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Minutes of the December 6- 8, 2010 **Meeting of the Ohio State Board of Pharmacy**

Monday, December 6, 2010

10:13 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:

Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Jerome J. Wiesenbahn, R.Ph.; and Lori L. Woodson, R.Ph.

Also present were William T. Winsley, *Executive Director*; Timothy Benedict, *Assistant Executive Director*; Mark Keeley, *Legislative Affairs Administrator*; Chris Reed, *Compliance Supervisor*; David Rowland, *Legal Affairs Administrator*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Tracy Greuel, *Assistant Attorney General*.

Mr. Reed introduced new Board Compliance Agent, Dustin Robison.

10:15 a.m. Mr. Casar 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. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Wiesenbahn – *yes*; and Woodson – *yes*.

11:05 a.m. The Executive Session ended and the meeting was recessed briefly.

11:16 a.m. The meeting resumed and opened to the public.

R-2011-109 Mr. Joyce moved that the settlement offer in the matter of **Raymond Denuit**, R.Ph. (03-1-10793) Oak Hill, Ohio, be denied. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 7.

R-2011-110 Mr. Casar moved that the settlement offer in the matter of **Andrea C. Bullock**, R.Ph. (03-2-26193) Massillon, Ohio, be denied. The motion was seconded by Ms. Lange and approved by the Board: *Aye* – 6; *Nay* – 1.

R-2011-111 Mr. Gahm moved that the Board issue a Cease and Desist letter to **NewCrop, LLC; Larry Susnow**, M. D., Sugarland, Texas, because it is an unlicensed facility shipping dangerous drugs to clients in Ohio. Mr. Wiesenbahn seconded the motion and it was approved by the Board: *Aye* – 7.

11:16 a.m.
R-2011-112 Ms. Lange moved that the new and proposed rules, which are to be implemented and become effective January 1, 2011, be approved for final filing. The motion was seconded by Mr. Wiesenbahn and approved by the Board: *Aye* – 7.

R-2011-113 The Board met with **Mr. Ernest E. Boyd**, R.Ph., Executive Director of the Ohio Pharmacist Association to discuss the November Licensure Ceremony.

Due to a scheduling conflict with the District IV meeting next November, Ms. Woodson moved that the November Board meeting be changed to October 31 through November 2, 2011. Mr. Gahm seconded the motion and it was approved by the Board: *Aye – 7*.
Mr. Keeley presented the Legislative Report.

Ms. Lange and Mr. Keeley discussed the Technician Exam Status Report with the Board.

Mrs. Droz presented the Ohio Automated Prescription Reporting System update.

12:05 p.m. The Board recessed for lunch.

1:30 p.m. The Board reconvened with all members present:

1:34 p.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **David R. Stepanik**, R.Ph. (03-2-14037) Brooklyn, Ohio.

2:30 p.m. The hearing ended and the record was closed.

2:31 p.m. Mr. Gahm 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. Moné and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Moné – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.

2:43 p.m. The Executive Session ended and the meeting was opened to the public.

R-2011-114 After votes were taken in public session, the Board adopted the following order in the matter of **David R. Stepanik**, R.Ph. (03-2-14037) Brooklyn, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100908-146

in the matter of:

DAVID R. STEPANIK, R.Ph.

4631 Winter Lane

Brooklyn, Ohio 44144

R.Ph. Number 03-2-14037

INTRODUCTION

The matter of David R. Stepanik came for hearing on December 6, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael A. Moné, R.Ph.; Jerome J. Wiesenhahn, R.Ph. and Lori L. Woodson, R. Ph.

David R. Stepanik was represented by Michael E. Stepanik. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: None

Respondent's Witnesses: David R. Stepanik, R.Ph., Respondent
Michael E. Quigley, R.Ph., PRO

State's Exhibits:

1. Reinstatement hearing request letter [11-06-09]
1A-1B. Procedurals
2. State Board of Pharmacy Order in re David R. Stepanik, R.Ph. [11-06-09]

Respondent's Exhibits:

- A. PRO Pharmacist's Treatment Contract for David Stepanik [11-11-09]
- B. Letter from Pamela Zuban, LISW of Glenbeigh in re David Stepanik [11-12-10]; Seven Glenbeigh Outpatient Progress Reports for David Stepanik [12-10-09 to 07-12-10]; Glenbeigh Certificate of Completion [09-10-10]
- C. Support Group Calendars [October 2009 through December 2010]; Support Group Attendance Records [10-08-09 to 12-01-10]
- D. FirstLab Test History Report [09-20-09 to 12-01-10]
- E. Ohio State Board of Pharmacy hearing schedule for David R. Stepanik, R.Ph. [09-08-10]
- F. Fourteen letters of support and student evaluations [10-26-10 to 11-18-10]
- G. Continuing education credits and certificates [08-13-08 to 10-31-10]
- H. Curriculum Vitae of David R. Stepanik, R.Ph. [not dated]

FINDING 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 that David R. Stepanik has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket Number D-090629-141, effective November 6, 2009.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, Number 03-2-14037, held by David R. Stepanik to practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

- (A) David R. Stepanik 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 submit a copy of the signed contract to the Board office before his pharmacist identification card is issued. The contract must provide that:
 - (1) **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.
 - (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 urine screen or a diluted urine 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) The intervener/sponsor shall submit reports to the Board, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
 - (3) Attendance is required a minimum of three times per calendar week (Sunday through Saturday), at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) David R. Stepanik 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:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of David R. Stepanik's progress towards recovery and what David R. Stepanik has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that David R. Stepanik'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) David R. Stepanik may not serve as a responsible pharmacist.
 - (3) David R. Stepanik may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) David R. Stepanik must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
 - (5) David R. Stepanik must not violate the drug laws of Ohio, any other state, or the federal government.
 - (6) David R. Stepanik must abide by the rules of the State Board of Pharmacy.
 - (7) David R. Stepanik must comply with the terms of this Order.
 - (8) David R. Stepanik's license is deemed not in good standing until successful completion of the probationary period.

