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Minutes of the September 10-12, 2007 Meeting of the Ohio State Board of Pharmacy

Monday, September 10, 2007

9:00 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:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, 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*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Sally Ann Steuk, *Assistant Attorney General*.

9:10 a.m. Mr. Turner 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 Mrs. Gregg and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; Turner – *yes*; and Wiesenhahn – *yes*.

10:00 a.m. The Executive Session ended and the meeting was opened to the public.

R-2008-026 Mr. Turner moved that the Board accept the settlement offer in the matter of **Gene A. Johnson**, R.Ph. (03-1-26043) Centerburg, Ohio, as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent's agreeing to the changes made by the Board. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

R-2008-027 Mrs. Gregg moved that the Board summarily suspend the license to practice pharmacy belonging to **Lloyd Neal Fisk**, R.Ph. (03-2-19476) Grove City, Ohio, pursuant to Ohio Revised Code 3719.121 (A) and (B). Mr. Kolezynski seconded the motion and it was approved by the Board: *Aye* – 8.

The Board recessed briefly.

10:14 a.m. The Board reconvened.

WellPoint (Mason, Ohio) representative Don Haberthier made a presentation concerning WellPoint's Work-At-Home program and requested that the Board approve an expansion of the program to include Ohio-licensed pharmacists living outside of Ohio. After the presentation and

discussion, President Braylock thanked Mr. Haberthier for his presentation and said that the Board would give him a response after they had more discussion about it.

- R-2008-028** Mr. McMillen presented a request from pharmacy intern **Suha Umina** (06-0-05578) for permission to extend her internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mrs. Gregg moved that Ms. Umina's request be approved for one year only. The motion was seconded by Mrs. Teater and approved by the Board: *Aye* – 8.
- R-2008-029** Mr. McMillen presented a request from pharmacy intern **Durga Devineni** (06-0-05937) for permission to extend her internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mr. Lipsyc moved that Ms. Devineni's request be approved for one year only. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.
- R-2008-030** Mr. McMillen presented a request from pharmacy intern **Tamer Ibrahim** (06-0-06147) for permission to extend his internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mr. Mitchell moved that Mr. Ibrahim's request be approved for one year only. The motion was seconded by Mr. Turner and approved by the Board: *Aye* – 8.
- R-2008-031** Mr. McMillen presented a request from pharmacy intern **Anitha Parvataneni** (06-0-05874) for permission to extend her internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mr. Mitchell moved that Ms. Parvataneni 's request be approved for one year only. The motion was seconded by Mr. Wiesenhahn and approved by the Board: *Aye* – 8.
- R-2008-032** Mr. McMillen presented a request from pharmacy intern **Grace Bufi** (06-0-06074) for permission to extend her internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Ms. Pasquale moved that Ms. Bufi's request be approved for one year only. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye* – 8.
- R-2008-033** Mr. McMillen presented a request from pharmacy intern **Yulia Bar** (06-0-04981) for permission to extend her internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mrs. Gregg moved that Ms. Bar's request be approved. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye* – 8.
- R-2008-034** Mr. McMillen presented a request from pharmacy intern **James Colla** (06-0-03670) for permission to extend his internship pursuant to Rule 4729-3-04 (Pharmacy Intern Identification Card Renewal). After discussion, Mrs. Gregg moved that Mr. Colla's request be approved for one year only. The motion was seconded by Ms. Pasquale and approved by the Board: *Aye* – 7/*Nay* – 1.
- R-2008-035** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Pharmacare Specialty Pharmacy, Detroit, Michigan (02-1745350)
Cleveland Clinic Foundations Hospital, Cleveland, Ohio (02-0034700)

After discussion, Mr. Lipsyc 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 Mrs. Gregg and approved by the Board: *Aye* – 8.

- R-2008-036** The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **Gary Rutherford**, R.Ph. (03-1-12410) Columbus, Ohio be permitted to be the responsible person for the following sites:

Columbus Prescription Pharmacy, Worthington, Ohio (02-0734550)
Columbus Prescription West, Columbus, Ohio (02-1455100)

After discussion, Mrs. Gregg moved that the Board approve the request for 6 months. The motion was seconded by Mr. Lipsyc and approved by the Board: *Aye – 7/Nay – 1*.

