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Ohio State Board of Pharmacy 77 South High Street, Room 1702 Columbus, Ohio 43215-6126
telephone: 614-466-4143 fax: 614-752-4836 email: exec@bop.state.oh.us

Minutes of the August 8 & 9, 2005
Meeting of the Ohio State Board of Pharmacy

MONDAY, AUGUST 8

10:10 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Suzanne R. Eastman, R.Ph., *President*; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; and Dorothy S. Teater, Public Member.

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 agreements were signed by all parties and are now effective:

R-2006-013

SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY

Docket Numbers: D-040518-075 and D-041122-036

in the matter of:

DANIEL L. DEEM, R.Ph.
336 East Lima Avenue
Ada, Ohio 45810

R.Ph. Number 03-2-21149

This Settlement Agreement is entered into by and between Daniel L. Deem 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.

Daniel L. Deem 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.

The Notices of Opportunity for Hearing for Respondent Daniel L. Deem is, upon execution of this Agreement, hereby withdrawn by the Board and held for naught.

Daniel L. Deem 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. Daniel L. Deem waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

<u>/s/</u> Daniel L. Deem, R.Ph., Respondent	<u>/d/ 07/30/05</u> Date Signed
<u>/s/</u> David W. Grauer, Attorney for Respondent	<u>/d/ 07/30/05</u> Date Signed
<u>/s/</u> Suzanne R. Eastman, President, Ohio State Board of Pharmacy	<u>/d/ 08/08/05</u> Date Signed
<u>/s/</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 08/08/05</u> Date Signed

R-2006-014

SETTLEMENT AGREEMENT WITH THE OHIO STATE BOARD OF PHARMACY

DOCKET NUMBERS: D-040518-073, D-040518-074, D-040518-076
D-040621-077 and D-041122-035

in the matter of:

RITE AID DISCOUNT PHARMACY #3086
RITE AID #3088
RITE AID OF OHIO, INC. #1186
RITE AID DISCOUNT PHARMACY #1659
RITE AID DISCOUNT PHARMACY #2304
c/o Karen Mankowski

Terminal Distributor Numbers: 02-0094400; 02-0094750; 02-0181100; 02-0438400; and 02-0583400

This settlement agreement is entered into by and between Rite Aid Discount Pharmacy #3086, Rite Aid #3088, Rite Aid of Ohio, #1186, Rite Aid Discount Pharmacy #1659 and Rite Aid Discount Pharmacy #2304 (hereinafter referred to as "Respondents"), 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.

Respondents enter into this agreement being fully informed of their 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, the right to appeal. Respondents acknowledge that by entering into this agreement each has waived all rights under Chapter 119. of the Revised Code.

Whereas, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

Whereas, Respondents are licensed terminal distributors of dangerous drugs in the State of Ohio.

Whereas, on or about May 18, 2004, June 22, 2004, and November 22, 2004, pursuant to Chapter 119. of the Ohio Revised Code, Respondents were notified

of the allegations or charges against them, their rights to a hearing, their rights in such hearing, and their rights to submit contentions in writing. Respondents requested hearings; they were scheduled, consolidated, and continued. The Notices of Opportunity for Hearing contain the following allegations or charges:

RITE AID DISCOUNT PHARMACY #3086:

- (1) Records of the Ohio State Board of Pharmacy indicate that Rite Aid Discount Pharmacy #3086, 1248 North Broad Street, Fairborn, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Jerry L. Durst is the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) Rite Aid Discount Pharmacy #3086 did, on or about August 31, 2003, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of the following controlled substances, he reported it immediately to Rite Aid Loss Prevention; however, required notification to the Board was not made.

<u>Drug</u>	<u>Strength</u>	<u>Quantity</u>
lorazepam	1 mg	1000
Xanax	1 mg	300
alprazolam	0.25 mg	370
alprazolam	1 mg	850
alprazolam	2 mg	770
clonazepam	2 mg	50
hydrocodone/APAP	5/500 mg	107
hydrocodone/APAP	7.5/750 mg	400
Concerta	27 mg	100
Percocet	2.5/500 mg	20

Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

RITE AID #3088:

- (1) Records of the Board of Pharmacy indicate that Rite Aid #3088, 4328 North Main Street, Dayton, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Jerome F. Holtel is the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) Rite Aid #3088 did, on or about August 12, 2003, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 50 unit doses of oxycodone with APAP 5 mg/325 mg, a Schedule II controlled substance, he reported it to Rite Aid supervisors and indicated that an employee was terminated after being found stealing the drugs. It was later determined by Rite Aid that the pharmacist had miscounted the drugs. A DEA 106 form indicating the theft or other significant loss of the drugs was completed and filed; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