(D) 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.

David R. Stepanik 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.

Brian Joyce moved for Action of the Board; Troy Gahm seconded the motion. Motion passed (Aye-8/Nay-0).

The Board recessed briefly.

3:02 p.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **John Kenneth McLaughlin**, R.Ph. (03-1-27627) North Canton, Ohio.

5:16 p.m. The hearing ended and the record was closed.

5:17 p.m. Mr. Casar 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. Moné and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Moné – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.

5:34 p.m. The Executive Session ended and the meeting was opened to the public.

5:35 p.m.
R-2011-115 After votes were taken in public session, the Board adopted the following order in the matter of **John Kenneth McLaughlin**, R.Ph. (03-1-27627) North Canton, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100722-138

in the matter of:

JOHN KENNETH MCLAUGHLIN, R.Ph.

213 Sycamore Drive
North Canton, Ohio 44720

R.Ph. Number 03-1-27627

INTRODUCTION

The matter of John Kenneth McLaughlin came for hearing on December 6, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael A. Moné, R.Ph.; Jerome J. Wiesenhahn, R.Ph. and Lori L. Woodson, R. Ph.

John Kenneth McLaughlin was represented by Peter T. Cahoon. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: Thomas M. Miksch, Ohio State Board of Pharmacy
John Kenneth McLaughlin, R.Ph., Respondent

Respondent's Witness: John Kenneth McLaughlin, R.Ph., Respondent

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [07-22-10]
- 1A-1G. Procedurals
2. Notarized statement of John K. McLaughlin [07-09-10]
3. Notarized statement of Steven Basinger [07-07-10]
4. Notarized statement of Rob Koch [07-07-10]
5. False prescription spreadsheet [not dated]
6. Perpetual inventory sheets [various dates]
7. Order Tracking – Order Status sheets [various dates]
8. Notarized statement of Robert Nelson Jr. [10-13-10]
9. Notarized statement of Nabil Azar [10-13-10]
10. Notarized statement of Jenice S. Wilson [10-28-10]
11. Notarized statement of Keisha Mason, RN [10-14-10]
12. Notarized statement of Corattur N.S. Natesan, MD [10-14-10]
13. Notarized statement of Stephanie L. Saunders, RN, BSN, DON [10-22-10]
14. Notarized statement of Itvi A. Eren [10-22-10]

Respondent's Exhibits:

- A. Glenbeigh Discharge Summary in re John McLaughlin [07-15-10 to 08-13-10]
- B. Glenbeigh Hospital & Outpatient Centers Discharge Plan in re John McLaughlin [07-15-10 to 08-13-10]
- C. Quest Recovery & Prevention Services Intake Assessment for John K. McLaughlin [10-23-10]
- D. Glenbeigh Urine Screens [07-13-10 to 11-11-10]
- E. Support group attendance records [07-24-10 to 11-24-10]
- F-G. Two letters of support [not dated]
- H. Quest Recovery and Prevention Services Client Progress Report [12-02-10]

FINDINGS OF FACT

- (1) Records of the Board of Pharmacy indicate that John Kenneth McLaughlin was originally licensed in the State of Ohio on September 26, 2006, pursuant to examination, and his license to practice pharmacy in Ohio was summarily suspended effective July 22, 2010.
- (2) John Kenneth McLaughlin is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: John Kenneth McLaughlin has admitted to Board agents that he is addicted to the use of OxyContin, a Schedule II Controlled Substance. John Kenneth McLaughlin has admitted to stealing the drug from his employer to self-medicate for pain and depression issues. John Kenneth McLaughlin indicated that he began stealing Percocet, a Schedule II Controlled Substance, in February of 2010, and after a couple of weeks of abuse John Kenneth McLaughlin began stealing OxyContin. John Kenneth McLaughlin started at lower strengths and advanced to 80 mg tablets. Such conduct indicates that John Kenneth McLaughlin is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) John Kenneth McLaughlin did, on or about the month of February, 2010, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Pharmerica, beyond the express or implied consent of the owner, to wit: John Kenneth McLaughlin admittedly stole approximately 100 doses of Percocet, a Schedule II Controlled Substance, for personal abuse purposes. John Kenneth McLaughlin had created false prescriptions for the

drugs then destroyed the documents. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (4) John Kenneth McLaughlin did, on or about the month of February, 2010, through July, 2010, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Pharmerica, beyond the express or implied consent of the owner, to wit: John Kenneth McLaughlin admittedly stole a yet-unknown quantity of OxyContin, a Schedule II Controlled Substance, for personal abuse purposes. John Kenneth McLaughlin had created false prescriptions for the drugs then destroyed the documents. 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 (3) and (4) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

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 John Kenneth McLaughlin on July 22, 2010.

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, Number 03-1-27627, held by John Kenneth McLaughlin and such suspension is effective as of the date of the mailing of this Order.

- (A) John Kenneth McLaughlin, 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) John Kenneth McLaughlin, 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 two years from the date of John Kenneth McLaughlin's Summary Suspension of July 22, 2010, the Board will consider any petition filed by John Kenneth McLaughlin 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) John Kenneth McLaughlin must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) An effort of payment for restitution to Pharmerica;
 - (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.
- (B) John Kenneth McLaughlin 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 calendar week (Sunday through Saturday), 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.
- (C) John Kenneth McLaughlin must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (D) John Kenneth McLaughlin 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 and alcohol 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.

(E) If reinstatement is not accomplished within three years of the effective date of this Order, John Kenneth McLaughlin must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

Deborah Lange moved for Findings of Fact; Donald Casar seconded the motion. Motion passed (Aye-8/Nay-0).

