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STATE BOARD OF PHARMACY; 77 SOUTH HIGH STREET, ROOM 1702; COLUMBUS, OHIO 43215-6126
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Minutes Of The Meeting
Ohio State Board of Pharmacy
March 7 & 8, 2005

MONDAY, MARCH 7, 2005

10:06 a.m. ROLL CALL

The State Board of Pharmacy convened in Room East-B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph. (President); Suzanne R. Eastman, R.Ph. (Vice-President); Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

Also present were William T. Winsley, Executive Director; Timothy Benedict, Assistant Executive Director; William McMillen, Licensing Administrator; Mark Keeley, Legislative Affairs Administrator; David Rowland, Legal Affairs Administrator; and Sally Ann Steuk, Assistant Attorney General.

Mr. Winsley announced that the following settlement agreement had been signed by all parties and was now effective:

R-2005-141

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-040810-019)

In The Matter Of:

STEPHEN PAUL BONFIGLIO, R.Ph.
6818 White Springs Drive
Greenville, Ohio 45331
(R.Ph. No. 03-3-15801)

This Settlement Agreement is entered into by and between Stephen Paul Bonfiglio 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.

Stephen Paul Bonfiglio voluntarily 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, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Stephen Paul Bonfiglio acknowledges that by entering into this agreement he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board 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 enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Stephen Paul Bonfiglio is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about August 10, 2004 and January 19, 2005, pursuant to Chapter 119. of the Ohio Revised Code, Stephen Paul Bonfiglio was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Stephen Paul Bonfiglio requested a hearing; it was scheduled and continued. The August 10, 2004, Notice of Opportunity for Hearing and January 19, 2005, Amendment contains the following allegations or charges:

- (1) Records of the State Board of Pharmacy indicate that Stephen Paul Bonfiglio was originally licensed in the State of Ohio on March 1, 1985, pursuant to examination and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that Stephen Paul Bonfiglio was previously disciplined by the Board on August 13, 1993.
- (2) Stephen Paul Bonfiglio did, on or about July 9, 2002, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Stephen Paul Bonfiglio indicated on his pharmacist license renewal application that he had not been charged with a crime when in fact he had been charged with operating a motor vehicle while under the influence of alcohol and/or drugs in the State of Indiana, on May 18, 2002. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (3) Stephen Paul Bonfiglio did, on or about August 25, 2003, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Stephen Paul Bonfiglio indicated on his pharmacist license renewal application that he had not been charged with a crime when in fact he had been convicted of operating a motor vehicle while under the influence of alcohol and/or drugs in the State of Indiana, on September 24, 2002. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Whereas, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

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

- (A) Stephen Paul Bonfiglio agrees to the imposition of a monetary penalty of two thousand dollars (\$2,000.00), due and owing within thirty (30) 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 43215-6126.

If, in the judgment of the Board, Stephen Paul Bonfiglio 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.

Stephen Paul Bonfiglio 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.

Stephen Paul Bonfiglio 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. Stephen Paul Bonfiglio waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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/ Stephen Paul Bonfiglio RPh</u>	<u>/d/ 2-20-05</u>
Stephen Paul Bonfiglio, R.Ph., Respondent	Date of Signature
<u>/s/ Ralph E Breitfeller</u>	<u>/d/ 2/24/05</u>
Ralph E. Breitfeller, Attorney for Respondent	Date of Signature
<u>/s/ Lawrence J. Kost</u>	<u>/d/ 3/7/05</u>
Lawrence J. Kost, President, Ohio State Board of Pharmacy	Date of Signature
<u>/s/ Sally Ann Steuk</u>	<u>/d/ 3-8-05</u>
Sally Ann Steuk, Ohio Assistant Attorney General	Date of Signature

10:11 a.m.

Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code and for the purpose of conferring with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Revised Code. The motion was seconded by Ms. Eastman and a roll call vote was conducted by President Kost as follows: Eastman-Yes, Giacalone-Yes, Gregg-Yes, Lipsyc-Yes, Mitchell-Yes, Teater-Yes, and Turner-Yes.

10:15 a.m.

Board Member Gregory Braylock arrived and joined the Executive Session in progress.

10:50 a.m.

R-2005-142

The Executive Session ended and the meeting was opened to the public. Mrs. Gregg moved that the Board issue the following Cease and Desist letter in the matter of ASD Specialty Healthcare. The motion was seconded by Mrs. Teater and approved by the Board (Aye-7/Nay-0/Abstain-1[Braylock]).