RITE AID OF OHIO, INC. #1186:

- (1) Records of the Board of Pharmacy indicate that Rite Aid of Ohio, Inc. #1186, 1805 South Limestone Street, Springfield, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Martin D. Sutter, R.Ph. is the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) Rite Aid of Ohio, Inc. #1186 did, on or about January 22, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 500 unit doses of diazepam 2 mg and 125 unit doses of lorazepam 1 mg, Schedule IV controlled substances, he reported it immediately to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.
- (3) Rite Aid of Ohio, Inc. #1186 did, on or about March 12, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. The store's pharmacist detected a shortage of 100 unit doses of methylphenidate, a Schedule II controlled substance, while checking the perpetual inventory. The next day, while conducting a count of the Schedule II controlled substances, the pharmacist discovered a loss of 1 Adderall 15 mg tablet. The pharmacist reported it immediately to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

RITE AID DISCOUNT PHARMACY #1659:

- (1) Records of the Board of Pharmacy indicate that Rite Aid Discount Pharmacy #1659, 437 North Wolf Creek Street, Brookville, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Sam Jawahar, R.Ph. is the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) Rite Aid #1659 did, on or about March 31, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 5 Duragesic 100 mcg patches, Schedule II controlled substances, he reported it to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

RITE AID DISCOUNT PHARMACY #2304:

- (1) Records of the Board of Pharmacy indicate that Rite Aid Discount Pharmacy #2304, 2990 Derr Road, Springfield, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect that during the relevant time periods stated herein, Daniel L. Deem, R.Ph. was the District Manager and/or Responsible Pharmacist pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Rite Aid Discount Pharmacy #2304 did, on or about March 10, 2004, and March 17, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. Though the store detected a shortage of Concerta (March 10, 2004) and methylphenidate (March 17, 2004), Schedule

II Controlled Substances, the required notification to the Board was not made until March 26, 2004; further, this notification indicated a false date of April 9, 2004, as the date of discovery of the loss of methylphenidate. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

- (3) Rite Aid Discount Pharmacy #2304 did, on or about April 28, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When a loss of Duragesic, a Schedule II Controlled Substance, was detected, Rite Aid Discount Pharmacy #2304, did not notify the Board. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.
- (4) Rite Aid Discount Pharmacy #2304 did, from February 23, 2004, through May 24, 2004, and dates thereafter, fail to employ a Responsible Pharmacist who was physically present in the pharmacy a sufficient amount of time to provide supervision and control, to wit: the pharmacist designated as the Responsible Pharmacist resigned on February 23, 2004. The designated replacement as the Responsible Pharmacist was the district manager, Daniel Deem, effective March 26, 2004, and was physically in the store only a few times. Deem was admittedly responsible for forty stores, and could not perform both functions: district manager and Responsible Pharmacist. Such conduct is in violation of Rule 4729-5-11 of the Ohio Administrative Code.

Respondents, Rite Aids admit the allegations stated in the Notices of Opportunity for Hearing letters dated May 18, 2004, June 22, 2004 and November 22, 2004, as reiterated herein.

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

- (A) Respondents agree to the collective imposition of a monetary penalty of five thousand dollars (\$5,000.00), due and owing within thirty (30) days from the effective date of the 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.

Respondents acknowledge that they have 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.

Respondents waive any and all claims or causes of action they 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. Respondents waive any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

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

<u>/s/</u> Karen Mankowski R.Ph., Respondent	<u>/d/ 07/21/05</u> Date Signed
<u>/s/</u> David W. Grauer, Attorney for Respondent	<u>/d/ 07/16/05</u> Date Signed
<u>/s/</u> Suzanne R. Eastman, President, Ohio State Board of Pharmacy	<u>/d/ 08/08/05</u> Date Signed
<u>/s/</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 08/08/05</u> Date Signed

- 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 Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the ORC. The motion was seconded by Mr. Mitchell and a roll-call vote was conducted by President Eastman as follows: Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; and Teater – yes.
- 10:12 a.m. Board member Gregory Braylock arrived and joined the meeting in progress.
- 10:26 a.m. Board member Lawrence Kost arrived and joined the meeting in progress.
- 11:35 a.m. The Executive Session ended and the meeting was opened to the public.

R-2006-015 Mr. Giacalone moved that the Board accept the settlement offer in the matter of **Donna Schmittgen**, R.Ph., with the additional stipulations added by the Board. The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 6/*Abstain* – 1(Kost).

