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Minutes of the January 10, 2006
Meeting of the Ohio State Board of Pharmacy

TUESDAY, JANUARY 10, 2006

10:02 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*; James E. Turner, R.Ph., *Vice-President*; 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.

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*; Danna Droz, *Prescription Monitoring Program 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 in effect:

10:05 a.m.
R-2006-109

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
Docket Numbers D-050811-017 and D-050811-018

in the matter of:

PharMerica, Inc., TDDD #02-1114200
and
PharMerica, Inc., TDDD #02-1149650
c/o William L. Mertz
3625 Queen Palm Drive
Tampa, Florida 33619

This Settlement Agreement is entered into by and between PharMerica, Inc., and PharMerica, Inc. at Eagle Creek Nursing Center, collectively hereinafter referred to as PharMerica, 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.

PharMerica voluntarily enters into this Agreement being fully informed of its 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. PharMerica acknowledges that by entering into this agreement it has waived its rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, 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, PharMerica is licensed as Terminal Distributors of Dangerous Drugs, i.e. TDDD, in the State of Ohio.

Whereas, on or about August 11, 2005, pursuant to Chapter 119. of the Ohio Revised Code, PharMerica was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. PharMerica requested a hearing; it was scheduled and continued. The August 11, 2005, Notices of Opportunity for Hearing are attached hereto as Exhibit A and B.

PharMerica neither admits nor denies the allegations stated in the Notices of Opportunity for Hearing letters; however, 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, PharMerica knowingly and voluntarily agrees with the State Board of Pharmacy to the imposition of a monetary penalty in the amount of four thousand dollars (\$4,000.00).

PharMerica acknowledges that it 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 or failure to fulfill this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

PharMerica waives any and all claims or causes of action it 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. PharMerica 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/</u> Scott Arledge, on behalf of PharMerica	<u>/d/</u> 12/01/05 Date Signed
<u>/s/</u> William L. Mertz, Attorney for Respondent	<u>/d/</u> 11/29/05 Date Signed
<u>/s/</u> Suzanne R. Eastman, President, Ohio State Board of Pharmacy	<u>/d/</u> 01/10/06 Date Signed
<u>/s/</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/</u> 01/10/06 Date Signed

10:10 a.m. Board member Gregory Braylock, R.Ph., arrived and joined the meeting in progress.

Mr. Keeley announced that the new and changed rules were filed and became effective January 1, 2006.

R-2006-110 The Board considered a request for a continuance until the February, 2006 meeting from **Amy Lynn Froman**, R.Ph., **Strasburg Pharmacy**, and **Michael T. Dennis**, R.Ph. Mrs. Gregg moved that the continuance be granted. The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.

R-2006-111 After discussion, Mrs. Gregg moved that two additional days, February 22 and 23, 2006, be added to the Board meeting calendar if needed for additional hearings. The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 8.

10:18 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 Ohio Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Eastman as follows: Braylock – yes; Giacalone – yes; Gregg – yes; Kost – yes; Lipsyc – yes; Mitchell – yes; Teater – yes; and Turner – yes.

10:44 a.m. The Executive Session ended and the meeting was opened to the public.

R-2006-112 Mr. Giacalone moved that the proposed Cease and Desist order drafted by Board staff be issued in the matter of **Civic Center Pharmacy**, 8331 East Osborn Dr., Suite 208, Scottsdale, Arizona. Mrs. Gregg seconded the motion and it was approved by the Board: *Aye* – 8.

R-2006-113 The Board next discussed a letter received from Anthony Palmieri, Jr., attorney for **John R. Mileti**, R.Ph., requesting leniency from the Board's order. Mr. Turner moved that the request be denied. The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 7/Abstain – 1 (Kost).

R-2006-114 After discussion, Mr. Kost moved that the Board summarily suspend the license to practice pharmacy belonging to **Daniel Huffman**, R.Ph. (03-2-23577), 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* – 8.

R-2006-115 Mr. Turner made a motion that payment of dues to the National Association of Boards of Pharmacy (NABP) be approved. The motion was seconded by Mr. Mitchell and approved by the Board: *Aye* – 8.