R-2008-037

The Board considered a request for approval as a provider of continuing pharmacy education pursuant to Ohio Administrative Code Rule 4729-7-05 from **Brad White**, R.Ph. (03-3-21701) Massillon, Ohio on behalf of:

Philly Pharmacy Inc., (02-0786250) New Philadelphia, Ohio.

After discussion, Ms. Pasquale moved that the Board approve the request. The motion was seconded by Mr. Kolezynski and approved by the Board: *Aye – 8*.

10:56 a.m. The Board recessed briefly.

11:05 a.m. The Board reconvened in Room South A, 31st Floor of the Vern Riffe Center with all members present to hold a public hearing concerning new and amended rules.

11:12 a.m. The public hearing ended and the Board recessed briefly.

11:20 a.m. The Board then reconvened in Room East B of the Vern Riffe Center.

11:22 a.m. **Andrea Darby** and **Joe Green** of **Ohio Health** discussed the proposed new method for positive ID submitted by **Phone Factor**.

11:39 a.m. The discussion was concluded. President Braylock thanked both of the representatives for their presentation and said that the Board would provide a response after they had more discussion about it

R-2008-038

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Teregen Laboratories, Willoughby, Ohio (02-1235150)
Various Physician Offices included in the letter of request

After discussion, Mr. Turner 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 Mrs. Gregg and approved by the Board: *Aye – 8*.

R-2008-039

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-11 (Responsible person) requesting that **Raymond Carlson**, R.Ph., (03-3-16010) Lowellville, Ohio be permitted to be the responsible person for the following sites:

RC Compounding Services (02-1678950) Poland, Ohio
Seeley Medical Pharmacy (02-1166700) Poland, Ohio

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

R-2008-040

The Board considered a request for an exemption to Ohio Administrative Code Rule 4729-5-10 (Prescription pick-up station) received for the following sites:

Buderer Drug/Sandusky (02-1106900)
Buderer Drug/Perrysburg (02-1198400)
Various Physician Offices included in the letter of request

After discussion, Mr. Turner 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 Mrs. Gregg and approved by the Board: *Aye* – 8.

11:52 a.m. The Board recessed for lunch.

1:00 p.m.

R-2008-041

The following candidates for licensure by reciprocity and members of the Board met in Room South A, 31st Floor of the Vern Riffe Center. They introduced themselves and participated in a discussion of pharmacy laws and rules with Mr. McMillen. They were then presented their pharmacist identification cards.

Taneeshe Rene Green	03-1-28310	Michigan
Anthony K. Hayibor	03-1-28321	Missouri
Amber Leeann Jones	03-1-28331	Virginia
Chin Kyong Kim	03-1-28326	Iowa
Scott David Koon	03-1-28240	Arizona
Alicia Marie Lutz	03-1-28320	Pennsylvania
Clyde Peter McCauley	03-1-28322	Michigan
Richard Kelly Merchant	03-1-28329	Indiana
Holly Rae Miller	03-1-27749	Wisconsin
Andrea Virginia Paige	03-1-28328	Georgia
Douglas Emile Smit	03-1-27784	California
Dolores Stadelbauer-McKay	03-1-28325	Tennessee
Eric Jason Stephens	03-1-28073	Kentucky

1:30 p.m. The Board reconvened in Room East B, 31st Floor, of the Vern Riffe Center with all members present.

1:34 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Douglas McOwen**, R.Ph. (03-2-12516), Urbana, Ohio.

3:16 p.m. The hearing ended and the record was closed.

The Board recessed briefly.

3:25 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 Ohio Revised Code. The motion was seconded by Mr. Turner and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; Turner – *yes*; and Wiesenhahn – *yes*.

3:49 p.m. The Executive Session ended and the meeting was opened to the public.

3:51 p.m.

R-2008-042

Mr. Wiesenhahn moved that the Board adopt the following order in the matter of **Douglas McOwen**, R.Ph. (03-2-12516), Urbana, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Numbers D-070508-047 and D-070625-052

in the matter of:

Douglas Elwood McOwen, R.Ph.