The Board considered a settlement offer from **Eric Hizer**, R.Ph. After discussion, the matter was tabled pending receipt of a psychological evaluation.

The Board next considered a request for a continuance from **Gary Sass**, R.Ph. The Board decided to table the issue at this time.

- 11:40 a.m. The Board recessed for lunch.
- 1:09 p.m. The Board reconvened in Room East B of the Vern Riffe Center for Government and the Arts with the following members present:

Suzanne R. Eastman, R.Ph., *President*; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; and Dorothy S. Teater, Public Member.
- The Board was joined by Assistant Attorney General Sally Ann Steuk for an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of Michael Linhart, R.Ph.
- 3:51 p.m. The hearing ended and the record was closed. The Board then recessed briefly.
- 4:02 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk for an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of Kevin Bowers.

- 5:02 p.m. The hearing ended and the record was closed. The Board then recessed briefly.
- 5:13 p.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 ORC. The motion was seconded by Mrs. Teater and a roll-call vote was taken by President Eastman as follows: Braylock – yes; Giacalone – yes; Gregg – yes; Kost – yes; Lipsyc – yes; Mitchell – yes; and Teater – yes.
- 5:50 p.m. The Executive Session ended and the meeting was opened to the public.

Mr. Kost moved that the Board adopt the following order in the matter of Kevin Bowers:

R-2006-016

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-041020-033

in the matter of:

KEVIN JAMES BOWERS, R.PH.

15 Pinehurst Court
Fairfield, Ohio 45014

R.Ph. Number 03-3-18479

INTRODUCTION

The matter of Kevin James Bowers came for hearing on August 8, 2005, before the following members of the Board: Suzanne R. Eastman, R.Ph., (*presiding*); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; and Dorothy S. Teater, Public Member.

Kevin James Bowers was represented by Harry B. Plotnick. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Rick Haun, Ohio State Board of Pharmacy

Respondent's Witnesses: Kevin James Bowers, R.Ph. Respondent
James Liebertrau, R.Ph.

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [10-20-04]
- 1A-1B. Procedurals
- 1C. Amendment/Addendum Notice [04-20-05]
- 1D-1F. Procedurals
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

Respondent's Exhibits:

- A.
- B.
- C. Drug Screen Reports [12-17-04 to 04-21-05]
- D. Support Group Attendance Records [10-13-04 to 04-19-05]
- E.
- F. Treatment Completion letter from Elizabeth Harris, BS, CCDCIII-E [03-08-05]; Progress Report from Kelly Rogan MS, LSW, LICDC [04-07-05]
- G-I.
- J. University of Cincinnati Transcript for Kevin James Bowers [1981 to 2005]
- K. The Rho Chi Society Certificate of Membership [05-18-89]

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 Kevin James Bowers was originally licensed by the State of Ohio as a pharmacist on July 30, 1990, pursuant to examination, and that his license to practice in Ohio was summarily suspended on October 20, 2004.
- (2)
- (3)
- (4)
- (5)
- (6)

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (3) through (6) 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)
- (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)

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 Kevin James Bowers on October 20, 2004.

- (A) 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. 03-3-18479, held

by Kevin James Bowers and such suspension is effective as of the date of the mailing of this Order.

- (1) Kevin James Bowers, 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.
 - (2) Kevin James Bowers, 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.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of fifteen thousand dollars (\$15,000.00) on Kevin James Bowers and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance 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, Room 1702, Columbus, Ohio 43215-6126.

Further, after November 6, 2006, the Board will consider any petition filed by Kevin James Bowers 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) Kevin James Bowers 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, submit 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) 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) Kevin James Bowers 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) Kevin James Bowers 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 Kevin James Bowers must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Kevin James Bowers 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.

The motion was seconded by Mr. Mitchell and approved by the Board: *Aye – 5/ Nay – 2.*

Mr. Lipsyc then moved that the Board adopt the following order in the matter of Michael Linhart. As Mr. Mitchell had recused himself from the deliberations on this matter and left the Executive Session during the deliberations, he did not vote.

R-2006-017

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-010313-048

in the matter of:

MICHAEL H. LINHART, R.PH.

727 Shelton Road
Salem, Ohio 44460

R.Ph. Number 03-1-18835

INTRODUCTION

The matter of Michael H. Linhart came for hearing on August 8, 2005, before the following members of the Board: Suzanne R. Eastman, R. Ph.,(*presiding*); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph. (recused); and Dorothy S. Teater, Public Member.