R-2006-116 The Board considered a request for an exemption to OAC Rule 4729-5-11 (Responsible person) requesting that **Charles Cather**, R.Ph., be permitted to be the responsible person for the following sites:

K-C Institutional Pharmacy (02-0832350)
Brewster Pharmacy (02-0831200)

After discussion, Mrs. Gregg moved that the Board approve the request for one year. The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 8.

R-2006-117 The Ohio Pain and Palliative Care Advisory Committee requested that the Board confirm an interest in retaining an official appointment to the committee. After discussion, Mr. Mitchell moved that the Board indicate that it is interested in continuing to participate in the activities of the OPPCAC in an official capacity. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

R-2006-118 Mrs. Gregg moved that Board President Suzanne R. Eastman, R.Ph., be appointed as the Board's voting delegate to the NABP Annual Meeting, April 8-11, 2006, with Vice-President James E. Turner, R.Ph., serving as the alternate delegate. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.

R-2006-119 The Board considered a request for an exemption to OAC Rule 4729-5-10 (Prescription pick-up station) received from Teregen Laboratories for the following sites:

Teregen Laboratories (02-1235150)
Various Offices as listed on the letter of request

After discussion, Mrs. Gregg 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.

R-2006-120 The Board considered a request for an exemption to OAC Rule 4729-5-10 (Prescription pick-up station) received from **Cleveland Clinic** for the following sites:

Cleveland Clinic, Strongsville Pharmacy (02-1091350)
Central Admixture Pharmacy Services (02-1312700)

After discussion, Mr. Braylock 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. Giacalone and approved by the Board: Aye – 8.

Mr. Keeley presented his Legislative Report.

Mr. Keeley presented his Budget Report.

11:25 a.m. The Board recessed briefly.

11:38 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to create a record in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of **Janet Ann Berrett**, R.Ph., Pepper Pike.

12:03 p.m. The hearing ended and the record was closed.

Mr. Benedict said there was no Medical Board Prescribing Committee Report this month.

Mr. Braylock said there was no Nursing Board Committee on Prescriptive Governance Report this month.

12:04 p.m. The Board recessed for lunch.

1:00 p.m. The Board reconvened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with all members present.

The Board was joined by **Mike Somali** of **Liberty Direct Services** and **Wally Williams** of **Skilled Care Pharmacy** to discuss plans for a central fill operation between these two pharmacies.

1:30 p.m. The discussion of the central fill operation ended. 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 with the following members present:

Suzanne R. Eastman, R.Ph., *President*; James E. Turner, R.Ph., *Vice-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-2006-121 The following candidates for licensure by reciprocity introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen. They were then presented their pharmacist identification cards.

Robert Henry Abrahams	03-3-27070	West Virginia
Charles E. Bish	03-3-27064	West Virginia
Wendy Theresa Blackston	03-3-27058	Louisiana
Mariann Deneweth Churchwell	03-3-27073	Michigan
Arnold Todd Cole	03-3-17258	Tennessee
Michelle Earl Cruson	03-3-27067	Utah
Son Hee Han	03-3-27066	Texas
Jeffrey John Widdowfield	03-3-27079	Pennsylvania

1:54 p.m. The Board reconvened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with all members present.

2:09 p.m.

R-2006-122 The Board considered the draft minutes of the December, 2005 meeting. Mrs. Gregg moved that the minutes be approved as amended. Mr. Lipsyc seconded the motion and it was approved by the Board: Aye – 8.

R-2006-123 After discussion, Mr. Braylock moved that the central fill operation between **Liberty Direct Services** and **Skilled Care Pharmacy** be approved as presented. Mrs. Gregg seconded the motion and it was approved by the Board: Aye – 7/Abstain – 1 (Giacalone).

2:25 p.m. Mr. Kost left the meeting. 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 Ohio Revised Code. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Eastman as follows: Braylock – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Turner – yes; and Teater – yes.

2:32 p.m. Mr. Kost returned to the Executive Session.

2:54 p.m. The Executive Session ended and the meeting was opened to the public.