CEASE AND DESIST

ASD Specialty Healthcare, Inc.
c/o John Shelton, OMGR
7881 National Turnpike
Louisville, Kentucky 40214

Re: Illegal Sales of Drugs

Dear Mr. Shelton:

Board of Pharmacy records indicate that you are the Responsible Person for ASD Specialty Healthcare, Inc., Ohio Wholesale Distributor Registration Certificate No. 01-0774200, which distributes dangerous drugs and/or controlled substances at wholesale into the state of Ohio. It has come to the attention of the Board that your company has sold dangerous drugs to persons and/or facilities which are not licensed by the Board nor otherwise authorized to possess dangerous drugs.

Please be reminded that Section 4729.60(A) of the Ohio Revised Code states in pertinent part:

(A) Before a registered wholesale distributor of dangerous drugs may sell dangerous drugs at wholesale to any person, other than the persons specified in divisions (B)(1)(a) to (d) and (B)(1)(f) to (h) of section 4729.51 of the Revised Code, such wholesale distributor shall obtain from the purchaser and the purchaser shall furnish to the wholesale distributor a certificate indicating that the purchaser is a licensed terminal distributor of dangerous drugs. . . .

Violation of this provision constitutes a violation of Section 4729.51(B) of the Ohio Revised Code, a misdemeanor of the first degree, and is punishable by a fine of \$1,000.00 and incarceration up to 6 months for an individual, and is punishable by a fine of \$5,000.00 for an organization. Additionally, Section 2925.03 of the Ohio Revised Code prohibits the sale of controlled substances unless the seller is acting in accordance with Chapters 3719. and 4729. of the Ohio Revised Code, each of which requires licensure. A violation of this

section is a felony depending upon the amount of the substance, and is punishable by a mandatory fine of up to \$15,000.00 and incarceration up to the lifetime of the offender for an individual, and is punishable by a fine of \$25,000.00 for an organization. If purchasers of your drugs are not so licensed, they therefore cannot legally receive in commerce dangerous drugs. To so distribute is in violation of Ohio law.

Specifically, the attached document indicates that ASD sold dangerous drugs to Concentra Managed Care, located in Ohio, but at the time of the transactions was not licensed to make such purchases. Though Concentra has become licensed with the Board after these sales occurred, ASD's sale to unlicensed facilities still remains an issue.

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 distribution, sale or delivery of dangerous drugs in the state of Ohio unless you dutifully ensure that your purchaser is properly licensed, and DESIST from any further violations of Chapter 4729. of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

R-2005-143 Ms. Eastman moved that the Board deny the settlement offer received in the matter of Elizabeth Warner, R.Ph. The motion was seconded by Mrs. Gregg and approved by the Board (Aye-8/Nay-0).

R-2005-144 Mr. Braylock then moved that the Board deny the request to change the Board's Order issued in the matter of Dana Casper, R.Ph. The motion was seconded by Ms. Eastman and approved by the Board (Aye-7/Nay-0/Abstain-1[Lipsyc]).

R-2005-145 Mr. Lipsyc moved that the Board accept the settlement offer in the matter of Stephen Daley, R.Ph. as amended by the Board. The motion was seconded by Mr. Mitchell and approved by the Board (Aye-8/Nay-0). The settlement will become official upon receiving the signatures of all parties.

Mr. Rowland distributed letters received from Eric Youngblood, Pharmacy Intern that were written as part of his compliance with his Board Order. No official action by the Board was required.

R-2005-146 Mr. Braylock moved that the Board accept the restitution plan submitted by James Smetana, R.Ph. as part of his compliance with his Board Order. The motion was seconded by Mr. Giacalone and approved by the Board (Aye-8/Nay-0).

R-2005-147 Mrs. Gregg moved that the Board adopt the following recognition resolution for Sandra Butler, recognizing her many years of service to the Board of Pharmacy. The motion was seconded by Ms. Eastman and approved by the Board (Aye-8/Nay-0).

RESOLUTION OF THE BOARD

WHEREAS, the Board's Executive Secretary Sandra L. Butler has been with the Board since March of 1970, giving of herself great dedication and personal sacrifice to the benefit of the Board and the citizens of the State of Ohio for over 30 years;

WHEREAS, her efforts have significantly contributed to the ongoing operation of this Board, enabling this Board to serve its constituents effectively and efficiently;

WHEREAS, the Board recognizes that, upon her retirement this March 31, 2005, her daily presence in the Board office will be greatly missed;

BE IT RESOLVED that we, the undersigned Members of the Ohio State Board of Pharmacy, in the Board's one-hundred twentieth year, do hereby express our profound appreciation to Sandra L. Butler for her dedication and service to the Board and to the citizens of Ohio; and

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

SANDRA L. BUTLER

The Board then discussed the proposed consolidation and reorganization of 27 Boards and Commissions that was contained in the Executive Budget (HB66). The Board discussed ways that the Board's concerns with this proposal could be addressed.

