February 6, 1998.
- (5) Exhibit A5--Copy of letter from Ms. Dawn R. Csepegi dated February 3, 1998.
- (6) Exhibit A6--Copy of letter from Tina Fabel dated February 2, 1998.
- (7) Exhibit A7--Copy of letter from Mark D. Miller dated February 5, 1998.
- (8) Exhibit A8--Copy of letter from Mary Jo Ross dated February 5, 1998.
- (9) Exhibit A9--Copy of letter from Roy C. Whipple and Winifred Whipple, not dated.
- (10) Exhibit A10--Copy of letter from Mark S. Baer dated December 5, 1997.
- (11) Exhibit B1--Copy of three-page Summary of Treatment of William J. Hocevar, Jr. by Paul Becker, Ph.D. dated April 1, 1998.

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 William John Hocevar, Jr. was originally licensed in the state of Ohio on July 29, 1991, pursuant to examination, and on November 25, 1997, his license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) William John Hocevar, Jr. did, on or about November 12, 1997, plead guilty in the Common Pleas Court of Lake County, Ohio, to one count of Theft of a Dangerous Drug in violation of Section 2913.02 of the Ohio Revised Code, and two counts of Illegal Processing of Drug Documents in violation of Section 2925.23 of the Ohio Revised Code, felonies of the fourth and fifth degree. State of Ohio vs. William J. Hocevar, Case No. 97-CR-000518.

- (3) William John Hocevar, Jr. did, on or about January 17, 1997, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Aruta's Drug, beyond the express or implied consent of the owner, to wit: William John Hocevar, Jr. stole 100 units of Halotestin 10mg, a schedule III controlled substance, when he admittedly had the purpose to sell the drugs without a legitimate medical purpose. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) William John Hocevar, Jr. did, on or about January 16, 1997, intentionally make and/or knowingly possess a false or forged prescription, to wit: William John Hocevar, Jr. created prescription number 347972 for 100 units of Halotestin 10mg in order to cover his theft of the drugs. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (5) William John Hocevar, Jr. did, on or about January 19, 1996, and again on February 17, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: William John Hocevar, Jr. created prescription numbers 323796 and 323796R for Deca-Durabolin, a schedule III controlled substance, in order to cover his thefts and trafficking of the drugs. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (6) William John Hocevar, Jr. did, on or about January 17, 1997, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, and when the drug was an anabolic steroid not used in a research project approved by the FDA, to wit: William John Hocevar, Jr. possessed with the purpose to illegally distribute 100 units of Halotestin 10mg. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (7) William John Hocevar, Jr. did, from January 10, 1995, through January 10, 1997, with purpose to deprive, knowingly obtain or exert control over the property of Aruta's Drug, beyond the express or implied consent of the owner, to wit: William John Hocevar, Jr. stole the following anabolic steroids, each a schedule III controlled substance:

Sixteen 10ml vials of Testosterone Aqueous 100mg vials or 160ml
Eleven 10ml vials of Testosterone Cypionate 200mg or 110ml
Nine 10ml vials of Testosterone Enanthate 200mg or 90ml
Two 10ml vials of Testosterone Propionate 200mg or 20ml
Thirteen 1ml vials of Deca-Durabolin 200mg or 13 ml
Three 30ml vials of Testosterone Aqueous 100mg or 90 ml
320 tablets of Halotestin 10mg
100 tablets of Fluoxymesterone
400 tablets of Winstrol 2mg
400 tablets of Android 25mg

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (8) William John Hocevar, Jr. did, on or about January 10, 1995, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Aqueous 100mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (9) William John Hocevar, Jr. did, on or about April 4, 1995, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Enanthate 100mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.

- (10) William John Hocevar, Jr. did, on or about April 25, 1995, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Cypionate 200mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (11) William John Hocevar, Jr. did, on or about September 6, 1995, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered one 30ml vial of Testosterone Aqueous 100mg, stole it, and possessed it outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (12) William John Hocevar, Jr. did, on or about January 23, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered three 10ml vials of Testosterone Cypionate 200mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (13) William John Hocevar, Jr. did, on or about January 30, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered three 10ml vials of Testosterone Cypionate 200mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (14) William John Hocevar, Jr. did, on or about February 29, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Aqueous 100mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (15) William John Hocevar, Jr. did, on or about April 23, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Aqueous 100mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.
- (16) William John Hocevar, Jr. did, on or about May 23, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered two 10ml vials of Testosterone Aqueous 100mg, stole them, and possessed them outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.