Michael H. Linhart was represented by Daniel D. Connor. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: David Gallagher, Ohio State Board of Pharmacy

Respondent's Witness: Michael H. Linhart, R.Ph., Respondent

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing letter [03-13-01]
- 1A-1E. Procedurals
- 1F. Addendum Notice letter [02-22-05]
- 1G. Procedural
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

Respondent's Exhibits:

- A. PRO Pharmacist's Recovery Contract for Michael H. Linhart [03-28-01]; Support Group Attendance Records [03-19-01 to 07-26-05];

Twenty pages of
Evaluation and Treatment Reports [03-16-99 to 10-02-00]

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 Michael H. Linhart was originally licensed by the State of Ohio as a pharmacist on July 29, 1991, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended effective March 13, 2001.
- (2)
- (3)
- (4)
- (5)

CONCLUSIONS OF LAW

- (1)
- (2) The State Board of Pharmacy concludes that paragraphs (4) and (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

- (3) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. 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 Michael H. Linhart on March 13, 2001.

- (A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of hereby suspends for two years the pharmacist identification card, No. 03-1-18835, held by Michael H. Linhart and such suspension is effective as of the date of the mailing of this Order.
- (1) Michael H. Linhart, 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.
- (2) Michael H. Linhart, 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.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Michael H. Linhart a monetary penalty of one thousand dollars (\$1,000.00) due an owing within thirty days of the mailing of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (C) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places Michael H. Linhart on probation for five years effective upon reinstatement of his identification card. The terms of probation are as follows:
- (1) Michael H. Linhart 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) approved treatment provider or a treatment provider 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 drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
- (i) 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.
- (ii) Results of all drug screens must be negative. Refusal of a drug screen or a diluted urine screen is equivalent to a positive result. Any positive results, including those that may have resulted from

ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of the contract.

- (b) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.
 - (c) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (d) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (2) Michael H. Linhart must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (a) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (b) A written description of Michael H. Linhart 's progress towards recovery and what Michael H. Linhart has been doing during the previous three months.
- (D) Other terms of probation are as follows:
- (1) Michael H. Linhart must take and pass, within the last year of his suspension, the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board. If Mr. Linhart does not pass the examination within the one year period, his license will remain suspended until this condition has been achieved.
 - (2) Michael H. Linhart must take and pass, within the last year of his suspension, the Multistate Pharmacy Jurisprudence Examination (MPJE) or an equivalent examination approved by the Board. If Mr. Linhart does not pass the examination within the one year period, his license will remain suspended until this condition has been achieved.
 - (3) The State Board of Pharmacy hereby declares that Michael H. Linhart'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) Michael H. Linhart may not serve as a responsible pharmacist.
 - (5) Michael H. Linhart may not destroy, assist in, or witness the destruction of controlled substances.
 - (6) Michael H. Linhart must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
 - (7) Michael H. Linhart must not violate the drug laws of Ohio, any other state, or the federal government.
 - (8) Michael H. Linhart must abide by the rules of the State Board of Pharmacy.
 - (9) Michael H. Linhart must comply with the terms of this Order.

- (10) Michael H. Linhart's license is deemed not in good standing until successful completion of the probationary period.
- (11) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Michael H. Linhart 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.

The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 4/ Nay – 2/ Abstain – 1* (Mitchell).

5:55 p.m. The Board meeting was recessed until Tuesday, August 9, 2005.

TUESDAY, AUGUST 9

8: 08 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Suzanne R. Eastman, R. Ph., *President*; Gregory Braylock, R. Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; and Dorothy S. Teater, Public Member.

R-2006-018 After a discussion of the draft minutes from the July 11-12, 2005 Board meeting, Mrs. Gregg moved that the minutes be approved as amended. The motion was seconded by Mrs. Teater and approved by the Board: *Aye – 7*.

R-2006-019 Mr. McMillen presented a request for an exemption to Rule 4729-5-11 (Responsible person) to allow **Christine Widman**, R.Ph., to be the Responsible Pharmacist at the following licensed locations:

Medicine Shoppe (02-0676450)
Bellevue Home Medical Pharmacy (02-0721200)

After discussion, Mr. Giacalone moved that the Board approve the request for one year. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 7*.

R-2006-020 Mr. McMillen then presented an exemption request to Rule 4729-5-11 (Responsible person) to allow **Mark Johannigman**, R.Ph., to be the Responsible Pharmacist at the following licensed locations:

Blanchard Valley Regional Health Center (02-0850100)
Blanchard Valley Regional HC Retail Pharmacy (Pending)

After discussion, Mr. Giacalone moved that the Board approve the request for one year. The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 7*.