11:00 a.m.

The Board took a brief recess.

11:14 a.m.

The Board discussed the FY06-07 Budget that had been submitted by the Governor to the Legislature. The Board members agreed that they were not in favor of the proposed reorganization of the Boards and Commissions that was contained in the Budget and discussed alternatives that could be suggested.

12:11 p.m.

The Budget discussion ended and the Board recessed for lunch.

1:32 p.m.

The Board reconvened in Room East-B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph. (President); Suzanne R. Eastman, R.Ph. (Vice-President); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

1:33 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Elizabeth Warner, R.Ph., Lakewood.

3:07 a.m.

The hearing ended and the record was closed. The Board took a brief recess.

3:23 p.m.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Ronald Stevens, R.Ph., Stow.

6:46 p.m.

The hearing ended and the record was closed. The Board meeting was recessed until Tuesday, March 8, 2005.

TUESDAY, MARCH 8, 2005

8:00 a.m. ROLL CALL

The Board reconvened in Room East-B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph. (President); Suzanne R. Eastman, R.Ph. (Vice-President); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

8:09 a.m.

Mrs. Gregg moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mr. Braylock and a roll call vote was conducted by President Kost as follows: Braylock-Yes, Eastman-Yes, Giacalone-Yes, Gregg-Yes, Lipsyc-Yes, Mitchell-Yes, Teater-Yes, and Turner-Yes.

10:18 a.m.
R-2005-148

The Executive Session ended and the meeting was opened to the public. Mr. Braylock moved that the Board adopt the following Order in the matter of Elizabeth Warner, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-031104-029)

In The Matter Of:

ELIZABETH MARIE WARNER, R.Ph.
1486 Clarence Avenue
Lakewood, Ohio 44107
(R.Ph. No. 03-3-16196)

INTRODUCTION

THE MATTER OF ELIZABETH WARNER CAME FOR HEARING ON MARCH 7, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

ELIZABETH MARIE WARNER WAS REPRESENTED BY RICHARD D. SUMMERS AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Joann Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Elizabeth Warner, R.Ph., Respondent

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [11-04-03]
1A-1B. Procedurals
1C. Amendment Notice [12-24-03]
1D-1I. Procedurals
2. Notarized Statement of Elizabeth Warner. [11-24-03]
3. Photocopies of unit dose packages of pseudoephedrine HCL 60 mg; hydroxyzine HCL 25 mg; Remeron 15 mg; Augmentin 875 mg., Zithromax 250 mg; diphenhydramine HCL 25 mg; and theophylline 300 mg

Respondent's Exhibits

- A. University Hospitals HealthSystem Neuropsychological Evaluation of Elizabeth Warner [10-15-04]
- B. Two Treatment Compliance letters from Jose I. Suarez, MD [01-04-05 and 02-18-05]
- C. Cardiac Evaluation letter from Lloyd Greene, M.D. [08-31-04]
- D. Chemical Dependency Assessment Report of Elizabeth M. Warner [02-16-05]
- E.
- F.
- G. Letter from Carl Lufter, R.Ph. [02-23-05]
- H. Twenty Continuing Pharmaceutical Education Credits and Certificates [01-12-05 to 03-01-05]
- I-O. Seven Letters of Support [02-15-05 to 03-01-05]

FINDINGS OF FACT

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

(1) Records of the Board of Pharmacy indicate that Elizabeth Marie Warner was originally licensed by the State of Ohio as a pharmacist on August 2, 1985, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.

(2) Elizabeth Marie Warner is mentally and/or physically impaired to such a degree as to render her unfit to practice pharmacy, to wit: on or about July 30, 2003, Elizabeth Marie Warner had a seizure and collapsed at work, and was in a coma in the neurointensive care unit with possible permanent brain damage. Elizabeth Marie Warner admitted to a board specialist that she had been self-medicating, and was found in illegal possession of dangerous drugs at the time of her seizure. Elizabeth Marie Warner has admitted that she is incapable of practicing pharmacy due to severe brain trauma. Further, Elizabeth Marie Warner has problems with concentration and short-term memory. Elizabeth Marie Warner has admitted that she "might hurt someone as a pharmacist." Such condition indicates that the continuation of Elizabeth Marie Warner's professional practice presents a danger of immediate and serious harm to others within the meaning of Section 3719.121 of the Ohio Revised Code, and that Elizabeth Marie Warner is impaired to such a degree as to render her unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

(3)

(4)

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraph (2) 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 her unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) 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 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION 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 to Elizabeth Marie Warner on November 4, 2003.