Troy Gahm moved for Conclusions of Law; Michael Moné seconded the motion. Motion passed (Aye-8/Nay-0).

Donald Casar moved for Action of the Board; Deborah Lange seconded the motion. Motion passed (Aye-6/Nay-2).

5:36 p.m. The Board recessed for the day.

Tuesday, December 7, 2010

8:50 a.m. The Board reconvened with the following members present:

Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael Moné, R.Ph.; Jerome J. Wiesenbahn, R.Ph.; and Lori L. Woodson, R.Ph.

Mr. Winsley announced that Carmen Catizone, Executive Director of NABP would be delivering this year's Sebok Pharmacy Lecture at Ohio Northern University on January 18, at 1 p.m. Board members will be receiving invitations from Ohio Northern University at a later date.

9:00 a.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Stephen Deloi Lucore**, R.Ph. (06-0-06145) North Canton, Ohio.

9:30 a.m. The hearing was recessed.

10:08 a.m. The **Stephen Deloi Lucore** hearing resumed.

11:39 a.m. The Board recessed for lunch.

1:02 p.m. The Board reconvened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts and the hearing in the matter of **Stephen Deloi Lucore** resumed.

1:30 p.m. The following candidates for licensure by reciprocity convened in Room South A, 31st Floor of the Vern Riffe Center and then participated in a discussion of pharmacy laws and rules with Mr. Parker, Licensing Administrator.

Henna Rasik Griego

Deepa Sekar

Michael D. Pickering

Clarissa Miyasato Dornbush

Cassandra Lynn Johns

Brian Joseph Schellhaus

California

Florida

Illinois

Arizona

Pennsylvania

West Virginia

Gina Louise Hayward
Chengyin Yao
Kelly Earhart
Zhenjie Li
Kimberly Catherine Foraker
Hussein El Khatib
Mehulkumar Babubhai Patel
Xin Liu

Illinois
Michigan
Tennessee
Connecticut
Tennessee
Michigan
New Jersey
Tennessee

- 1:38 p.m. The hearing in the matter of **Stephen Deloi Lucore**, R.Ph. (06-0-06145) North Canton, Ohio ended and the record was closed.
- 1:39 p.m. Ms. Lange 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. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Moné – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.
- 2:08 p.m. The Executive Session ended and the meeting was opened to the public.
- 2:09 p.m.
R-2011-116 After votes were taken in public session, the Board adopted the following order in the matter of **Stephen Deloi Lucore**, R.Ph. (06-0-06145) North Canton, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100908-147
in the matter of:

STEPHEN DELOI LUCORE
2217 Zink Road, Apartment #2
Fairborn, Ohio 45324

R.Ph. Number 06-0-06145

INTRODUCTION

The matter of Stephen Deloi LuCore came for hearing on December 7, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael A. Moné, R.Ph.; Jerome J. Wiesenhahn, R.Ph. and Lori L. Woodson, R. Ph.

Stephen Deloi LuCore was represented by James M. McGovern. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Stephen Deloi LuCore, Respondent

Respondent's Witness: Stephen Deloi LuCore, Respondent

State's Exhibits:

1. Copy of Summary Suspension Order/Notice of Opportunity for Hearing letter [09-08-10]
1A-1C. Procedurals

2. Pharmacy Intern Registration Application for Stephen Deloi LuCore [06-07-06]
3. Email correspondence regarding Intern LuCore [06-28-10 to 07-14-10]
4. Notarized statement of Ashley Clark, R.Ph. [12-03-10]
5. Statement of Kayla Young [not dated]
6. Notarized statement of Stacie Hanks [12-03-10]

Respondent's Exhibits:

- A. TCN Fairborn Progress Report in re Stephen LuCore [10-13-10]
- B. TCN Fairborn Progress Report in re Stephen LuCore [10-13-10]; TCN Fairborn Discharge Summary [10-13-10]

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) Records of the Board of Pharmacy indicate that Stephen Deloi LuCore was originally licensed as an intern in the State of Ohio on August 1, 2008 and his license to practice pharmacy as a pharmacy intern in Ohio was summarily suspended on September 8, 2010.
- (2) Stephen Deloi LuCore is addicted to the use of controlled substances, to wit: Stephen Deloi LuCore was observed practicing as an intern on or about July 13, 2010, exhibiting odd behavior and unprofessional conduct, acting as if he was under the influence of drugs. Stephen Deloi LuCore has admitted that he started experimenting with a methcathinone derivative drug, a Schedule I Controlled Substance, in the Spring of 2010, and that Stephen Deloi LuCore is mentally and physically addicted to the drug. Such conduct indicates that Stephen Deloi LuCore is addicted to controlled substances within the meaning of Section 3719.121 of the Ohio Revised Code.

CONCLUSION OF LAW

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 Stephen Deloi LuCore on September 8, 2010.

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 intern identification card, Number 06-0-06145, held by Stephen Deloi LuCore and such suspension is effective as of the date of the mailing of this Order.

- (A) Stephen Deloi LuCore, 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) Stephen Deloi LuCore, 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 two years from the effective date of this Order, the Board will consider any petition filed by Stephen Deloi LuCore 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) Stephen Deloi LuCore must continue with mental health treatment with quarterly reports provided to this Board (due January 10, April 10, July 10, and October 10) of each year by the treatment provider.

- (B) Stephen Deloi LuCore 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 calendar week (Sunday through Saturday), 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.

- (C) Stephen Deloi LuCore must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

- (D) Stephen Deloi LuCore 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 and

alcohol screen reports, meeting attendance records, treatment program reports, etc.);

(2) Satisfactory documentation from a Board approved college of pharmacy demonstrating that college's intent to allow enrollment to take professional classes directly related to the practice of pharmacy once Stephen Deloi LuCore is licensed by the Board.