R-2006-021 The Board next considered a request for an exemption from Rule 4729-5-10 (Prescription pick-up station) received from ZellMed Solutions for the following locations:

ZellMed Solutions (02-1289550)
Northeast Care Center (02-1523900)

After discussion, Mrs. Gregg moved that the Board approve the request. The motion was seconded by Mr. Kost and approved by the Board: *Aye – 7.*

Mr. McMillen presented his quarterly Licensing Report to the Board.

R-2006-022 Mr. McMillen then presented a request for an exemption from Rule 4729-5-10 (Prescription pick-up station) received from Teregen Labs for the following locations:

Teregen Laboratories (02-1235150)
Various Physician Offices on letter of request

After discussion, Mrs. Gregg moved that the Board approve the request. The motion was seconded by Mr. Kost and approved by the Board: *Aye – 7.*

R-2006-023 Mr. Keeley presented a request from the electronic prescribing system **Medry/R.Referral** to have the board recognize their name change to **e-Referral** with no other changes to their program.

After discussion, Mr. Mitchell moved that the Board recognize and approve the requested name change. The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 7.*

R-2006-024 Mr. Keeley then presented a request from **Relay Health Electronic Prescription System** for Board approval of their electronic prescribing system.

After discussion, Mr. Braylock moved that the Board find the system approvable pending final inspection. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 7.*

A discussion regarding a request received from **SureScripts** was tabled pending further information.

After a discussion regarding a request received from **Ritzman Pharmacy** regarding **ddn Automated Delivery System**, the matter was tabled pending further information.

Mr. Braylock reported that there had been no meeting of the Nursing Board's Committee on Prescriptive Governance.

Mr. Benedict reported that there were no items regarding the Medical Board Prescribing Committee that needed to be discussed.

Mr. Keeley presented his Legislative Report to the Board.

R-2006-025 The Board next considered a request for an exemption to Rule 4729-5-11 (Responsible person) to allow **Lorne A. Roby**, R.Ph., to be the Responsible Pharmacist at the following licensed locations:

Focus Healthcare (02-1116300)
Active Infusion (02-1178200)

After discussion, Mr. Braylock moved that the Board approve the request for one year. The motion was seconded by Mr. Mitchell and approved by the Board: *Aye – 7.*

9:05 a.m. The Board took a brief recess.

9:15 a.m. The Board reconvened. Mr. Keeley discussed the proposed new and changed rules that had been suggested by the various Ad Hoc Committees on Rules that had been appointed by the Board during the past year. After making the revisions suggested by the Board, the rules will be brought back to the Board at the September meeting for final approval for filing.

10:25 a.m. The Board took a brief recess.

- 10:42 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the ORC Chapters 119. and 4729. in the matter of Stephen Robert Chikosky, R.Ph.
- 11:53 a.m. The hearing was recessed for lunch.
- 1:02 p.m. The Board reconvened and the hearing resumed.
- 1:30 p.m. Mr. McMillen met with the candidates for licensure by reciprocity in Room South-A, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio.

R-2006-026 Following 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.

Mark Ronald Amsler	03-3-26966	Georgia
Heather Marie Bockeim	03-3-26949	Michigan
Amy Rebecca Brooks	03-3-26965	Georgia
Jennifer Lynn Brooks	03-3-26986	Pennsylvania
Philip Chung	03-3-26933	New York
Shannon Nicole Derenge	03-3-26964	Kentucky
Savita Deswal	03-3-26974	Michigan
Stacy Elizabeth Doran	03-3-26947	Connecticut
Tracy Lynn Ecoff	03-3-26915	Kentucky
George Gillman	03-3-26973	Indiana
Susan Marie Gordon	03-3-26893	Indiana
Christine Nicole Hansen	03-3-26990	North Carolina
Philip David Kiser	03-3-26989	Illinois
Rachna A. Patel	03-3-26697	South Carolina
Jason Joseph Schafer	03-3-26935	Pennsylvania
Mahmoud Jamil Shaltaf	03-3-26985	Iowa
Lisa Witty Travis	03-3-26759	Kentucky
Sheren Xiang-Yin Lin-Qian	03-3-26926	Michigan

- 2:58 p.m. The hearing in the matter of Stephen Robert Chikosky, R. Ph., ended. The Board recessed briefly.
- 3:08 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the ORC Chapters 119. and 4729. in the matter of Mark Carrington, R.Ph.
- 4:14 p.m. The hearing in the matter of Mark Carrington, R.Ph., ended. The Board recessed briefly.
- 4:26 p.m. Mr. Mitchell moved that the Board go into Executive Session to investigate complaints regarding licenses and registrants pursuant to Section 121.22(G)(1) of the ORC. The motion was seconded by Mr. Braylock and a roll-call vote was taken by President Eastman as follows: Braylock – yes; Giacalone – yes; Gregg – yes; Kost – yes; Lipsyc – yes; Mitchell – yes; and Teater – yes.
- 5:00 p.m. The Executive Session ended and the meeting was opened to the public.