- (17) William John Hocevar, Jr. did, on or about June 3, 1996, knowingly possess a controlled substance in an amount equal to or 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: William John Hocevar, Jr. ordered one 30ml vial of Testosterone Aqueous 100mg, stole it, and possessed it outside the confines of the pharmacy for the purpose of trafficking in drugs. Such conduct is in violation of Section 2925.03(A)(4) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of 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 (17) 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), (4), (5), (6), and (8) through (17) 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. 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 November 25, 1997.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of William John Hocevar, Jr.:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-19075, held by William John Hocevar, Jr. effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-1-19075, held by William John Hocevar, Jr. effective as of the date of the mailing of this Order.
- (C) 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 revokes the pharmacist identification card, No. 03-1-19075, held by William John Hocevar, Jr. effective as of the date of the mailing of this Order.

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.

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-7/Nay-0).

5:20 p.m. The Board recessed the meeting until Tuesday, April 7, 1998 at 8:00 a.m.

TUESDAY, APRIL 7, 1998

8:13 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:

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

8:16 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of considering the Notice of Opportunity issued in the matter of Nilam Pravinbhai Patel, R.Ph., Oak Park, Illinois pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

8:22 a.m.

All evidence and testimony having been received and entered into the record, the record was closed. The Board then considered the Notice of Opportunity issued in the matter of Laurence Robert Cappel, R.Ph., Grand Blanc, Michigan pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

8:45 a.m.

All evidence and testimony having been entered into the record, the record was closed. Mrs. Neuber moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received in the matters. The motion was seconded by Mr. Lamping and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

8:55 a.m.

RES. 98-176 The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board adopt the following order in the matter of Nilam Pravinbhai Patel:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980130-034)

In The Matter Of:

NILAM PRAVINBHAI PATEL, R.Ph.
1196 S. Kenilworth Avenue, Apartment 2W
Oak Park, Illinois 60304
(R.Ph. No. 03-2-21093)

INTRODUCTION

THE MATTER OF NILAM PRAVINBHAI PATEL CAME ON FOR CONSIDERATION ON APRIL 7, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

NILAM PRAVINBHAI PATEL WAS NOT PRESENT NOR WAS SHE 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) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None
- (B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of two-page Notice of Opportunity for Hearing letter dated January 30, 1998.
- (2) Exhibit 1A--Copy of Pharmacist File Front Sheet of Nilam P. Patel showing original date of registration as July 27, 1995; copy of Renewal Application for Pharmacist License, No. 03-2-21093, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998 of Nilam Pravinbhai Patel dated August 1, 1997; and copy of letter from Nilam Pravin Patel, not dated.
- (3) Exhibit 1B--Letter from Nilam P. Patel dated February 18, 1998.
- (4) Exhibit 2--Returned check, No. 414, of Nilam P. Patel dated August 2, 1997.
- (5) Exhibit 3--Copy of letter from Karen E. Prather dated October 27, 1997.

Respondent's Exhibits:

- (1) None

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) On January 30, 1998, Nilam Pravinbhai Patel was notified by letter of her right to a hearing, her rights in such hearing, and her right to submit her contentions in writing.
- (2) As demonstrated by return receipt of February 7, 1998, Nilam Pravinbhai Patel received the letter of January 30, 1998, informing her of the allegations against her, and her rights.
- (3) Nilam Pravinbhai Patel sent her contentions in writing by letter dated February 18, 1998.
- (4) Records of the Board of Pharmacy indicate that Nilam Pravinbhai Patel 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.
- (5) Nilam Pravinbhai Patel did, on or about August 2, 1997, with purpose to defraud, issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it would be dishonored, to wit: Nilam Pravinbhai Patel issued a bad check to the Treasurer of the State of Ohio for renewal of her license to practice pharmacy in this state. Further, after Nilam Pravinbhai Patel was given notice of the dishonor on or about October 27, 1997, she failed to make payment or satisfaction within ten days after receiving said notice of dishonor. Such conduct is in violation of Section 2913.11 of the Ohio Revised Code.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (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.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby reprimands Nilam Pravinbhai Patel.

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. 98-177 Mrs. Neuber moved that the Board adopt the following Order and deny the renewal of Laurence Robert Cappel's license to practice pharmacy in Ohio:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980217-045)

In The Matter Of:

LAURENCE ROBERT CAPPEL, R.Ph.
11414 Stoneybrook Drive
Grand Blanc, Michigan 48439
(R.Ph. No. 03-1-09945)

INTRODUCTION

THE MATTER OF LAURENCE ROBERT CAPPEL CAME ON FOR CONSIDERATION ON APRIL 7, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

LAURENCE ROBERT CAPPEL WAS NOT PRESENT NOR WAS HE 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) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

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 February 17, 1998.