1771 North Main Street
Urbana, Ohio 43078

INTRODUCTION

The matter of Douglas Elwood McOwen came for hearing on September 10, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Douglas Elwood McOwen was represented by Stephen B. Yurik. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Todd Knauss, Ohio State Board of Pharmacy

Respondent's Witness: Douglas Elwood McOwen, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [05-08-07]
- 1A-1B. Procedurals
- 1C. Summary Suspension Order/Notice of Opportunity For Hearing letter [06-25-07]
- 1D-1E. Procedurals
2. State Board of Pharmacy Settlement Agreement In Re Douglas E. McOwen [07-05-94]
3. Rx #N614127 [06-21-06]
4. Medication Log for Douglas McOwen [01-17-03 to 06-21-06]; Copy of two prescriptions prescribed by James C. Binski, M.D. for Douglas McOwen [06-21-06]
5. CVS Pharmacy #3452 Patient Prescription Record for Douglas E. McOwen [01-01-05 to 10-19-06]
6. Notarized Statement of James C. Binski, M.D. [08-02-06]
7. Rx #C587623 [02-01-06]
8. Notarized Statement of Victoria Dyer, CMA [10-27-06]
9. Rx # C608777 [05-20-06]
10. Notarized Statement of Victoria Dyer, CMA [08-02-06]
11. Indictment, State of Ohio vs Douglas E. McOwen, Case No. 2007CR93, Champaign County Common Pleas Court [04-19-07]; Final Appealable Order [08-21-07]

Respondent's Exhibits:

- A. Medical History of Douglas McOwen [not dated]
- B. Six Colored Photographs of Douglas McOwen [08-23-02]
- C. Letter from James C. Binski, M.D. to William T. Winsley, M.S., R.Ph. [not dated]
- D. Progress Report from Sheri Haines, MA, LPC, LICDC to Stephen B. Yurik, Attorney at Law [06-26-07]
- E. Discharge Report from Sheri Haines, MA, LPC, LICDC to Stephen B. Yurik, Attorney at Law [07-31-07]
- F. Nine Letters of Support [06-06-07 to 06-19-07]

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 Douglas Elwood McOwen was originally licensed by the State of Ohio as a pharmacist on August 9, 1978, pursuant to examination, and that his license was summarily suspended on June 25, 2007. Records further reflect during the relevant time periods stated herein, Douglas Elwood McOwen was the Responsible Pharmacist at CVS Pharmacy #3452, 719 Scioto Street, Urbana, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Records further reflect that Douglas Elwood McOwen was previously disciplined by the Board on July 5, 1994.
- (2) Douglas Elwood McOwen did, on or about June 21, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen altered Rx #614127, written for 90 tablets of Percocet 5/325 mg, to 90 tablets of oxycodone with APAP 7.5/325 mg, without the permission of the prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (3) Douglas Elwood McOwen did, on or about February 1, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created and kept on file in the pharmacy Rx #587623, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Douglas Elwood McOwen did, on or about March 21, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #587623, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (5) Douglas Elwood McOwen did, on or about May 20, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created and kept on file in the pharmacy Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (6) Douglas Elwood McOwen did, on or about June 18, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (7) Douglas Elwood McOwen did, on or about July 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without

a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (8) Douglas Elwood McOwen did, on or about September 1, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (9) Douglas Elwood McOwen did, on or about October 7, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (10) Douglas Elwood McOwen did, on or about June 15, 2007, plead guilty in State of Ohio vs Douglas E. McOwen, Case No. 2007 CR 93, Champaign County Common Pleas Court, to one (1) count of Illegal Processing of Drug Documents, a felony of the fourth degree, under Section 2925.23(B)(1)(F)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (10) of the Findings of Fact constitute 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 (2) through (10) 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 (10) 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 Douglas Elwood McOwen on June 25, 2007.

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 adjudicates the matter of Douglas Elwood McOwen 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 two years the pharmacist identification card, No. 03-2-12516, held by Douglas Elwood McOwen and such suspension is effective as of the date of the mailing of this Order.