R-2006-027 Mr. Braylock moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to **Jeffrey Kline**, R.Ph. (03-2-13825), because a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 7.

R-2006-028 Mr. Braylock moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to **John Brungart**, R.Ph. (03-1-11035), because a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 7.

R-2006-029 Mr. Giacalone moved that, pursuant to Section 3719.121 of the Revised Code, the Board summarily suspend the license to practice pharmacy belonging to **Michael Fraulini**, R.Ph. (03-2-19444), because a continuation of his professional practice presents a danger of immediate and serious harm to others. The motion was seconded by Mrs. Gregg and approved by the Board: Aye – 7.

Mr. Braylock moved that the Board adopt the following Order in the matter of Mark Carrington.

R-2006-030

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-040916-024

in the matter of:

MARK CHRISTOPHER CARRINGTON, R.Ph.

3684 McDermott Pond Creek

McDermott, Ohio 45652

R.Ph. No. 03-1-22586

INTRODUCTION

The matter of Mark Christopher Carrington came for hearing on August 9, 2005, before the following members of the Board: Suzanne R. Eastman, R.Ph.; (*presiding*); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph., Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member.

Mark Christopher Carrington was represented by Daniel D. Connor. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Todd Zevchik, R.Ph., Ohio State Board of Pharmacy

Respondent's Witness: Mark Christopher Carrington, R.Ph., Respondent

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing Letter [09-16-04]
- 1A-1C. Procedurals
- 1D. Addendum Notice Letter [02-02-05]
- 1E-1F. Procedurals
2. Notarized Statement of Mark Christopher Carrington [09-13-04]
- 2A. Two Statements of Rory Phillips, R.Ph. [09-03-04 and 09-13-04]
3. Clinical Reference Laboratory Drug Screen Report [09-11-04]
4. Drug Audit Summary Report [not dated]; Drug Accountability Statement at Southern Ohio Medical Center for Hydrocodone/Apap 10/500 mg [09-21-04]; Drug Accountability Statement at Southern Ohio Medical Center for Hydrocodone/Apap 7.5/500 mg [09-21-04]; Drug Accountability Statement at Southern Ohio Medical Center for Hydrocodone/Apap 5/500 mg [09-21-04]; Drug Accountability Statement at Southern Ohio Medical Center for Butalbital/Apap/Caffeine 50/325/40 mg [09-21-04]; Drug Accountability Statement at Southern Ohio Medical Center for Ambien™ (Zolpidem) 10 mg

- [09-21-04]; Drug Accountability Statement at Southern Ohio Medical Center for Ambien™ (Zolpidem) [Audit Control] 5 mg [09-21-04]
5. Indictment, State of Ohio vs. Mark Christopher Carrington, Case No. 04CR1236, Scioto County Common Pleas Court [11-15-04]
 6. Judgment Entry [01-24-05]
 7. Judgment Entry on Defendant's Request for Treatment in Lieu of Conviction [03-11-05]

Respondent's Exhibits:

- A1. PRO Pharmacist's Recovery Contract for Mark Carrington [01-18-05]
 - A2. Two Treatment Compliance letters from Veronica Mershon, CCDCI [06-27-05 and 06-29-05]
 - A3. The Counseling Center, Inc. Treatment Records for Mark C. Carrington [11- 11-04 to 06-29-05]
 - A4. Scioto Darby Adult Probation Department Drugs Screens [03-28-04 to 08-01-05]; Support Group Attendance Records [02-28-05 to 07-28-05]
 - A5. Copy of Restitution Money Order No. 641689302, payable to Southern Ohio Medical Center [04-04-05]
 - A6. Compass Vision Licensee Summary Report [03-24-05 to 07-07-05]
 - A7. Support Group Attendance Records [12-06-04 to 07-28-05]
 - A8. Five letters of Support [07-20-05 to 07-29-05]
- B. Letter from J.C. Carrington [08-09-05]