(3) Compliance with the terms of this Order.

Deborah Lange moved for Findings of Fact; Lori Woodson seconded the motion. Motion passed (Aye-8/Nay-0).

Troy Gahm moved for Conclusions of Law; Jerome Wiesenhahn seconded the motion. Motion passed (Aye-8/Nay-0).

Troy Gahm moved for Action of the Board; Edward Cain seconded the motion. Motion passed (Aye-6/Nay-2).

2:11 p.m. The Board recessed briefly.

2:19 p.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **John Joseph Perry**, R.Ph., Richmond, Indiana. Mr. Wiesenhahn recused himself from this hearing.

3:36 p.m. The hearing ended and the record was closed.

3:37 p.m. Ms. Lange 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. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Moné – *yes*; and Woodson – *yes*.

4:10 p.m. The Executive Session ended and the meeting was opened to the public.

4:11 p.m.

R-2011-117 After votes were taken in public session, the Board adopted the following order in the matter of **John Joseph Perry**, R.Ph., Richmond, Indiana.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100903-143

in the matter of:

JOHN JOSEPH PERRY, R.Ph.

3737 S A Street, Apt #11

Richmond, Indiana 47374

INTRODUCTION

The matter of John Joseph Perry came for hearing on December 7, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael A. Moné, R.Ph.; and Lori L. Woodson, R. Ph.

Jerome J. Wiesenhahn, R.Ph., recused.

John Joseph Perry was represented by David W. Grauer. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: John J. Perry, R.Ph., Respondent

Respondent's Witness: John J. Perry, R.Ph., Respondent

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity for Hearing letter [09-03-10]
1A-1C. Procedurals
2. National Association of Boards of Pharmacy Application for Transfer of Pharmacist License [08-27-10]
3. Order of the State Board of Pharmacy [01-31-95]
4. Order of the State Board of Pharmacy [04-07-99]
5. Order of the State Board of Pharmacy [12-08-09]
6. United States District Court, Northern District of Ohio Case No. 4:94CR0417 Judgment, Indictment, Plea Agreement [various dates]

Respondent's Exhibits:

- A. Resume of John Joseph Perry, R.Ph. [not dated]
- B. Copies of pharmacist license cards for Indiana, Illinois and Nevada [expires 2011 thru 2012]
- C. Letter from Purdue University regarding preceptor program [03-14-07]
- D. Evidence of National Provider Identifier issued by the Centers for Medicare and Medicaid Services [02-29-08]
- E.-M. Nine letters of recommendation [10-07-09 to 11-22-10]
- N.-O. Continuing Pharmacy Education Statements of Credits [05-06-09 through 11-30-10]
- P. Walmart pharmacy staff award [10-27-10]
- Q. Compliance certificate [01-26-07 through 02-29-08]
- R. Illinois Poison Center certificate [06-13-07]
- S. Preferred Care Services, Inc. Prescription Drug Fraud, Waste and Abuse Training Affidavit [06-15-07]
- T. Email regarding nominated stores for training Service Section Leaders [07-07-09]
- U. Business cards [not dated]

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) John Joseph Perry is a registered pharmacist in the states of Illinois, Indiana, West Virginia, and Nevada, and on or about August 27, 2010, applied for reciprocal registration into the State of Ohio.
- (2) Records further indicate that John Joseph Perry was originally licensed to practice pharmacy as a pharmacist in the State of Ohio on May 24, 1978, and his license to practice pharmacy in Ohio was revoked on January 31, 1995.
- (3) Records of the Board of Pharmacy indicate that John Joseph Perry submitted an application for examination as a pharmacist on or about

September 16, 1998. Further, the Board denied the application for examination as a pharmacist on April 7, 1999.

- (4) Records of the Board of Pharmacy indicate that John Joseph Perry submitted an application for Registration by Reciprocity on or about May 8, 2009. Further, the Board denied the application for examination as a pharmacist on December 8, 2009.
- (5) John Joseph Perry does not meet the qualifications for reciprocal registration, to wit: John Joseph Perry is not of good moral character and habits; John Joseph Perry has been convicted of a felony; John Joseph Perry has been disciplined by the Ohio Board of Pharmacy; and John Joseph Perry has been found by the Board of Pharmacy to be guilty of a felony and gross immorality, dishonesty and unprofessional conduct in the practice of pharmacy and/or guilty of willfully violating provisions of Chapter 2925. of the Ohio Revised.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes having been convicted of violating any state or federal pharmacy or drug law as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Sections 4729.08 and 4729.16 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice as a pharmacist in Ohio and, therefore, denies the application for registration by reciprocity submitted by John Joseph Perry on or about August 27, 2010 for the following reasons:

Brian Joyce moved for Action of the Board; Deborah Lange seconded the motion. Motion passed (Aye-6/Nay-1).

- 4:12 p.m. The Board recessed briefly.
- 4:20 p.m. The Board was joined by Assistant Attorney General Tracy Greuel to create a record in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of **Elmer Roulhac, Jr., R.Ph.**, Huntington, West Virginia.
- 4:38 p.m. The hearing ended and the record was closed.
- 4:39 p.m. Ms. Lange 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. Moné and a roll-call vote was conducted by

President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Moné – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.

4:56 p.m. The Executive Session ended and the meeting was opened to the public.

R-2011-118 After votes were taken in public session, the Board adopted the following order in the matter of **Elmer Roulhac, Jr.**, R.Ph., Huntington, West Virginia.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100614-123

in the matter of:

ELMER ROULHAC, Jr. R.Ph.

6363 Country Club Drive
Huntington, West Virginia 25705

INTRODUCTION

The matter of Elmer Roulhac, Jr. came for hearing on December 7, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Michael A. Moné, R.Ph.; Jerome J. Wiesenhahn, R.Ph. and Lori L. Woodson, R. Ph.