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby reinstates the pharmacist identification card, No. 03-3-16196, held by Elizabeth Marie Warner to practice pharmacy in Ohio and places Elizabeth Marie Warner on probation for two years beginning on the effective date of this Order, with the following conditions:

(A) Elizabeth Marie Warner may not, during the first 30 days of practice, work in a pharmacy more than six hours per day and a maximum of 30 hours per week.

(B) Elizabeth Marie Warner may not, during the next five months of practice, work in a pharmacy more than eight hours per day and a maximum of 40 hours per week.

(C) Elizabeth Marie Warner must, during the first six months of practice, be directly supervised by another pharmacist whose license is in good standing.

(D) Elizabeth Marie Warner may not dispense prescriptions for herself or her family.

(E) Elizabeth Marie Warner must submit to the Board, each year for two years, documentation from her neurologist that she continues to maintain the cognitive abilities needed to function in a pharmacy work environment.

(F) Prior to practicing pharmacy, Elizabeth Marie Warner must enter into an agreement with the facility's Responsible Pharmacist that mandates the Responsible Pharmacist to submit a progress report to the Board every two months for six months from the date of employment.

(G) Other terms of probation are as follows:

(1) The State Board of Pharmacy hereby declares that Elizabeth Marie Warner'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) Elizabeth Marie Warner may not serve as a responsible pharmacist.

(3) Elizabeth Marie Warner may not destroy, assist in, or witness the destruction of controlled substances.

(4) Elizabeth Marie Warner must not violate the drug laws of Ohio, any other state, or the federal government.

(5) Elizabeth Marie Warner must abide by the rules of the State Board of Pharmacy.

(6) Elizabeth Marie Warner must comply with the terms of this Order.

(H) Any violation of probation or any unsatisfactory performance review may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

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

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Teater and approved by the Board (Aye-8/Nay-0).

R-2005-149 Mr. Braylock then moved that the Board adopt the following Order in the matter of Ronald Stevens, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-041006-026)

In The Matter Of:

RONALD HEATH STEVENS, R.Ph.

4378 Millburn Avenue

Stow, Ohio 44224

(R.Ph. No. 03-3-21936)

INTRODUCTION

THE MATTER OF RONALD HEATH STEVENS CAME FOR HEARING ON MARCH 7, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY

BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

RONALD HEATH STEVENS WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Thomas Miksch, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Ronald Heath Stevens, R.Ph., Respondent
2. Teri Stevens

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [10-06-04]
- 1A-1F. Procedurals
2. Notarized Statement of David Woychik [02-17-04]
3. Notarized Statement of Ronald H. Stevens [09-21-04]
4. Record of Illegal Prescriptions [11-22-02 to 01-29-04]
5. Rx #151178 [11-22-02]; Rx #152440 [01-13-03]; Rx #155421 [05-03-03]; Rx #157107 [07-15-03]; Rx #157108 [07-15-03]; Rx #369535 [10-29-03]; Rx #171368 [11-03-03]; Rx #175194 [10-29-03]
6. Notarized Statement of Michael K. Brockett [04-21-04]
- 6A. Notarized Statement of Michael Brockett, M.D. [02-22-05]
- 6B. Notarized Statement of Kurt Miller, L.P.N. [02-22-05]
7. Rx #C151965 [12-20-02]; Rx #C152799 [01-28-03]; Rx #C155725 [05-16-03]; Rx #C157144 [07-16-03]; Rx #157915 [08-21-03]; Rx #158695 [09-25-03]; Rx #170637 [10-01-03]; Rx #174284 [12-17-03]; Rx #700566 [01-29-04]

Respondent's Exhibits

- A-D. Handwritten Contentions of Ronald Heath Stevens [not dated]
- E. Letter from Michael K. Brockett, M.D. [10-27-04]
- F. Letter from Kurt D. Miller, L.P.N. [10-27-04]
- G-H. Handwritten Contentions of Ronald Heath Stevens [not dated]