- (2) Exhibit 1A--Certified copies of the following: seven-page Consent Order from the State of Michigan Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated August 12, 1996; two-page First Amended Administrative Complaint from the State of Michigan Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated August 6, 1996; Order of Summary Suspension from the State of Michigan Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated July 10, 1996; eleven-page Administrative Complaint from the State of Michigan Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated July 8, 1996; Affidavit of Fabian Suarez from the State of Michigan Department of Consumer and Industry Services, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated July 8, 1996; Affidavit of James Wolf from the State of Michigan Department of Consumer and Industry Services, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00, In the Matter of Laurence R. Cappel, R.Ph. dated July 8, 1996; eight-page Search Warrant from the State of Michigan in the District Court for the County of Genesee 68th Judicial District, of Medicentre Pharmacy #3 and/or Laurence Robert Cappel issued on March 28, 1996; Inventory Of Items Seized Under -- Authority of A Warrant -- at 4250 N. Saginaw In The City of Flint (Michigan) dated March 28, 1996; Inventory Of Items Seized Under -- Authority of A Warrant -- at 11414 Stoneybrook Dr. In The City of Grand Blanc (Michigan) dated March 28, 1996; two copies of Complaint Felony, in State of Michigan, 38th Judicial District, 7th Judicial Circuit, Case No. 96-1316FY, the People of the State of Michigan v Laurence Cappel, 11414 Stoneybrook, Grand Blanc, MI 48439, dated June 21, 1996; and letter from Eddie L. Boyd, dated June 19, 1996.
- (3) Exhibit 1B--Copy of Pharmacist File Front Sheet of Laurence Robert Cappel showing original date of registration as July 26, 1971; copy of Renewal Application for Pharmacist License, No. 03-1-09945L96, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Laurence Robert Cappel dated February 2, 1998; and copy of letter from Larry Cappel dated February 3, 1998.

Respondent's Exhibits:

- (1) None

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) On February 17, 1998, Laurence Robert Cappel was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of February 21, 1998, Laurence Robert Cappel received the letter of February 17, 1998, informing him of the allegations against him, and his rights.
- (3) Laurence Robert Cappel has not responded in any manner to the letter of February 17, 1998, and has not requested a hearing in this matter.
- (4) Records of the Board of Pharmacy indicate that Laurence Robert Cappel was originally licensed in the state of Ohio on July 26, 1971, pursuant to examination, and his license to practice pharmacy in the state of Ohio lapsed on September 15, 1996, however, Laurence Robert Cappel applied for renewal on or about February 5, 1998.
- (5) On or about September 11, 1996, the state of Michigan issued an Order against Laurence Robert Cappel's license to practice pharmacy. Attached to and incor-

porated herein as State's Exhibit 1A is the Consent Order and Stipulation, First Amended Administrative Complaint, Order of Summary Suspension, Administrative Complaint, and supporting affidavits and evidence from the State of Michigan Department of Consumer and Industry Services Bureau of Occupational and Professional Regulation, Board of Pharmacy Disciplinary Subcommittee, Complaint No. 53-96-0711-00. State of Michigan vs. Laurence Cappel, Case No. 96-1316 FY, Genesee County Circuit Court (68th Judicial District). As a result of his actions, Laurence Robert Cappel's license was revoked and he was assessed a fine in the amount of Ten Thousand Dollars (\$10,000).

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) 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 and 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 paragraph (5) the Findings of Fact constitutes 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 paragraph (5) of the Findings of Fact constitutes having been convicted of violating any state or federal pharmacy or drug law as provided in Paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes not being of good moral character and habits as provided in Paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes having been disciplined by any board of pharmacy as provided in Paragraph (F) of Rule 4729-5-04 of the Ohio Administrative Code.

ACTION OF THE BOARD

Pursuant to Sections 4729.12 and 4729.16 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby refuses to renew the identification card held by Laurence Robert Cappel, No. 03-1-09945, and thereby denies the Renewal Application for Pharmacist License submitted by Laurence Robert Cappel.

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

MOTION CARRIED.

SO ORDERED.

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

RES. 98-178 Tim Benedict presented a request from Douglas F. Theuring, 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. Lamping moved that the Board approve R.Ph. Theuring's request to serve as the responsible pharmacist for Elmwood Place Pharmacy (02-149650) and Elmwood Institutional Pharmacy (02-917250) for one year. The motion was seconded by Mrs. Plant and approved (Aye-7/Nay-0).

RES. 98-179 The Board then considered a request from Shirley J. Kramer, 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. Kramer's request to serve as the responsible pharmacist for Cigna Healthcare (02-

817900) and Cigna Healthcare (02-817850) for ninety days. The motion was seconded by Mr. Hanna and approved (Aye-7/Nay-0).