Elmer Roulhac, Jr. was not present nor was he represented by counsel. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Copy of Proposal to Deny/Notice of Opportunity for Hearing letter [06-14-10] 1-1A. Procedurals
2. National Association of Boards of Pharmacy Official Application for Transfer of Pharmacist License [11-07-09]
3. Documentation for Second Judicial Circuit Court Leon County, Florida Case No. 2004CF1061 [various dates]

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) Elmer Roulhac, Jr. is a registered pharmacist in the state of West Virginia, and on or about November 17, 2009 Elmer Roulhac, Jr. applied for reciprocal registration into the State of Ohio.
- (2) Elmer Roulhac, Jr. did, on or about October 27, 2009, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Elmer Roulhac, Jr. indicated on his Transfer of

Pharmacist License to the State of Ohio application that he had not been charged or convicted with a crime when in fact Elmer Roulhac, Jr. had been convicted of Grand Theft, a felony of the third degree, Florida statute 812.014(2)(c)1. State of Florida vs. Elmer Roulhac, 2004CF1061, Second Judicial Circuit Court, in and for Leon County, Florida. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

- (3) Elmer Roulhac, Jr. did, on or about April 26, 2004, plead guilty in the Second Judicial Court, in and for Leon County, Florida to a violation of Grand theft, Florida Section #FL812.014(2)(c)1, a 3rd degree felony. Elmer Roulhac, Jr. was placed on probation for 30 months, required to complete 20 days in the jail work camp, and pay restitution of \$1,200.00. Such conduct, is in violation of Section 4729.16 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of a felony and/or gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes having been found by the Board of Pharmacy not to be of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code and Section 4729.08 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Sections 4729.09 and 4729.16 of the Ohio Revised Code and Rule 4729-5-04 of the Ohio Administrative Code, and on the basis of the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card to practice as a pharmacist in Ohio and, therefore, denies the Official Application for Transfer of Pharmacist Licensure submitted by Elmer Roulhac, Jr. on or about November 7, 2009.

Jerome Wiesenhahn moved for Action of the Board; Brian Joyce seconded the motion. Motion passed (Aye-8/Nay-0).

R-2011-119 After discussion, Mr. Moné moved that the Board continue its long-standing support of the need for an attorney to function as the Board's Legal Affairs Administrator. The motion was seconded by Mr. Cain and approved by the Board: *Aye* – 8.

R-2011-120 After further discussion, Mr. Gahm moved that the determination of the need for the Board's Legal Affairs Administrator to maintain competence in trial work and the need for that competence to be obtained during normal Board business hours continue to be delegated to the Board's Executive Director. Mr. Cain seconded the motion and it was approved by the Board: *Aye* – 8.

Mr. Casar said there was no report from the Nursing Board Committee on Prescriptive Governance.

Ms. Lange said there was no report from the Medical Board's Physician-Assistant Policy Committee this month.

5:00 p.m. The Board recessed for the day.

Wednesday, December 8, 2010

8:00 a.m. The Ohio State Board of Pharmacy convened in Room South B & C, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Richard F. Kolezynski, R.Ph., *President*; Donald M. Casar, R.Ph.; *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Jerome J. Wiesenbahn, R.Ph.; and Lori L. Woodson, R.Ph.

R-2011-121 Ms. Lange moved that the Board minutes of November 1-3, 2010, be approved as amended. Ms. Woodson seconded the motion and it was approved by the Board: *Aye* – 7.

R-2011-122 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:

Mercy Regional Medical Center Pharmacy, Lorain, Ohio (02-1011900)
Central Admixture Pharmacy Services, Inc., Valley View, Ohio (02-1312700)

After discussion, Mr. Joyce 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. Cain and approved by the Board: *Aye* – 7.

R-2011-123 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:

Vibra Hospital of Mahoning Valley, Boardman, Ohio (02-2083650)
Central Admixture Pharmacy Services, Inc., Valley View, Ohio (02-1312700)

After discussion, Mr. Joyce 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. Wiesenbahn and approved by the Board: *Aye* – 7.

R-2011-124 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:

Oncology Hematology Care Pharmacy, LLC, Cincinnati, Ohio (02-1304800) &
(02-1938900)
Various Physicians Offices

After discussion, Mr. Gahm 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. Joyce and approved by the Board: *Aye* – 7.

R-2011-125 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:

Nationwide Children's Hospital Pharmacy, Columbus, Ohio (02-0039200)
Nationwide Children's Hospital Dialysis Unit, Columbus, Ohio (02-0039200)

After discussion, Mr. Gahm 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. Casar and approved by the Board: *Aye* – 7.

R-2011-126 A request to be registered as a Continuing Pharmacy Education provider was received from the **Chillicothe VA Medical Center** and **Stacie Renee Jackson, Pharm D.**, (03-1-24239). After

discussion, Ms. Lange moved that the request be approved. Ms. Woodson seconded the motion and it was approved by the Board: *Aye – 7.*

R-2011-127 A request to be registered as a Continuing Pharmacy Education provider was received from **Advanced Infusion Services** and **Randy Douglas Fasnacht**, R.Ph. (03-2-15153) Akron, Ohio. After discussion, Mr. Gahm moved that the request be approved. Ms. Lange seconded the motion and it was approved by the Board: *Aye – 7.*

R-2011-128 Mr. Parker presented a request for approvable status for the electronic prescribing system **BioMedix "TRAKnet DPM"**. Mr. Casar moved that the system be found approvable pending final inspection. Mr. Joyce 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.

8:40 a.m. Ms. Lange moved that the Board go into Executive Session for the purpose of discussing personnel matters pursuant to Section 121.22(G)(1) of the Ohio Revised Code. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Kolezynski as follows: Casar – *yes*; Cain – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.