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Ronald Heath Stevens was originally licensed by the State of Ohio as a pharmacist on July 30, 1996, pursuant to examination, and that Ronald Heath Stevens' license to practice pharmacy in Ohio was summarily suspended effective October 6, 2004.
- (2) Ronald Heath Stevens is addicted to the use of controlled substances and/or is abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Ronald Heath Stevens has admitted to Board agents that he is addicted to controlled substances and that he "is afraid that if he stopped taking them [he] wouldn't be able to handle the withdrawal." Such conduct indicates that Ronald Heath Stevens is within the ambit of Section 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Ronald Heath Stevens did, on or about the following dates, intentionally create and/or knowingly possess false or forged prescriptions, to wit: Ronald Heath Stevens created the following prescriptions and/or their refill information without authorization from a prescriber, and filed them in the pharmacies in which he was employed making them to appear legitimate.

Rx #	Date	Drug	Qty
151178	11/22/02	Soma 350 mg	120
151178	11/27/02	Soma 350 mg	120
151178	12/26/02	Soma 350 mg	120
151178	01/07/03	Soma 350 mg	120
152440	01/13/03	Soma 350 mg	360
152440	01/20/03	Soma 350 mg	120
152440	01/24/03	Soma 350 mg	120
152440	02/14/03	Soma 350 mg	120
152440	03/07/03	Soma 350 mg	240
152440	03/21/03	Soma 350 mg	240
152440	03/28/03	Soma 350 mg	120
155421	05/02/03	Soma 350 mg	300
155421	05/17/03	Soma 350 mg	300
155421	06/09/03	Soma 350 mg	300
155421	06/20/03	Soma 350 mg	300
155721	07/10/03	Soma 350 mg	300
157107	07/15/03	Soma 350 mg	300
157108	07/15/03	Soma 350 mg	300
157107	08/01/03	Soma 350 mg	300
157108	08/14/03	Soma 350 mg	300
157107	08/27/03	Soma 350 mg	300
157108	09/10/03	Soma 350 mg	300
157107	09/25/03	Soma 350 mg	300
369535	10/29/03	carisoprodol 350 mg	300
171368	11/03/03	Wellbutrin XL 300 mg	60
175194	12/31/03	carisoprodol 350 mg	300

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

(4)) Ronald Heath Stevens did, on or about the following dates, intentionally create and/or knowingly possess false or forged prescriptions, to wit: Ronald Heath Stevens created the following prescriptions and/or their refill information without authorization from a prescriber, and filed them in the pharmacy in which he was employed making them to appear legitimate.

Rx #	Date	Drug	Qty
151965	12/20/02	Vicoprofen 7.5 mg	300
151965	01/10/03	Vicoprofen 7.5 mg	300
151965	01/27/03	Vicoprofen 7.5 mg	300
152799	01/28/03	Vicoprofen 7.5 mg	300
151965	02/07/03	Vicoprofen 7.5 mg	300
151965	02/21/03	Vicoprofen 7.5 mg	300
152799	03/07/03	Vicoprofen 7.5 mg	300
152799	03/21/03	Vicoprofen 7.5 mg	300
152799	04/20/03	Vicoprofen 7.5 mg	300
152799	05/16/03	Vicoprofen 7.5 mg	300
155725	05/16/03	Vicoprofen 7.5 mg	300
155725	06/04/03	Vicoprofen 7.5 mg	300
155725	06/20/03	Vicoprofen 7.5 mg	300
155725	07/10/03	Vicoprofen 7.5 mg	300
157144	07/16/03	Vicoprofen 7.5 mg	300
155725	07/29/03	Vicoprofen 7.5 mg	300
157915	08/21/03	Vicoprofen 7.5 mg	300
157144	08/27/03	Vicoprofen 7.5 mg	300
157144	09/10/03	Vicoprofen 7.5 mg	300
158695	09/25/03	Robitussin AC	8 oz
170637	10/22/03	Vicoprofen 7.5 mg	300
170637	11/05/03	Vicoprofen 7.5 mg	300
174284	11/14/03	Vicoprofen 7.5 mg	300
170637	11/19/03	Vicoprofen 7.5 mg	300
170637	12/03/03	Vicoprofen 7.5 mg	300
174284	12/17/03	Vicoprofen 7.5 mg	300
174284	12/31/03	Vicoprofen 7.5 mg	300
174284	01/14/04	Vicoprofen 7.5 mg	300
700566	01/29/04	hydrocodone BT - ibuprofen (<i>sic</i>)	300

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

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) and (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) The State Board of Pharmacy concludes that paragraph (2) 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) The State Board of Pharmacy concludes that paragraphs (3) and (4) 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.