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 Mark Christopher Carrington was originally licensed by the State of Ohio as a pharmacist on July 24, 1997, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended on September 16, 2004.
- (2) Mark Christopher Carrington is addicted to the use of controlled substances, to wit: Mark Christopher Carrington has admittedly stolen and abused hydrocodone/APAP, Ambien, and butalbital/APAP; Mark Christopher Carrington has admitted that he is psychologically dependent on hydrocodone; and, Mark Christopher Carrington has tested positive for the use of barbiturates. Such conduct indicates that Mark Christopher Carrington falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (3) Mark Christopher Carrington did, on or about September 2, 2004, and dates previous, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Southern Ohio Medical Center pharmacy, beyond the express or implied consent of the owner, to wit: Mark Christopher Carrington has admittedly stolen hydrocodone/APAP, Ambien, pseudoephedrine products, and butalbital/APAP for his own personal abuse. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) On January 19, 2005, Mark Christopher Carrington pled guilty to five (5) counts of Theft of Drugs, felonies of the fourth degree under Section 2913.02(A)(1)/(B)(6) of the Ohio Revised Code. State of Ohio vs. Mark Christopher Carrington, Case No. 04-CR-1236, Scioto County Common Pleas Court. Such conduct indicates that Mark Christopher Carrington is guilty of a felony or gross immorality, dishonesty or unprofessional conduct in the practice of pharmacy, and/or addicted to or abusing drugs to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (4) of the Findings of Fact constitutes being guilty of a felony and 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.

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 Mark Christopher Carrington on September 16, 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. 03-1-22586, held by Mark Christopher Carrington and such suspension is effective as of the date of the mailing of this Order.

- (A) Mark Christopher Carrington, 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) Mark Christopher Carrington, 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 February 6, 2006, the Board will consider any petition filed by Mark Christopher Carrington 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) Mark Christopher Carrington 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) approved treatment provider or a treatment provider 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:
 - (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) 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) Mark Christopher Carrington 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) Mark Christopher Carrington 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, Mark Christopher Carrington must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Mark Christopher Carrington 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.

Mr. Giacalone seconded the motion and it was approved by the Board: Aye – 7.

R-2006-031 Mr. Braylock then moved that the Board adopt the following Order in the matter of Stephen Robert Chikosky, R. Ph.:

ORDER OF THE STATE BOARD OF PHARMACY
Docket Number. D-041008-027

in the matter of:

STEPHEN ROBERT CHIKOSKY, R.Ph.
235 Waggaman Circle
Boardman, Ohio 44512

R.Ph. Number 03-2-15373

INTRODUCTION

The matter of Stephen Robert Chikosky came for hearing on August 9, 2005, before the following members of the Board: Suzanne R. Eastman, R.Ph. (*presiding*); Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Lawrence J. Kost, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; and Dorothy S. Teater, Public Member.

Stephen Chikosky was represented by Edward J. Hartwig. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Constance K. Zebosky
George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses: Karen Chikosky
Stephen Robert Chikosky, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [10-08-04]
- 1A-1F. Procedurals
2. State Board of Pharmacy Order in re Stephen Robert Chikosky, R.Ph. [06-19-97]
3. KMart Loss Control Statement of Stephen R. Chikosky [06-10-04]; Notarized Statement of Stephen R. Chikosky [06-10-04]
4. One hundred thirty-nine page KMart Cash Card Loss Prevention Report [12-2-97 to 05-20-04]
5. Dangerous Drug Distributor Inspection Report of KMart Pharmacy #4233 [07-11-04]
6. Drug Audit Accountability Statement for OxyContin 80 mg at KMart #4233 [07-25-04]
7. Drug Audit Accountability Statement for paregoric 2 mg/5 ml at KMart #4233 [07-25-04]
8. Drug Audit Accountability Statement for Vicodin/Lortab 5/500 mg at KMart Pharmacy #4233 [07-25-04]
9. Drug Audit Accountability Statement for Lorcet 10/650 mg at KMart Pharmacy #4233 [07-25-04]
10. Drug Audit Accountability Statement for Lortab 7.5/500 mg at KMart Pharmacy #4233 [07-25-04]
11. DEA Report of Theft or Loss of Controlled Substances at KMart #4233 [07-26-04]
12. Sony Video Tape [08-07-03]
13. KMart Loss Prevention Investigation Report [06-10-04]
14. Sony Video Tape [05-06-04]
15. Indictment, State of Ohio vs. Stephen R. Chikosky, Case No. 04-CR-982, Mahoning County Common Pleas Court [09-02-04]
- 15A. Indictment, State of Ohio vs. Stephen Chikosky, Case No. 04-CR-1195, Mahoning County Common Pleas Court [09-16-04]; Judgment Entry [07-11-05]