8:59 a.m. The Executive Session ended and the meeting was opened to the public.

9:13 a.m. The Board was joined by Assistant Attorney General Tracy Greuel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **B. Elise Miller**, R.Ph. (03-1-12257) Coshocton, Ohio.

12:19 p.m. The Board recessed for lunch.

1:21 p.m. The adjudication hearing in the matter of **B. Elise Miller** resumed.

5:21 p.m. The hearing ended and the record was closed.

5:22 p.m. Ms. Lange 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. Joyce and a roll-call vote was conducted by President Kolezynski as follows: Cain – *yes*; Casar – *yes*; Gahm – *yes*; Joyce – *yes*; Lange – *yes*; Wiesenhahn – *yes*; and Woodson – *yes*.

5:56 p.m. The Executive Session ended and the meeting was opened to the public.

5:57 p.m.

R-2011-129 After votes were taken in public session, the Board adopted the following order in the matter of **B. Elise Miller**, R.Ph. (03-1-12257) Coshocton, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number D-100310-100

in the matter of:

B. ELISE MILLER, R.Ph.

P.O. Box 176

2171 Forest Hill

Coshocton, Ohio 43812

R.Ph. Number 03-1-12257

INTRODUCTION

The matter of B. Elise Miller came for hearing on December 8, 2010, before the following members of the Board: Richard F. Kolezynski, R.Ph. (*presiding*); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Brian M. Joyce, R.Ph.; Deborah A. Lange, R.Ph.; Jerome J. Wiesenhahn, R.Ph. and Lori L. Woodson, R. Ph.

Michael A. Moné, R.Ph., absent.

B. Elise Miller was represented by Michael L. Close. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses: B. Elise Miller, R.Ph., Respondent
David Gallagher, Ohio State Board of Pharmacy
Louis R. Mandi, R.Ph.
Avril Sutherland Wagner

Respondent's Witness: B. Elise Miller, R.Ph., Respondent

State's Exhibits:

1. Copy of Notice of Opportunity for Hearing letter [03-10-10]
1A-1F. Procedurals
2. State Board of Pharmacy Settlement Agreement in re B. Elise Miller, R.Ph, Miller Pharmacy and Three Rivers O.P.T.I.O.N Care, Inc. [04-05-04]
3. Notarized statement of Douglas A. Bolden [05-20-09]
4. Notarized statement of Janet Myers [05-19-09]
5. Dangerous Drug Distributor Inspection Report at Three Rivers Infusion & Pharmacy with attachments [04-29-09]
6. Dangerous Drug Distributor Inspection Report at Three Rivers Infusion & Pharmacy [05-19-09]
7. Dangerous Drug Distributor Inspection Report at Mt. Vernon Developmental Center [not dated]
- 7a. One 20 ml plastic syringe with prescription label [04-13-09]
8. Chain of Custody form with attached receipts for physical evidence [05-18-09]
- 8a. Two Wolf-Pak unlabeled containers containing approximately 2,000 ml of clear fluid [not dated]
One Hospira unlabeled container containing approximately 250 ml of clear fluid [not dated]
60 ml B-D syringe with attached needle and approximately 3 ml of clear fluid [not dated]
9. Miller Pharmacy Rx Compounding Form for RX #6525289 [04-23-09]
10. Miller Pharmacy Rx Compounding Form for RX #6525291 [04-23-09]
11. Miller Pharmacy Rx Compounding Form for RX #6525290 [04-23-09]
12. Miller Pharmacy Rx Compounding Form for RX #6525292 [04-17-09]
13. Spectrum Invoice [12-08-08]
14. HD Smith response to request for information [05-20-09]
15. Medtronic Lioresal Intrathecal refill kit label [not dated]
16. Medtronic Lioresal Intrathecal baclofen injection paperwork [not dated]
17. Dangerous Drug Distributor Inspection Report at Miller Pharmacy [04-29-09]
18. Dangerous Drug Distributor Inspection Report at Miller Pharmacy [04-30-09]

19. Dangerous Drug Distributor Inspection Report at Miller Pharmacy [05-19-09]
20. Dangerous Drug Distributor Inspection Report at Miller Pharmacy [07-23-09]
21. DEA Form 222 forms obtained from Miller Pharmacy [various dates]
22. Copy of RX #4015463 [12-30-08]
23. Copy of RX #4015496 [03-09-09]
24. Copy of RX #4015569 [04-15-09]
25. Copy of RX #4015572 [04-20-09]
26. Copy of RX #4015577 [04-22-09]
27. Copy of RX #4015578 [04-23-09]
28. Miller Pharmacy RX documentation packet for patient 1 [various dates]
29. Miller Pharmacy RX documentation packet for patient 2 [various dates]
30. Miller Pharmacy RX documentation packet for patient 3 [various dates]
31. Miller Pharmacy RX documentation packet for patient 4 [various dates]
32. Three Rivers Infusion & Pharmacy Specialists RX documentation packet for patient 5 [various dates]
33. Three Rivers Infusion & Pharmacy Specialists RX documentation packet for patient 6 [various dates]
34. Three Rivers Infusion Pharmacy purchase/dispensing comparison for 2008
35. Three Rivers Infusion Pharmacy purchase/dispensing comparison for 2009
36. Three Rivers Infusion & Pharmacy Specialists delivery receipts for Kineret [08-30-06 to 03-25-09]

Respondent's Exhibits:

- A. Prescription for lower dose of Kineret with attachments [01-26-09]
- B. Controlled substance inventory with attachments [07-29-08]
- C. Serially labeled prescriptions [04-14-09 to 04-28-09]
- D. Synchronized pump prescription [05-11-09]
- E. Maintenance schedule flow hood [not dated]