DECISION 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 to Ronald Heath Stevens on October 6, 2004.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-21936, held by Ronald Heath Stevens and such suspension is effective as of the date of the mailing of this Order.

(A) Ronald Heath Stevens, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(B) Ronald Heath Stevens, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by Ronald Heath Stevens for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

(A) Ronald Heath Stevens must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month.

(a) Urine drug screens may not be conducted at Marietta Health Care Systems, Inc.

(b) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(c) Carisoprodol and hydrocodone must be included in the standard urine drug screen.

(d) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

(2) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Ronald Heath Stevens must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

(C) Ronald Heath Stevens must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);

(2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;

(3) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Ronald Heath Stevens must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

Upon such time as the Board may consider reinstatement, Ronald Heath Stevens will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-1).

MOTION CARRIED.

SO ORDERED.

The motion was seconded by Mrs. Gregg and approved by the Board (Aye-7/Nay-1).

After a discussion of the draft minutes of the February 7-9, 2005, meeting, Mrs. Gregg moved that the minutes be approved as amended. The motion was seconded by Mr. Mitchell and approved by the Board (Aye-8/Nay-0).

R-2005-150 The Board next considered a request for an exemption from Rule 4729-5-10 (Pick-up station) received from the following sites:

Teregen Laboratories (02-1235150)
Various Physician Office contained in the letter of request

After discussion, Mr. Giacalone moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mr. Braylock and approved by the Board (Aye-8/Nay-0).

R-2005-151 Mr. McMillen next presented a request for an exemption to Rule 4729-5-11 (Responsible person) requesting that Nick Femia, R.Ph. be permitted to be the Responsible Pharmacist for the following Terminal Distributor of Dangerous Drugs licenses:

Greenbrier Hospital for Special Services (02-1287350)
Mahoning Valley Hospital/Youngstown (02-1390500)

After discussion, Mr. Giacalone moved that the Board approve this request. The motion was seconded by Mrs. Gregg and approved by the Board (Aye-8/Nay-0).

R-2005-152 The Board then considered a request for an exemption from Rule 4729-5-10 (Pick-up station) received from the following sites:

Planned Parenthood of Southwest Ohio Pharmacy (Pending)
12 Associated Planned Parenthood Medical Centers

After discussion, Mr. Giacalone moved that the Board approve the request subject to a final inspection after delivery of the Pharmacy's license. The motion was seconded by Mrs. Teater and approved by the Board (Aye-8/Nay-0).

Mr. Keeley discussed his Legislative Report with the Board.

R-2005-153 Mr. Keeley next presented a request for Board approval of an electronic prescribing system from NewCrop LLC. After discussion, Mr. Braylock moved that the Board find the NewCrop electronic prescribing system approvable pending final inspection of the installed product. The motion was seconded by Mr. Mitchell and approved by the Board (Aye-8/Nay-0).

R-2005-154 Mr. Keeley then discussed the need to develop rules in response to HB 454, dealing with charitable pharmacies. The consensus of the Board was that the Ad Hoc Committee on Rule Review previously appointed could deal with these rules. Mr. Braylock then moved that the Board add Robert Valentine, R.Ph. and Liz Carter to that committee due to their expertise in this area. The motion was seconded by Mrs. Gregg and approved by the Board (Aye-8/Nay-0).

R-2005-155 Mr. Keeley next discussed a problem with the electronic filing of Rule 4729-21-06 that had been approved by the Board at the February meeting. Due to a problem with the electronic filing system, the rule could not be filed with an effective date of March 1, 2005 as previously approved by the Board. Mr. Keeley asked for Board approval to change the effective date to March 11, 2005. After discussion, Mrs. Gregg moved that the Board approve an effective date of March 11, 2005 for Rule 4729-21-06. The motion was seconded by Mr. Mitchell and approved by the Board (Aye-8/Nay-0).

11:31 a.m.

The Board recessed for lunch.

12:42 p.m.

The Board reconvened in Room East-B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph. (President); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Robert A. Berkowitz, R.Ph., Lyndhurst. Mr. Lipsyc, and Mr. Turner were recused from this hearing.

1:15 p.m.

The hearing ended and the record was closed.

1:17 p.m.

Mr. Mitchell moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mrs. Gregg and a roll call vote was conducted by President Kost as follows: Braylock-Yes, Giacalone-Yes, Gregg-Yes, Mitchell-Yes, and Teater-Yes.

1:20 p.m.