Respondent's Exhibits:

- A. Boardman, Ohio Police Department Incident Report No. 04-4929 [06-10-04]
- B. Transcript of Proceedings, State of Ohio vs. Stephen Chikosky, Case No. 04 CR 667, Mahoning County Common Pleas Court [07-27-04]
- C. Indictment for Theft, State of Ohio vs. Stephen R. Chikosky, Case No. 04-CR-982, Mahoning County Common Pleas Court [09-14-04]
- D. Judgment Entry [07-07-05]
- E. Direct Presentment, State of Ohio vs. Stephen Chikosky, Case No. 04 CR 1195 [09-16-04]

- F. Judgment Entry [07-07-05]
- G. Treatment Progress Report from Catherine A. Hammond, Ph.D. [07-05-05]
- H-K. Four Letters of Support [07-10-05 to 07-24-05]
- L. K-Mart PDP Appraisal of Stephen R. Chikosky [Fiscal Year 2003]

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 State Board of Pharmacy indicate that Stephen Chikosky was originally licensed by the State of Ohio as a pharmacist on March 27, 1984, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio. Records further reflect that Stephen Chikosky was previously disciplined by the Board on June 19, 1997.
- (2) Stephen Chikosky did, from July 23, 1993, through June 9, 2004, with purpose to deprive, knowingly obtain or exert control over property of K-Mart #4233, 1209 Boardman-Poland Road, Youngstown, Ohio 44512, beyond the express or implied consent of the owner, to wit: Stephen Chikosky admittedly stole approximately \$19,133.00 in cash, merchandise, and pharmaceuticals from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Stephen Chikosky did, from June 3, 2004, through July 8, 2004, with purpose to deprive, knowingly obtain or exert control over controlled substances, property of K-Mart, beyond the express or implied consent of the owner, to wit: Stephen Chikosky admittedly stole drugs; an audit showed a shortage of 100 tablets of OxyContin 80 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Stephen Chikosky did, from May 1, 2004, through July 11, 2004, with purpose to deprive, knowingly obtain or exert control over controlled substances, property of K-Mart, beyond the express or implied consent of the owner, to wit: Stephen Chikosky admittedly stole drugs; an audit showed a shortage of the following Schedules III and IV controlled substances:

Paregoric 2 mg/5 ml	263 ml
Vicodin	160 tablets
Lorcet 10	101 tablets
Lortab 7.5	9 tablets

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

- (5) Stephen Chikosky did, on or about May 6, 2004, hold or offer for sale drugs that were adulterated, to wit: using your mouth to suck pure, reconstitute water from a pure container into the reconstitute line and to the stopper, Stephen Chikosky used this water to prepare reconstituted medications for customers. Such activity adulterated the drug product pursuant to Section 3715.63 of the Ohio Revised Code, and is in violation of Section 3715.52(A) of the Ohio Revised Code. Such conduct constitutes being guilty of gross immorality; guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating provisions of Chapter 3715. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) 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 (2) through (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraph (5) 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 3715. 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 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Stephen Robert Chikosky as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for three years the pharmacist identification card, No. 03-2-15373, held by Stephen Robert Chikosky and such suspension is effective as of the date of the mailing of this Order.
 - (1) Stephen Robert Chikosky, 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.
 - (2) Stephen Robert Chikosky, 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.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of seven thousand seven hundred fifty dollars (\$7,750.00) on Stephen Robert Chikosky and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance 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, Room 1702, Columbus, Ohio 43215-6126.

Mrs. Teater seconded the motion and it was approved by the Board: Aye – 7.

1:22 p.m.

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

<u>PER DIEM</u>	<u>7/20</u>	<u>8/3</u>	<u>8/8</u>	<u>8/9</u>	<u>Total</u>
Braylock			1	1	2
Eastman	1	1	1	1	4
Giocalone			1	1	2
Gregg			1	1	2
Kost			1	1	2
Lipsyc			1	1	2
Mitchell			1	1	2
Teater			1	1	2
Turner			1	1	2

The motion was seconded by Mr. Kost and approved by the Board: *Aye – 7.*

5:08 p.m. Mr. Lipsyc moved that the meeting be adjourned. The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 7.*

<p>THE OHIO STATE BOARD OF PHARMACY APPROVED THESE MINUTES SEPTEMBER 13, 2005</p>
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