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that B. Elise Miller was originally licensed in the State of Ohio on March 6, 1979, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that B. Elise Miller was previously disciplined by the Board on April 5, 2004.
- (2) B. Elise Miller did, on or about May 26, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, sell, deliver or hold or offer for sale an adulterated drug, to wit: when dispensing RX #6525420, B. Elise Miller used a Kineret™ 100 mg/0.67 ml single-use product and placed it into four different syringe dosages, thereby reducing the effectiveness of the drug. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (3) B. Elise Miller did, on or about April 23, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, misbrand a drug, to wit: when B. Elise Miller received a refill for RX #6525289, B. Elise Miller dispensed a compounded 20 ml product of baclofen 2 mg/ml and labeled the product as

Lioresal™, a commercially available product. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

- (4) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, hold or offer for sale a drug that was misbranded, to wit: B. Elise Miller held for sale a Hospira™ container with approximately 250 ml of an unknown clear liquid that did not have a label. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (5) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, hold or offer for sale a drug that was misbranded, to wit: B. Elise Miller held for sale two WolfPak™ containers with approximately 2000 ml of an unknown clear liquid that did not have a label. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (6) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, hold or offer for sale a drug that was misbranded, to wit: B. Elise Miller held for sale a 60 ml B-D™ syringe with approximately 3 ml of an unknown clear liquid that did not have a label. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (7) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, sell, deliver or hold or offer for sale an adulterated drug, to wit: B. Elise Miller prepared parental or sterile product prescriptions in a laminar and vertical flow hood which was not properly certified. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (8) B. Elise Miller did, on or about April 23, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, misbrand a drug, to wit: when B. Elise Miller received RX #6525291, B. Elise Miller dispensed a compounded 20 ml product of baclofen 2 mg/ml and labeled the product as Lioresal™, a commercially available product. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (9) B. Elise Miller did, on or about April 23, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, misbrand a drug, to wit: when B. Elise Miller received RX #6525290, B. Elise Miller dispensed a compounded 20 ml product of baclofen 2 mg/ml and labeled the product as Lioresal™, a commercially available product. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (10) B. Elise Miller did, on or about April 17, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, misbrand a drug, to wit: when B. Elise Miller received RX #6525292, B. Elise Miller dispensed a compounded 20 ml product of baclofen 2 mg/ml and labeled the product as Lioresal™, a commercially available product. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (11) B. Elise Miller did, from August 2, 2006, through April 30, 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, manufacture, sell, deliver or hold or offer for sale an adulterated drug, to wit: when dispensing RX #6525420, B. Elise Miller used a Kineret™ 100 mg/0.67 ml

single-use product and placed it into four different syringe dosages, thereby reducing the effectiveness of the drug. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

- (12) B. Elise Miller did, approximately 427 times from 2008 through 2009, while practicing pharmacy at Three Rivers Infusion Pharmacy, misbrand a drug, to wit: when B. Elise Miller received prescriptions for baclofen 2 mg/ml liquid, B. Elise Miller labeled and dispensed the product as Lioresal™ 40 mg/20 ml (NDC 58281-0563-01) Intrathecal Refill Kit. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (13) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Miller's Pharmacy, fail to carry her pharmacist's identification card or renewal identification card while engaged in the practice of pharmacy. Such conduct is in violation of Section 4729.12 of the Ohio Revised Code.
- (14) B. Elise Miller did, on or about April 29, 2009, while practicing pharmacy at Miller's Pharmacy, work in a pharmacy without being able to access all current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio, to wit: B. Elise Miller did not have a "Drug Laws of Ohio" book and was unable to access the information otherwise. Such conduct is in violation of Rule 4729-9-02(A)(1) of the Ohio Administrative Code.
- (15) B. Elise Miller as the Responsible Pharmacist did, between September 4, 2008, and April 29, 2009, while practicing pharmacy at Miller's Pharmacy, fail to properly execute DEA 222 Forms, to wit: B. Elise Miller or pharmacists under her control failed to record, on "copy 3" of Form number 072282225, the date the pharmacy received fentanyl citrate USP 1 gm, a Schedule II Controlled Substance. As well, B. Elise Miller or pharmacists under her control failed to record, on "copy 3" of Form number 072282226, the number of packages or date received Kadian™ 10 mg, a Schedule II Controlled Substance. Additionally, B. Elise Miller or pharmacists under her control failed to record, on "copy 3" of Form number 072282227, the date received fentanyl 12 mcg/hr patches, meperidine 50 mg/ml, and Kadian SR™ 10 mg capsules, each a Schedule II Controlled Substance. Such conduct is in violation of Section 1305.13(e) of the Code of Federal Regulations.
- (16) B. Elise Miller as the Responsible Pharmacist did, on or about April 29, 2009, while practicing pharmacy at Miller's Pharmacy, and dates preceding, fail to provide security and control for DEA 222 order forms by limiting availability only to authorized persons, to wit: B. Elise Miller stored DEA 222 order forms at her residence where they were available to unauthorized persons. Such conduct is in violation of Rule 4729-9-09 of the Ohio Administrative Code.
- (17) B. Elise Miller as the Responsible Pharmacist did, on or about April 29, 2009, and for two years preceding, while practicing pharmacy at Miller's Pharmacy, fail to take and maintain a complete controlled substance inventory. Such conduct is in violation of Section 1304.11(c) of the Code of Federal Regulations.
- (18) B. Elise Miller did, on or about the following dates, while practicing pharmacy at Miller's Pharmacy, fail to record on the record of dispensing

the drug name, the name of the manufacturer or distributor, or the NCD number of the generic drug dispensed:

| <u>Date</u> | <u>Rx No.</u> |
|-------------|---------------|
| 12-30-08 | 4015463 |
| 02-23-09 | 4015463 |
| 02-07-09 | 4015496 |
| 04-08-09 | 4015496 |
| 04-15-09 | 4015569 |
| 04-20-09 | 4015572 |
| 04-22-09 | 4015577 |
| 04-23-09 | 4015578 |

Such conduct is in violation of Rule 4729-5-21(I) of the Ohio Administrative Code.