RES. 98-180 The Board then reviewed a draft of the Cease and Desist Order authorized during the March meeting to be mailed to Kmart. Mrs. Plant moved that the following Cease and Desist Order be issued to Kmart Corporation:

CEASE AND DESIST

Floyd Hall, Chairman, President & CEO
Kmart Corporation - International Headquarters
3100 West Big Beaver Road
Troy, Michigan 48084-3163

RE: Compliance Programs/Patient Records

Dear Mr. Hall:

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

It has come to the attention of the Board that Kmart's corporate headquarters has implemented a computer-based marketing program regarding patients' compliance with their prescribed drug therapy. Ensuring that a patient complies with this drug therapy is an important goal that can only be accomplished by a practicing pharmacist whose intent is to improve the patient's quality of life and ensure positive drug therapy outcomes.

Kmart's program as it is structured, however, is problematic in several areas - not the least of which is that the program appears to be designed primarily to increase drug sales rather than placing the primary concern on the welfare of the patient. The system automatically targets a patient based on the prescription refill records maintained in Kmart pharmacies only and does not involve the professional judgment of a pharmacist who directly interacts with the patient.

Whether or not a patient should have a prescription refilled is a personal decision based on professional advice given by the pharmacist and the prescriber when appropriate. The decision needs to be based on personal information obtained by a pharmacist who has the opportunity to discuss the matter confidentially with the patient. Once the pharmacist has determined the reasons why the prescription has not been refilled, the reasons should be documented and an appropriate intervention carried out by the pharmacist communicating personally with the patient.

The Board has received information that a pharmacist practicing in Kmart's pharmacy where the patient's prescriptions are dispensed is not involved in the decision about whether or not a letter under that pharmacist's name will be sent to a patient encouraging the patient to have a particular prescription refilled. This raises several questions:

- (1) What information does corporate headquarters have that indicates that the patient should be continuing a particular drug therapy?
- (2) Is corporate headquarters encouraging a patient to have prescriptions refilled for drugs that have been discontinued by the physician or are no longer needed by the patient?
- (3) Does the patient have another prescription on file for a different drug to treat the same condition at the pharmacy or at another pharmacy in the community?

The problems with Kmart's program are exacerbated in that it appears that confidential prescription information that is patient-specific may have been compromised by being disclosed to individuals who are not responsible for providing professional care to the patient. According to information received by the Board, Kmart pharmacists do not know who has generated the letters under their name and how confidential patient information has been obtained by the persons preparing and mailing the letters.

If confidential patient information has been released pursuant to a written authorization from the patient in accordance with paragraph (A)(8) of Ohio Administrative Code Rule 4729-5-29 (copy enclosed), the Board is concerned that the authorization on the part of the affected patient was not "an informed consent". "Informed consent" connotes the fact that the patient understood that their prescription information would be provided to other entities by the corporate office of Kmart for marketing purposes. The signing of a third party log when picking up a prescription does not meet the Board's requirement for "written authorization" as used in Ohio Administrative Code Rule 4729-5-29.

YOU ARE HEREBY ADVISED that, pursuant to Section 4729.25(B) of the Ohio Revised Code, the Board of Pharmacy may issue notice or warning to an alleged offender of any of the provisions of Chapter 4729. of the Ohio Revised Code; thus, you are hereby notified to immediately cease distributing patient prescription information to any person in violation of Rule 4729-5-29 of the Ohio Administrative Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

Enc: O.A.C. Rule 4729-5-29

cc: Anthony N. Palizzi, General Counsel; Kmart Corporation
Sally Ann Steuk, Assistant Attorney General; State of Ohio

The motion was seconded by Mr. Hanna and approved (Aye-6/Nay-0/Abstain-1[Adelman]).

9:06 a.m.

The Board recessed the meeting for 15 minutes.

9:25 a.m.

The Board was joined by the Assistant Attorney General, Sally Ann Steuk, for the purpose of conducting an adjudication hearing in the matter of Larry Devonne Shaffer, R.Ph., Urichsville pursuant to the provisions of Chapters 119. and 4729. of the Ohio Revised Code.

11:05 a.m.

All evidence and testimony having been entered into the record, the hearing was concluded and Mrs. Plant moved that the Board go into Executive Session. The motion was seconded by Mr. Lamping and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, Plant-Yes, and Repke-Yes.

11:40 a.m.

RES. 98-181 The Executive Session was concluded and the meeting opened to the public. Mrs. Plant moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-980320-050)

In The Matter Of:

LARRY DEVONNE SHAFFER, JR., R.Ph.
6366 S. Water St. Ext., SE
Urichsville, Ohio 44683
(R.Ph. No. 03-2-17555)

INTRODUCTION

THE MATTER OF LARRY DEVONNE SHAFFER CAME TO HEARING ON APRIL 7, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

LARRY DEVONNE SHAFFER, JR. 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) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy
- (2) Chris Hart, R.Ph., Pharmacists Rehabilitation Organization, Inc.