R-2005-156 The Executive Session ended and the meeting was opened to the public. Mrs. Gregg moved that the Board adopt the following Order in the matter of Robert A. Berkowitz, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-040713-002)

In The Matter Of:

ROBERT A. BERKOWITZ, R.Ph.

5529 Kilbourne Drive
Lyndhurst, Ohio 44124
(R.Ph. No. 03-2-08019)

INTRODUCTION

THE MATTER OF ROBERT A. BERKOWITZ CAME FOR HEARING ON MARCH 8, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; KEVIN J. MITCHELL, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

ROBERT A. BERKOWITZ WAS REPRESENTED BY JOHN R. IRWIN, M.D. AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. None

Respondent's Witnesses

1. Robert A. Berkowitz, R.Ph., Respondent

State's Exhibits

1. Reinstatement Hearing Request letter from John R. Irwin, M.D. [07-02-04]
1A-1D. Procedurals
2. State Board of Pharmacy Order in re Robert A. Berkowitz, R.Ph. [03-07-02]
3. Three Statements of Robert A. Berkowitz [04-16-01, 06-06-01 and 06-11-01]
4. Bill of Information, State of Ohio v. Robert Berkowitz, Case No. 411642, Cuyahoga County Common Pleas Court [09-25-01]; Journal Entry [10-18-01]; Journal Entry [11-27-01]
5. Information, United States of America vs. Nathan Schneider, Robert A. Berkowitz, Paul H. Marcus, Scott L. Nuti, Robert M. Epstein, Case No. CR 84-156, United States District Court For The Northern District of Ohio, Eastern Division [08-01-84]; Plea Agreement [08-01-84]; Sentencing [10-10-84]

Respondent's Exhibits

- A1-A7. Psychological Report from Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S. [01/25/02]
B1-B2. Progress Letter from Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S. [03-03-05]
C1-C2. Progress Letter from Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S. [04-02-03]
D1-D7. Curriculum Vitae of Dr. Robert G. Kaplan [02-22-05]
E-S. Fifteen Continuing Pharmaceutical Education Credits and Certificates [06-23-01 to 01-15-05]
T. Jurisprudence Examination (MPJE) letter to Robert A. Berkowitz [11-17-04]
U1-U6. Resume of Robert A. Berkowitz [02-01-05]
V1-V11. Eleven Letters of Support [01-2-02 to 02-13-05]
V12-V14. Three Thank You Letters [10-16-03 to 12-12-03]
W-W11d. Twenty-eight pages of Miscellaneous Course Articles
W12. Certificate of Completion "Managing Agitation in Elders with Dementia" [09-30-04]
X1a- X8b. Fourteen pages of Community Volunteer Activities [04-25-02 to 05-17-03]

FINDING OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that Robert A. Berkowitz has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-011205-022, effective March 7, 2002.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-2-08019, held by Robert A. Berkowitz to practice pharmacy in Ohio.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-0).

MOTION CARRIED.

SO ORDERED.

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

There was no report for the Nursing Board's Committee on Prescriptive Governance.

There was no report for the Medical Board's Prescribing Committee.

1:30 p.m.

The Board reconvened in Room South-A, 31st Floor., Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, for the purpose of meeting with the candidates for licensure by reciprocity.

R-2005-157

Following presentations by Board members and self-introductions by the candidates for licensure by reciprocity, the following candidates participated in a discussion of pharmacy laws and rules with Mr. McMillen and were then presented with their pharmacist identification cards.

CHRISTOPHER SCOTT ASHER	03-2-26617	SOUTH CAROLINA
MARK STEVEN CHAFFEE	03-2-26604	MICHIGAN
AIMEE JACINDA COLLINS	03-2-26615	INDIANA
YOGESH P. PATEL	03-2-26614	ILLINOIS
DORA PSIAKIS	03-2-26618	NEW HAMPSHIRE
ARNOLD SCHWARTZ	03-2-26602	NEW YORK

2:06 p.m.

The Board reconvened in Room East-B. The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Bradley Allen Schwartz, R.Ph., Mansfield.

3:15 p.m.

The hearing ended and the record was closed.

3:20 p.m.

Mr. Braylock moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mrs. Gregg and a roll call vote was conducted by President Kost as follows: Braylock-Yes, Giacalone-Yes, Gregg-Yes, Lipsyc-Yes, Mitchell-Yes, Teater-Yes, and Turner-Yes.

3:35 p.m.

R-2005-158

The Executive Session ended and the meeting was opened to the public. Mr. Braylock moved that the Board adopt the following Order in the matter of Bradley Allen Schwartz, R.Ph.:

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-041006-025)

In The Matter Of:

BRADLEY ALLEN SCHWARTZ, R.Ph.