Mr. Giacalone moved that the Board adopt the following order in the matter of **Janet Ann Berrett**, R.Ph.:

R-2006-124

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-050916-031

in the matter of:

JANET ANN BERRETT, R.PH.

29276 Bolingbrook Road
Pepper Pike, Ohio 44124

R.Ph. Number 03-2-12876

INTRODUCTION

The matter of Janet Ann Berrett came for consideration on January 10, 2006, 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.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy S. Teater, Public Member; and James E. Turner, R.Ph.

Janet Ann Berrett was not present nor was she represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Frank Bodi, Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [09-16-05]
- 1A. Procedural
2. Notarized Statement of Janet A. Berrett [08-23-05]
3. Glenbeigh Health Sources Intensive Outpatient Treatment Plan for Janet Berrett [07-28-05]
4. Notarized Statement of Reneé Mills [07-20-05]
5. Statement of Marie Groth [07-22-05]
6. Giant Eagle Advantage Card transaction report [06-01-05]
7. Rx #6014104 [06-01-05]; Rx #6014105 [06-01-05]; Rx #6014110 [06-01-05]

Respondent's Exhibits: None

FINDINGS 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 the following to be fact:

- (1) On September 16, 2005, Janet Ann Berrett was notified by letter of her right to a hearing, her rights in such hearing, and her right to submit any contentions in writing.
- (2) As demonstrated by return receipt dated September 19, 2005, signed by Terry Berrett, Janet Ann Berrett received the letter of September 16, 2005, informing her of the allegations against her and her rights.
- (3) Janet Ann Berrett has not responded in any manner to the letter of September 16, 2005, and has not requested a hearing in this matter, therefore the matter was referred to the Board for consideration.
- (4) Records of the State Board of Pharmacy indicate that Janet Ann Berrett was originally licensed by the State of Ohio on June 25, 1979, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio.
- (5) Janet Ann Berrett is addicted to or abusing liquor or drugs and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: Janet Ann Berrett has been observed to have practiced pharmacy while under the influence of alcohol; Janet Ann Berrett has admitted to Board agents that she drank beer while practicing pharmacy due to stress at work; and, Janet Ann Berrett has admittedly enrolled herself into an out-patient program for alcohol treatment. Such conduct indicates that Janet Ann Berrett is within the ambit of Section 4729.16(A)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (5) 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 (5) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of

pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

- (3) The State Board of Pharmacy concludes that paragraph (5) 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.

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 hereby suspends indefinitely the pharmacist identification card, No. 03-2-12876, held by Janet Ann Berrett and such suspension is effective as of the date of the mailing of this Order.

- (A) Janet Ann Berrett, 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) Janet Ann Berrett, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her 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, the Board will consider any petition filed by Janet Ann Berrett for a hearing, pursuant to Ohio Revised Code Chapter 119. with the following conditions:

- (1) Janet Ann Berrett must personally appear at the hearing before the Ohio Board of Pharmacy.
- (2) If reinstatement is not accomplished within three years of the effective date of this Order, Janet Ann Berrett must also show successful completion of the NAPLEX and MPJE examinations or equivalent examinations approved by the Board.

After additional hearing, if any, the Board will determine the appropriate disposition of the matter in accordance with Section 4729.16 of the Ohio Revised Code.

The motion was seconded by Mr. Braylock and approved by the Board: *Aye – 7/Recuse – 1(Kost).*

Mr. Braylock left the meeting for personal reasons.

2:55 p.m. Mr. Lipsyc moved that the Board receive Per Diem as follows:

<u>PER DIEM</u>	<u>01/10</u>	<u>Total</u>
G. Braylock	1	1
S. Eastman	1	1
R. Giacalone	1	1
E. Gregg	1	1
L. Kost	1	1
N. Lipsyc	1	1

K. Mitchell	1	1
D. Teater	1	1
J. Turner	1	1

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

2:56 p.m.

Mrs. Gregg moved that the meeting be adjourned. The motion was seconded by Mr. Giacalone and approved by the Board: *Aye* – 7.

<p>The Ohio State Board of Pharmacy approved these Minutes February 8, 2006</p>