Respondent's Witnesses:

- (1) Larry Devonne Shaffer, Jr., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Probation Violation Hearing letter dated March 20, 1998.
- (2) Exhibit 1A--Copy of Pharmacist File Front Sheet of Larry Devonne Shaffer, Jr. showing original date of registration as October 31, 1988; and copy of Renewal Application for Pharmacist License, No. 03-2-17555, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Larry Devonne Shaffer, Jr. dated August 21, 1997.
- (3) Exhibit 2--Copy of seven-page Order of the State Board of Pharmacy, Docket No. D-940915-016, in the matter of Larry Devonne Shaffer, Jr., R.Ph., dated June 30, 1995.
- (4) Exhibit 3--Copy of five-page Order of the State Board of Pharmacy, Docket No. D-960126-037, in the matter of Larry Devonne Shaffer, Jr., R.Ph. dated October 29, 1996.
- (5) Exhibit 4--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Larry Shaffer dated November 16, 1996.
- (6) Exhibit 5--Copy of Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet/Client Monitoring Sheet of Larry Shaffer for the period of July 1, 1997, to September 30, 1997.
- (7) Exhibit 6--Copy of Pharmacists Rehabilitation Organization, Inc. Client Reporting Sheet/-Client Monitoring Sheet of Larry Shaffer for the period of October 1, 1997, to December 31, 1997.
- (8) Exhibit 7--Copy of letter from Nick A. Kallis, R.Ph. dated March 15, 1998.
- (9) Exhibit 8--Copy of letter from Christopher Hart, R.Ph. dated March 9, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Copy of Shepherd Hill RMS Extended Service Agreement of Larry Shaffer dated November 20, 1996.
- (2) Exhibit B--Copy of two-page Shepherd Hill Hospital Recovery Monitoring Services Extended Agreement of Larry Shaffer dated January 25, 1995, and witnessed January 25, 1997.
- (3) Exhibit C--Copy of four pages of Ameritech telephone bills as follows: one for Account No. 614 922-1501 110 2 dated October 4, 1997; and three for Account No. 740 922-1501 110 5 dated December 4, 1997; January 4, 1998; and February 4, 1998.

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 Larry Devonne Shaffer's license to practice pharmacy in the state of Ohio was summarily suspended on September 14, 1994. On June 30, 1995, the summary suspension was removed and his identification card was suspended indefinitely. On October 29, 1996, Larry Devonne Shaffer's identification card was reinstated and placed on probation for a period of five years pursuant to the provisions of Section 4729.16 of the Ohio Revised Code. The terms of probation included: a new five-year contract with a treatment provider; submission to random urine screens; regular physical attendance at AA, NA, or other support group meetings, a minimum of three times per week; immediate

report(s) from the treatment program for violations of the contract and/or lack of cooperation; and, submission of quarterly reports to the Board.

- (2) Pursuant to the terms of his probation, Larry Devonne Shaffer entered into a contract with Pharmacists Rehabilitation Organization, Inc. (PRO), a limited treatment provider, on November 16, 1996. However, due to his noncompliance, PRO terminated Larry Devonne Shaffer's contract on or about March 15, 1998.
- (3) Contrary to the terms of his probation, and contrary to the terms of his contract with PRO, Larry Devonne Shaffer failed to call his PRO Intervenor once per month, to wit: Larry Devonne Shaffer called only once during the six months immediately preceding his contract's termination. Such conduct is in violation of the terms of probation as set forth in paragraphs (A)(2), (A)(4), and (D)(4) of the Board's Order of October 29, 1996.
- (4) Contrary to the terms of his probation, and contrary to the terms of his contract with PRO, Larry Devonne Shaffer failed to submit documentation of Alcoholics Anonymous [or other] meeting attendance. Such conduct is in violation of the terms of probation as set forth in paragraphs (A)(2), (A)(4), and (D)(4) of the Board's Order of October 29, 1996.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute violating probation.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy reaffirms the Findings of Fact and Conclusions of Law set forth in the Board's Orders of June 30, 1995, and October 29, 1996. The Board also concludes that paragraphs (2) through (4) of the Findings of Fact set forth above 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.

ACTION OF THE BOARD

On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby revokes the probation granted pursuant to the Board Order, Docket No. D-960126-037, dated October 29, 1996, and takes the following actions in the matter of Larry Devonne Shaffer, Jr.:

- (A) Larry Devonne Shaffer's pharmacist identification card, No. 03-1-17555, is hereby suspended indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Larry Devonne Shaffer may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Twelve months after the effective date of this Order, the Board will consider any petition filed by Larry Devonne Shaffer for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Larry Devonne Shaffer must enter into a new contract, after the effective date of this Order, with a certified Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment program acceptable to the Board, for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) random, observed urine screens shall be conducted at least once a month. The urine drug screens must report testing for alcohol and must also report testing for creatinine as the dilutional standard or specific gravity;

- (b) regular physical attendance (on-line meetings excluded), 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;
 - (c) the intervener shall provide copies of all urine screens to the Board of Pharmacy in a timely fashion; and
 - (d) the program shall immediately report to the Board of Pharmacy any violations of the contract.
- (2) Larry Devonne Shaffer must provide, at the time of petitioning the Board for reinstatement, written documentation from his treatment provider regarding compliance with the program pursuant to the contract.