- (1) Douglas Elwood McOwen, 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) Douglas Elwood McOwen, 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 Douglas Elwood McOwen a monetary penalty of ten thousand dollars (\$10,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 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 limits Douglas Elwood McOwen's practice of pharmacy in that he may not dispense prescriptions for himself or for any member of his family.

Mr. Turner seconded the motion and it was approved by the Board: *Aye – 5/Nay – 3.*

3:52 p.m. The Board recessed briefly.

4:03 p.m. The hearing scheduled in the matter of **Jae-Sung Lee**, R.Ph. (03-3-22050) Dublin, Ohio and Caringwell Pharmacy (02-1428000) Columbus, Ohio and RPh Care, Inc., was continued until October 10, 2007 at 1:30 p.m.

The Board recessed briefly.

4:13 p.m.

R-2008-043

Mr. Keeley and Mr. Benedict discussed with the Board a proposed electronic transmission system from **Practice Partner (McKesson)**. Mrs. Gregg moved that the Board find the system approvable pending final inspection. The motion was seconded by Mr. Wiesenbahn and approved by the Board: *Aye – 8.*

R-2008-044

Revisions to the immunization training programs of the **University of Toledo**, the **Ohio Pharmacists Association** and **Kroger** (Cincinnati region) were discussed by the Board and Mr. Mitchell moved that the revised programs be approved. Mr. Turner seconded the motion and it was approved by the Board: *Aye – 8.*

Mr. Keeley gave the Board a brief update on current legislation.

R-2008-045

The Board then continued their discussion about the proposed positive identification program, **Phone Factor**. After consideration, Mr. Lipsyc moved that the **Phone Factor** method of positive identification be found approvable pending inspection of the installed and operating product, but only with the following requirements:

1. The prescriber must either be mandated to select "2" for instant reporting of fraudulent prescriptions or there must be a daily review of all prescriptions that failed to verify.
2. There must be a requirement that all fraudulent prescriptions be reported.

3. The prescriber must notify the hospital of a lost or damaged telephone.

Mrs. Teater seconded the motion and it was approved by the Board: *Aye* – 8.

R-2008-046

After discussion, Mr. Lipsyc moved that the **WellPoint** proposed Work-At-Home program for out-of-state pharmacists be found approvable, subject to the following conditions:

1. The pharmacist must have an Ohio license and live in either Indiana or Kentucky;
2. The pharmacist must be physically present in the pharmacy at least twice each month for meetings or work-related purposes.

Mr. Turner seconded the motion and it was approved by the Board: *Aye* – 8.

5:12 p.m. The Board recessed for the day.

Tuesday, September 11, 2007

10:00 a.m. The Ohio State Board of Pharmacy convened at the Villa Milano Restaurant, 1630 Schrock Road, Columbus, Ohio, with the following members present:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; James E. Turner, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

The Board was joined by the Board of Directors of the Ohio Pharmacists Association (OPA) for a discussion of items of mutual interest.

Mr. McMillen discussed the Licensing Report with the Boards.

Mrs. Droz presented the Prescription Drug Monitoring Program report.

Mr. Keeley discussed the Legislative Report with the Boards.

11:30 p.m. Other items of mutual interest were discussed. There were no items requiring official Board action.

12:00 p.m. The Licensure Ceremony was held, with 66 pharmacists licensed within the last year, acknowledged as they received their pharmacist wall certificates.

2:00 p.m. The Licensure Ceremony ended and the Board recessed.

Wednesday, September 12, 2007

8:30 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:

Gregory Braylock, R.Ph., *President*; Nathan S. Lipsyc, R.Ph., *Vice-President*; Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; and Jerome J. Wiesenhahn, R.Ph.

R-2008-047

After discussion, Mrs. Gregg moved that the minutes of the August 6-8, 2007 Board meeting be approved as amended. Mrs. Teater seconded the motion and it was approved by the Board: *Aye* – 7.

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

Mr. Mitchell discussed the most recent Medical Board Physician Assistant Policy Committee meeting with the Board.

8:58 a.m. The Board recessed briefly.

9:16 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Melissa Anne Tumino**, R.Ph. (03-3-21818) Berea, Ohio. Mr. Kolezynski recused himself and did not participate in the hearing or the deliberations.