483 Clifton Boulevard

Mansfield, Ohio 44907

(R.Ph. No. 03-2-26247)

INTRODUCTION

THE MATTER OF BRADLEY ALLEN SCHWARTZ CAME FOR HEARING ON MARCH 8, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

BRADLEY ALLEN SCHWARTZ WAS REPRESENTED BY DAVID W. GRAUER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Paul Kover, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Bradley Allen Schwartz, R.Ph., Respondent
2. Debra Basinger, R.Ph.

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing Letter [10-06-04]
1A-1E. Procedurals
2. Notarized Statement of Brad Schwartz [10-12-04]
3. Notarized Statement of Detective Dawn Brown [09-27-04]
4. Notarized Statement of Brian Frank George [09-27-04]
5. Notarized Statement of Thomas W. Arkwright [10-12-04]
6. Medtox Laboratories, Inc. Drug Screen Report [09-24-04]
7. Judgment Entry, State of Ohio v. Bradley Allen Schwartz, Case No. 04CR1009D, Richland County Common Pleas Court [01-04-05]; Waiver of One Day Service [01-04-05]; Waiver of Indictment [01-04-05]

Respondent's Exhibits

- A. PRO Pharmacist's Recovery Contract for Brad Schwartz [12-16-04]
- B. Support Group Attendance Records [10-10-04 to 02-28-05]; Calendar pages for October 2004 to February 2005
- C. Compass Vision, Inc. Licensee Summary Report [01-31-05 to 02-10-05]
- D. Continuing Pharmaceutical Education Credits and Certificates [05-11-04 to 02-26-05]
- E. Eight Letters of Support [02-24-05 to 03-09-05]
- F. Richland County Adult Court Services Conditions of Release Supervision; Special Conditions of Supervision; Notice to Defendants; and Financial Responsibility Agreement [01-27-05]
- G. Letter from Brad Schwartz [not dated]

FINDINGS OF FACT

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

(1) Records of the Board of Pharmacy indicate that Bradley Allen Schwartz was originally licensed by the State of Ohio as a pharmacist on July 1, 2004, pursuant to examination, and that Bradley Allen Schwartz's license to practice pharmacy in Ohio was summarily suspended effective October 6, 2004.

(2) Bradley Allen Schwartz is addicted to the use of controlled substances and/or is abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Bradley Allen Schwartz admitted "having a problem" with controlled substances, that he "needed rehab," and that he "had a problem before, stopped, and started again." Bradley Allen Schwartz has also admitted to stealing controlled substances from his employer, MedCentral Health System, Mansfield. Such conduct indicates that Bradley Allen Schwartz is within the ambit of Section 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) Bradley Allen Schwartz did, on or about September 24, 2004, and on dates previous, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of MedCentral Health System, Mansfield, beyond the express or implied consent of the owner, to wit: Bradley Allen Schwartz has admitted to stealing Darvon and Xanax, Schedule IV Controlled Substances. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraph (3) 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.

(3) The State Board of Pharmacy concludes that paragraph (2) 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.

DECISION 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 to Bradley Allen Schwartz on October 6, 2004.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-26247, held by Bradley Allen Schwartz and such suspension is effective as of the date of the mailing of this Order.

(A) Bradley Allen Schwartz, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(B) Bradley Allen Schwartz, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by Bradley Allen Schwartz for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

(A) Bradley Allen Schwartz must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month.

(a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(b) Propoxyphene and alprazolam must be added to the standard urine drug screen.

(c) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

(2) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Bradley Allen Schwartz must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

(C) Bradley Allen Schwartz must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);

(2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;

(3) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Bradley Allen Schwartz must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

Upon such time as the Board may consider reinstatement, Bradley Allen Schwartz will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-0).

MOTION CARRIED.

SO ORDERED.

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

3:40 p.m.

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

PER DIEM	<u>10/26-28</u>	<u>3/7</u>	<u>3/8</u>	<u>Total</u>
Braylock	-	1	1	2
Eastman	-	1	1	2
Giacalone	-	1	1	2
Gregg	-	1	1	2
Kost	-	1	1	2
Lipsyc	-	1	1	2
Mitchell	-	1	1	2
Teater	-	1	1	2
Turner	3	1	1	5

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

3:41 p.m.

Mr. Lipsyc moved that the meeting be adjourned. The motion was seconded by Mr. Turner and approved by the Board (Aye-7/Nay-0).

APPROVED THESE MINUTES APRIL 13, 2005