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.

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

MOTION CARRIED.

SO ORDERED.

RES. 98-182 The motion was seconded by Mr. Lamping and approved (Aye-7/Nay-0). Mr. Hanna moved that Mr. Shaffer be notified as soon as possible of the Board's decision. Mr. Maslak seconded the motion and it was approved (Aye-7/Nay-0).

11:45 a.m.

The meeting was recessed for lunch.

1:00 p.m.

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

CACCHIONE, CAROL M.	03-1-22880	IOWA
DAWSON, NANCY J.	03-1-22865	INDIANA
GIANNINI, BETH L.	03-1-22877	PENNSYLVANIA
HOOGLAND, GARY D.	03-1-22876	NORTH DAKOTA
LONG, JENNIFER K.	03-1-22890	INDIANA
MANNINO, PAMELA	03-1-22867	PENNSYLVANIA
MILLER, WALTER B.	03-1-22849	NORTH CAROLINA
REDZIKOWSKI, ROBERT J.	03-1-22852	NEW YORK
SCEPPA, JOSEPH M.	03-1-22797	MASSACHUSETTS
SUTHIKANT, JITNAPA	03-1-22851	NEW JERSEY
TAYLOR, BRAD D.	03-1-22872	PENNSYLVANIA

1:20 p.m.

RES. 98-183 Mr. Lamping moved that the candidates be approved and their licenses to practice pharmacy in Ohio be issued. The motion was seconded by Mr. Repke and approved (Aye-7/Nay-0).

1:25 p.m.

RES. 98-184 The Board reconvened in Room 1914 and reviewed a request from Children's Hospital, Columbus regarding a trial Physicians Computerized Order System. Mrs. Neuber moved that the Board approve the request. Mr. Hanna seconded the motion and it was approved (Aye-6/Nay-0).

The Board then considered patient confidentiality issues and requests for pharmacies to share prescription data with software vendors or data processing companies. The first

request reviewed by the Board was submitted by Marc Glassman, Inc. of Cleveland, Ohio. Buyers for the company were approached by Wyeth-Ayerst Labs to participate in a market share driven program entitled "Shared Success". The Pharmacy Buyer informed the Board in his request that the company (Marc's Pharmacies) would qualify for discounts on future purchases of Wyeth-Ayerst products if they would provide prescription data to "Source Informatics".

Source Informatics was purchased by the National Data Corporation in 1997. National Data Corporation operates a real-time electronic prescription information service (PPE or Pre- and Post-Edit program) for chain pharmacies. According to information provided on the National Data Corporation website, "the program intercepts the online prescription and checks for formulary and regional pricing compliance", "examines if the prescription needs to be altered by substituting a brand or generic drug, or can be dispensed as written -- all in a matter of seconds". The Web page also indicates that all of this happens "prior to the data being submitted to the third party". The following prescription data would be provided by Marc's Pharmacies to Source Informatics: Store I.D., Rx Number, Date of Fill, NDC Dispensed, New/Refill Indicator, Quantity, Cost, Amount Billed, Payment Status, Prescriber I.D. (DEA), and Days Supply.

RES. 98-185 Following discussion by the Board, it was the consensus of the members that there would not be any patient confidentiality problems as long as data regarding the specific patient were not "transmitted" electronically to Source Informatics or "intercepted" by any third party such as NDC. If an audit would have to be performed pursuant to the contract with Wyeth-Ayerst, the auditors could not access the individual prescription data without the written permission of the patient for whom the prescription was issued and dispensed. Staff was directed to obtain a copy of the "Source Standard" format appearing on page 3 of the contract (2.4) before the Board makes a final decision as to whether or not the program presents patient confidentiality problems.

The Board then considered the request of Rod Stickrath of Northside Pharmacy, Zanesville, Ohio to permit their software vendor, RNA, Inc. to pull the following patient information from their computer files: Rx Fill Date, Rx Number, Pharmacy NABP Number, Pharmacy Zip Code, Patient ID Number (RNA account number scrambled), Patient Age, Patient Gender, Physician DEA Number, Physician Zip Code, Rx Type (new or refill), Refills Remaining, Quantity Dispensed, Days Supply Dispensed, Drug NDC Number, Pay Type, Retail Price, Acquisition Cost, DAW Indicator, Third Party BIN Number, and Third Party Processor Control Number.