10:48 a.m. The hearing ended and the record was closed.

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. The motion was seconded by Mr. Wiesenhahn and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.

11:12 a.m. The Executive Session ended and the meeting was opened to the public.

R-2008-048 Mr. Mitchell moved that the Board adopt the following order in the matter of **Melissa Anne Tumino**, R.Ph. (03-3-21818), Berea, Ohio

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070111-025

in the matter of:

Melissa Anne Tumino, R.Ph.

501 Lindberg Boulevard

Berea, Ohio 44017

R.Ph. Number 03-3-21818

INTRODUCTION

The matter of Melissa Anne Tumino came for hearing on September 12, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; and Jerome J. Wiesenhahn, R.Ph.

Melissa Anne Tumino was represented by Edward S. Molnar. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witness: Melissa Ann Tumino, R.Ph., Respondent

State's Exhibits:

1. Amended Notice of Opportunity For Hearing letter [02-02-07]
1A-1E. Procedurals

2. Notarized Statement of Melissa Tumino [08-31-06]
3. Statement of Melissa Tumino [08-31-06]
4. Notarized Statement of Mandy Yates [09-25-06]
5. Rx #543460 [08-10-06]
- 5A. Rx #543463 [08-10-06]
- 5B. Rx #C543508 [08-10-06]
- 5C. Rx #543509 [08-10-06]
- 5D. Rx #481562 [11-21-05]
- 5E. Rx #481565 [11-21-05]
- 5F. Rx #465391 [09-14-05]
- 5G. Rx #430576 [04-11-05]
6. Indictment, State of Ohio vs. Mellisa (Sic) Tumino, Case No. CR 495439, Cuyahoga County Common Pleas Court [04-26-07]; Journal Entry [05-10-07]; Journal Entry [06-15-07]

Respondent's Exhibits:

- A1. Copy of E-mailed letter from Melissa Tumino to Father Bonnell [05-14-07]
- B2. CVS/pharmacy Certificate of Achievement [not dated]
- C3. Medical Records for Melissa Tumino [01-16-04]
- D4. Copy of letter from Jamie Kopacz, LPTA and Corrie Long, MPT to Dr. Cooperman [05-16-06]; Medical Records for Brady Tumino [04-28-06 to 09-20-06]
- E5. Medical Record for Brady Tumino [02-20-06]
- F6. Progress Reports for Brady Tumino [02-23-06 and 08-29-06]
- G7. Progress Reports for Melissa Tumino [08-07-05 to 08-10-05]
- H8. Copy of letter from Robert Blankfield, MD, MS to Edward Molnar [04-15-07]
- I9. Restitution Documentation [06-26-07 and 07-20-07]
- J10. Four Letters of Support [01-15-07 to 07-23-07]

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 Melissa Anne Tumino was originally licensed by the State of Ohio as a pharmacist on July 30, 1996, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Melissa Anne Tumino did, on or about August 10, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #543460, written for herself as the patient, without the authorization of a prescriber. Melissa Anne Tumino obtained 90 tablets of clonidine HCL 0.1 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (3) Melissa Anne Tumino did, on or about August 10, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #543463, written for herself as the patient, without the authorization of a prescriber. Melissa Anne Tumino obtained 90 tablets of ibuprofen 800 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Melissa Anne Tumino did, on or about August 10, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa

Anne Tumino created Rx #C543508, without the authorization of a prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (5) Melissa Anne Tumino did, on or about August 10, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #543509, without the authorization of a prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (6) Melissa Anne Tumino did, on or about November 21, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #481562, written for herself as the patient, without the authorization of a prescriber. Melissa Anne Tumino obtained 60 tablets of ranitidine 300 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (7) Melissa Anne Tumino did, on or about November 21, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #481565, written for her husband, Joseph Tumino, without the authorization of a prescriber. Melissa Anne Tumino obtained 120 tablets of ranitidine 150 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (8) Melissa Anne Tumino did, on or about September 14, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #465391, written for herself as the patient, without the authorization of a prescriber. Melissa Anne Tumino obtained 120 tablets of ranitidine 150 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (9) Melissa Anne Tumino did, on or about April 11, 2005, intentionally create and/or knowingly possess a false or forged prescription, to wit: Melissa Anne Tumino created Rx #430576, written for her husband as the patient, without the authorization of a prescriber. Melissa Anne Tumino obtained 120 tablets of ranitidine 150 mg from the use of this document. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (10) Melissa Anne Tumino did, from April 11, 2005, through August 10, 2006, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of CVS/Pharmacy, beyond the express or implied consent of the owner, to wit: Melissa Anne Tumino admittedly stole \$404.00 worth of drugs from her employer. Melissa Anne Tumino obtained the drugs by filling forged prescriptions and then billing CVS, a self-insurer.