RES. 98-186 The Board directed staff to inform Mr. Stickrath that the Board considers the transmission of the patient I.D. number to be a violation of patient confidentiality and, therefore, it should not be included in the information provided.

RES. 98-187 The next request considered by the Board was submitted by Buehler Food Markets, Inc. of Wooster, Ohio. Buehler Food Markets, Inc. informed the Board in its request that the company planned to participate in National Data Corporation's Pre- and Post-Edit program provided the Board did not have problems with the program. Correspondence faxed to the Board office on March 27, 1998 by the Regional Sales Manager for NDC relating the fact that they presently are acting only as a switch to process third party claims. The new program will provide NDC with the opportunity to capture, manipulate, and share all patient prescription data with anyone that they contract with. The company's present plans are to use the data in the future for patient compliance programs. Staff was directed to inform Mr. Buehler that the Board would not permit the electronic transmission of patient-specific data to persons not authorized by the patient pursuant to Ohio Administrative Code Rule 4729-5-29 (Confidentiality of Patient Records).

The Board then reviewed correspondence and material distributed for their information pursuant to the agenda.

1:55 p.m. The meeting was recessed until Wednesday, April 8, 1998, at 8:00 a.m.

WEDNESDAY, APRIL 8, 1998

8:10 a.m. ROLL CALL

The following members of 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.; Paul Lamping, R.Ph.; Suzanne Neuber, R.Ph.; and Nicholas Repke, Public Member.

Matters appearing on the agenda not requiring official action by the Board were considered.

Mrs. Neuber moved that the Minutes of the March 9, 10, 11, 1998 meeting be approved as amended. The motion was seconded by Mr. Lamping and approved (Aye-5/Nay-0).

8:52 a.m.

Board member John Hanna arrived and joined the meeting.

The Board continued their discussion of patient confidentiality issues. Following consideration of the PCEP (Network patient care enhancing programs) and the "Pharmacy Compliance and Patient Education Programs" documents that were mailed to the Board members prior to the meeting, the Board directed that the issues be referred to the Sub. S.B. 66 ad hoc advisory committees for their recommendations.

10:18 a.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing pursuant to Ohio Revised Code Chapters 119. and 4729. in the matter of Pharmacy Intern Daniel E. O'Dowd, Columbus.

11:20 a.m.

The hearing was concluded and the record closed.

RES. 98-188 Staff requested a decision regarding the sale of "Vasceze" in Ohio. Mr. Maslak moved that the Board approve the sale of the product as a "device" based on the written and oral presentation of Vital Signs, Inc. The motion was seconded by Mr. Hanna and approved.

Mr. Hanna moved that the Board go into Executive Session for the purpose of considering the evidence and testimony received during the hearing in the matter of Daniel E. O'Dowd. The motion was seconded by Mrs. Adelman and a roll call vote was conducted by Vice-President Maslak as follows: Adelman-Yes, Hanna-Yes, Lamping-Yes, Maslak-Yes, Neuber-Yes, and Repke-Yes.

11:45 a.m.

RES. 98-189 The Executive Session was concluded and the meeting opened to the public. Mr. Hanna moved that the Board issue the following Order and require Mr. O'Dowd to compose and forward letters of apology to the Board agents involved in his case, his parents, and the Kroger Company. Further, Mr. O'Dowd is to compose a minimum 1,000-word essay for the Board with a copy being forwarded to both the Ohio State University Hospitals and the Dean of the Ohio State University College of Pharmacy. The letters and essay are to be completed and forwarded to the above-named individuals by June 5, 1998. The motion was seconded by Mr. Lamping and approved (Aye-4/Nay-2).

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-971223-028)

In The Matter Of:

DANIEL E. O'DOWD
1477 Peters Alley
Columbus, Ohio 43201
(Pharmacy Intern No. 06-0-02418)

INTRODUCTION

THE MATTER OF DANIEL E. O'DOWD CAME TO HEARING ON APRIL 8, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DANIEL E. O'DOWD WAS REPRESENTED BY GAROLD L. NEWBOLD, 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

Respondent's Witnesses:

- (1) Daniel E. O'Dowd, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Three-page copy of Notice of Opportunity for Hearing letter dated December 23, 1997.
- (2) Exhibit 1A--Hearing Request letter dated January 8, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 14, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated February 26, 1998.
- (5) Exhibit 1D--Pharmacy Intern File Front Sheet of Daniel E. O'Dowd showing original date of registration as May 7, 1996.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated March 11, 1998.
- (7) Exhibit 1F--Copy of Hearing Schedule letter dated March 17, 1998.
- (8) Exhibit 2--Renewal Application for Intern License, No. 06-0-02418, for a license to practice pharmacy as an intern in Ohio from September 15, 1997, to September 15, 1998, of Daniel E. O'Dowd dated July 25, 1997.
- (9) Exhibit 3--Certified copy of two-page Sentence Entry in the Franklin County Municipal Court, Columbus, Ohio, State of Ohio City of Columbus v. Daniel O'Dowd, Case No. 9607 CRB 017364, dated August 29, 1996.
- (10) Exhibit 3A--Copy of Complaint in the Franklin County Municipal Court, Case No. 23972/97, against Daniel E. O'Dowd dated September 8, 1997; and copy of Sentence Entry in the Franklin County Municipal Court, Columbus, Ohio, Case No. 23972/97, State of Ohio, City of Columbus vs. Daniel O'Dowd dated January 7, 1998.
- (11) Exhibit 4--Renewal Application for Intern License, No. 06-0-02418, for a license to practice pharmacy as an intern in Ohio from September 15, 1996, to September 15, 1997, of Daniel E. O'Dowd dated July 2, 1996.
- (12) Exhibit 5--Handwritten statement of Daniel E. O'Dowd signed and notarized on August 15, 1997.

Respondent's Exhibits:

- (1) None

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 Daniel E. O'Dowd was originally licensed in the state of Ohio on May 7, 1996, and is currently licensed as a pharmacy intern in the state of Ohio.
- (2) Daniel E. O'Dowd did, on or about July 2, 1996, knowingly make a false statement with purpose to secure the issuance by a governmental agency of a license, permit, or registration, to wit: Daniel E. O'Dowd swore on his pharmacy intern renewal application that there were no criminal charges pending against him when in fact, the day previous, Daniel E. O'Dowd had been arrested and criminally charged with theft, a misdemeanor of the first degree. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (3) Daniel E. O'Dowd did, on or about July 1, 1996, with purpose to deprive, knowingly obtain or exert control over property of Kroger without consent, to wit: Daniel E. O'Dowd admittedly stole a razor and a can of shaving cream valued at \$21.64. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Daniel E. O'Dowd did, during the months of April and May, 1997, knowingly obtain, possess, and use a controlled substance, to wit: Daniel E. O'Dowd admittedly obtained, possessed, and smoked marijuana. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been 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 paragraph (4) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. 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, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby reprimands Daniel E. O'Dowd. Further, Daniel E. O'Dowd must comply with the following actions imposed by the Board:

- (A) Daniel E. O'Dowd must write an essay to the Board regarding the issues contained in this Order. The essay must be a minimum of 1,000 words and must be copied and sent to Daniel E. O'Dowd's employer at Ohio State University Hospital and to John M. Cassidy, Ph.D., Dean of Ohio State University College of Pharmacy.
- (B) Daniel E. O'Dowd must write letters of apology to the following people:
 - (1) Daniel E. O'Dowd's parents;
 - (2) Robert Cole, Compliance Administrator, Ohio State Board of Pharmacy, 77 S. High St., 17th Floor, Columbus, Ohio 43266-0320;

- (3) Christopher K. Reed, Compliance Agent, Ohio State Board of Pharmacy, 77 S. High St., 17th Floor, Columbus, Ohio 43266-0320; and
- (4) William F. Sheridan, Manager of Pharmacy Services, The Kroger Co., 4111 Executive Parkway, Westerville, Ohio 43081

(C) The essay and a copy of each letter must be sent to the Board office prior to June 5, 1998.

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

MOTION CARRIED.

SO ORDERED.

RES. 98-190 The Board then reviewed Sub. S.B. 66 with staff. Staff was directed to set up and schedule ad hoc advisory committees for the purpose of drafting new rules and amendments to the Ohio Administrative Code necessary to implement the provisions of the legislation.

Mrs. Neuber reported on the progress of the Recruitment Committee. Mr. Hanna reported on the meeting of the Formulary Committee of the Nursing Board that was held March 23, 1998.

Mrs. Neuber moved that the Board receive Per Diem as follows:

PER DIEM	<u>3/24</u>	<u>3/30</u>	<u>3/31</u>	<u>04/06</u>	<u>04/07</u>	<u>04/08</u>	<u>Total</u>
Adelman	1	1	1	1	1	1	6
Cavendish	1	-	-	-	-	-	1
Hanna	-	-	-	1	1	1	3
Lamping	-	-	-	1	1	1	3
Littlejohn	-	1	1	-	-	-	2
Maslak	-	-	-	1	1	1	3
Neuber	-	1	1	1	1	1	5
Plant	-	1	1	1	1	-	4
Repke	-	1	1	1	1	1	5

The motion was seconded by Mrs. Adelman and approved by the Board (Aye-6/Nay-0).

11:32 a.m. Mr. Repke moved that the meeting be adjourned. The motion was seconded by Mrs. Adelman and approved (Aye-6/Nay-0).

/s/ Joseph J. Maslak
Joseph J. Maslak, Vice-President

/d/ 5/6/98
Date

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