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 paragraphs (2) through (10) 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 (10) 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 (10) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.
- (4) The State Board of Pharmacy concludes that paragraphs (2) through (9) 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 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby places Melissa Anne Tumino on probation for five years from the effective date of this Order. The terms of probation are as follows:

- (A) Melissa Anne Tumino must maintain treatment until she is released by her physician and her physician must provide semi-annual progress reports to the Board on her condition and progress.
- (B) Melissa Anne Tumino must obtain, within six months from the effective date of this Order, two hours of continuing pharmacy education (0.2 CEUs) in Jurisprudence, which may not also be used for license renewal.
- (C) Other terms of probation are:
 - (1) The State Board of Pharmacy hereby declares that Melissa Anne Tumino'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) Melissa Anne Tumino may not serve as a responsible pharmacist.
 - (3) Melissa Anne Tumino must notify any employers of this Order.
 - (4) 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.
 - (5) Melissa Anne Tumino must not violate the drug laws of Ohio, any other state, or the federal government.
 - (6) Melissa Anne Tumino must abide by the rules of the State Board of Pharmacy.
 - (7) Melissa Anne Tumino must comply with the terms of this Order.
 - (8) Melissa Anne Tumino's license is deemed to be not in good standing until successful completion of the probationary period.

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.

The Board hereby imposes the following condition upon Melissa Anne Tumino's practice of pharmacy: Melissa Anne Tumino may not dispense prescriptions for herself or for immediate members of her family.

Melissa Anne Tumino 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 Mr. Lipsyc and it was approved by the Board: *Aye* – 6.

11:15 a.m. The Board recessed briefly.

11:23 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Evan Adam Miller**, intern applicant, North Royalton, Ohio.

12:14 p.m. The hearing ended and the record was closed.

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. The motion was seconded by Mr. Lipsyc and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.

12:21 p.m. The Executive Session ended and the meeting was opened to the public.

R-2008-049 Mrs. Gregg moved that the Board adopt the following order in the matter of **Evan Adam Miller**, intern applicant, North Royalton, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-070508-048

in the matter of:

EVAN ADAM MILLER

8430 Parkdale Drive
North Royalton, Ohio 44133

INTRODUCTION

The matter of Evan Adam Miller came for hearing on September 12, 2007, before the following members of the Board: Gregory Braylock, R.Ph. (*presiding*); Elizabeth I. Gregg, R.Ph.; Richard F. Kolezynski, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Heather L. Pasquale, R.Ph.; Dorothy S. Teater, Public Member; and Jerome J. Wiesenhahn, R.Ph.

Evan Adam Miller was not represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Evan Miller, Respondent

Gerald W. Miller

Respondent's Witnesses: None

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity For Hearing letter [05-08-07]
1A-1C. Procedurals
2. Application for Pharmacy Intern Registration with attachment submitted by Evan Adam Miller [02-23-07]
3. Case Summary, Parma Heights vs. Evan A. Miller, Case No. 05CRB00529, Parma Heights Mayor's Court [09-09-05]
4. Certified Journal Report, City of Toledo vs. Evan A. Miller, Case No. CRB-05-21833-0101, Toledo Municipal Court [01-19-07]
5. Three Uniform Traffic Citations, State of Florida vs. Evan A. Miller, Citation No. 2491-XBA, Citation No. 1230-SER, and Citation No. 1231-SER [03-08-07]

Respondent's Exhibits:

- A. Letter from Pamela Zuban, LISW to Dale R. Fritz, Jr. [08-23-07]
- B. Institutional Coursework Credit [Fall 2004 to Fall 2006]
- C. Support Group Attendance Records [03-20-07 to 06-21-07]
- D1-D5. Five Letters of Support [08-21-07 to 09-10-07]

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 Evan Adam Miller applied to the Board for registration as an intern in the State of Ohio on February 23, 2007.
- (2) Evan Adam Miller was, on or about September 9, 2005, convicted of Underage Possession/Consumption in violation of Section 619.02 of the Parma Municipal Code. Evan Adam Miller was fined \$250.00 and assessed \$80.00 in court costs. Parma Heights vs. Evan A. Miller, Case No. 05CRB00529, Parma Heights Mayor's Court.
- (3) Evan Adam Miller was, on or about December 9, 2005, after having been charged with Underage Consumption, convicted of Disorderly Conduct in violation of Section 509.03 of the Toledo Municipal Court. Evan Adam Miller was fined \$50.00 and assessed \$79.00 in court costs. City of Toledo vs. Miller, Evan A., Case No. CRB-05-21833-010, Toledo Municipal Court.
- (4) Evan Adam Miller was, on or about March 8, 2007, arrested and charged with Driving Under the Influence (B.A.C. test .232), Failure to Yield to an Emergency Vehicle, and Driving through a Construction Zone by the Florida Highway Patrol. Though he spent 1½ days in jail prior to being bonded out, these charges are still pending.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute not being of good moral character and

habits as set forth in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.

- (2) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Section 4729.11 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the Application for Pharmacy Intern Registration submitted by Evan Adam Miller on or about February 23, 2007.

Further, the Board places Evan Adam Miller on probation for the duration of his Internship. The terms of probation are as follows:

- (A) Evan Adam Miller must not violate the laws of the State of Ohio, any other state, or the federal government.
- (B) Evan Adam Miller must abide by the rules of the State Board of Pharmacy.
- (C) Evan Adam Miller must comply with the terms of this Order.
- (D) Evan Adam Miller's license is deemed not in good standing until successful completion of the probationary period.
- (E) 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.

Evan Adam Miller 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.

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

Mr. Braylock discussed the Nursing Board's Committee on Prescriptive Governance Report meeting with the Board.

12:42 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 Ohio Revised Code. The motion was seconded by Ms. Pasquale and a roll-call vote was conducted by President Braylock as follows: Gregg – *yes*; Kolezynski – *yes*; Lipsyc – *yes*; Mitchell – *yes*; Pasquale – *yes*; Teater – *yes*; and Wiesenhahn – *yes*.

1:33 p.m. The Executive Session ended and the meeting was opened to the public.

R-2008-050 Mrs. Gregg moved that the Board summarily suspend the license to practice pharmacy belonging to **Curt Robert Evans**, R.Ph. (03-1-12331) Jackson, Ohio, pursuant to Ohio Revised Code 3719.121 (B). Ms. Pasquale seconded the motion and it was approved by the Board: *Aye* – 7.

R-2008-051 Mr. Mitchell moved that the Board accept the settlement offer in the matter of **Paula Gractl Sondergeld**, R.Ph., (03-1-10998) Sylvania, Ohio, as amended by the Board. The Board's acceptance of a settlement would be contingent on the respondent agreeing to the changes

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

The Board discussed the election for the District IV Executive Committee seat previously held by former Board member Robert Giacalone that is to occur at the District IV NABP/AACP meeting in November.

1:36 p.m. Mrs. Gregg moved that the Board receive per diem as follows:

PER DIEM	08/27	09/10	09/11	09/12	Total
Braylock	1	1	1	1	4
Gregg	-	1	1	1	3
Lipsyc	-	1	1	1	3
Kolezynski	-	1	1	1	3
Mitchell	-	1	1	1	3
Pasquale	-	1	1	1	3
Teater	-	1	-	1	2
Turner	-	1	1	-	2
Wiesenhahn	-	1	1	1	3

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

Mr. Lipsyc moved that the meeting be adjourned. Mr. Kolezynski seconded the motion and it was approved by the Board: *Aye* – 7.

<p>The Ohio State Board of Pharmacy approved these Minutes October 9, 2007</p>
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