- (19) B. Elise Miller did, on or about the following dates, while practicing pharmacy at Miller's Pharmacy, fail to record on the record of dispensing the full name of the prescriber's agent when filling oral prescriptions:

| <u>Date</u> | <u>Rx No.</u> |
|-------------|---------------|
| 12-30-08 | 4015463 |
| 04-15-09 | 4015569 |
| 04-20-09 | 4015572 |
| 04-22-09 | 4015577 |
| 04-23-09 | 4015578 |

Such conduct is in violation of Rule 4729-5-21(D)(1) of the Ohio Administrative Code.

- (20) B. Elise Miller did, on or about the following dates, while practicing pharmacy at Miller's Pharmacy, fail to create and maintain records of controlled substances sold, to wit: B. Elise Miller admittedly sold the following drugs, failed to keep a manual or electronic record, and indicated to a Board agent that she did not know how to enter the dispensing data into the pharmacy's computer.

| <u>Delivered</u> | <u>Patient (Code)</u> | <u>Drug</u> |
|------------------|---------------------------|--|
| 04-15-09 | #3 | fentanyl 10 mg/ml & clonidine 450 mcg/ml |
| 04-15-09 | #4 | morphine 5 mg/ml & bupivacaine 15 mg/ml |
| 04-22-09 | #5 | Dilaudid™ 10 mg/ml & bupivacaine 5 mg/ml |
| 04-27-09 | #2 | morphine 2.5 mg/ml & bupivacaine 7 mg/ml |
| 04-28-09 | #6 | Dilaudid™ 8 mg/ml |

Such conduct is in violation of Sections 3719.07(B)(3) and (C)(3)(a) and (b) of the Ohio Revised Code.

- (21) B. Elise Miller did, from April 15, 2009, through April 28, 2009, while practicing pharmacy at Miller's Pharmacy, fail to create and maintain a patient profile having requisite information for the following patients (as coded): #2, #3, #4, #5, #6. Such conduct is in violation of Rule 4729-5-18 of the Ohio Administrative Code.

- (22) B. Elise Miller did, on or about the following dates, while practicing pharmacy at Miller's Pharmacy, fail to manually record her name or initials on the record of dispensing:

| <u>Delivered</u> | <u>Patient (Code)</u> | <u>Drug</u> |
|------------------|---------------------------|--|
| 04-15-09 | #3 | fentanyl 10 mg/ml & clonidine 450 mcg/ml |
| 04-15-09 | #4 | morphine 5 mg/ml & bupivacaine 15 mg/ml |
| 04-22-09 | #5 | Dilaudid™ 10 mg/ml & bupivacaine 5 mg/ml |
| 04-27-09 | #2 | morphine 2.5 mg/ml & bupivacaine 7 mg/ml |
| 04-28-09 | #6 | Dilaudid™ 8 mg/ml |
| 05-11-09 | #1 | Lioresal™ 200 mcg/ml & morphine 6 mg/ml |

Such conduct is in violation of Rule 4729-5-21(C)(2) of the Ohio Administrative Code.

- (23) B. Elise Miller did, on or about the following dates, while practicing pharmacy at Miller's Pharmacy, fail to serially number the following prescriptions:

| <u>Delivered</u> | <u>Patient (Code)</u> | <u>Drug</u> |
|------------------|---------------------------|--|
| 04-15-09 | #3 | fentanyl 10 mg/ml & clonidine 450 mcg/ml |
| 04-15-09 | #4 | morphine 5 mg/ml & bupivacaine 15 mg/ml |
| 04-22-09 | #5 | Dilaudid™ 10 mg/ml & bupivacaine 5 mg/ml |
| 04-27-09 | #2 | morphine 2.5 mg/ml & bupivacaine 7 mg/m |
| 04-28-09 | #6 | Dilaudid™ 8 mg/ml |

Such conduct is in violation of Rule 4729-5-19(A) of the Ohio Administrative Code.

- (24) B. Elise Miller as the Responsible Pharmacist did, on or about May 19, 2009, while practicing pharmacy at Miller's Pharmacy, fail to maintain the following prescriptions in a separate file for Schedule II Controlled Substance prescriptions:

| <u>Delivered</u> | <u>Patient (Code)</u> | <u>Drug</u> |
|------------------|---------------------------|--|
| 04-15-09 | #3 | fentanyl 10 mg/ml & clonidine 450 mcg/ml |
| 04-15-09 | #4 | morphine 5 mg/ml & bupivacaine 15 mg/ml |
| 04-22-09 | #5 | Dilaudid™ 10 mg/ml & bupivacaine 5 mg/ml |
| 04-27-09 | #2 | morphine 2.5 mg/ml & bupivacaine 7 mg/ml |
| 04-28-09 | #6 | Dilaudid™ 8 mg/ml |
| 05-11-09 | #1 | Lioresal™ 200 mcg/ml & morphine 6 mg/ml |

These prescriptions were found in multiple piles of papers that included billing information, patient information, and other drug orders (both controlled and non-controlled). Such conduct is in violation of Rule 4729-5-09(A) of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2, 7 and 11) 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 (24) 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, 7, 11, 13, 14, 16) and (18) through (24) 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

The Board finds that the testimony of the Respondent was not believable.

B. Elise Miller's testimony clearly indicates that her practice of pharmacy does not comport to the standard of practice recognized as appropriate and required by this Board. Such standard of practice, at a minimum, requires compliance with state and federal laws regarding the practice of pharmacy.

B. Elise Miller refused to recognize or fails to understand, that her practice presents a danger to her patients.

B. Elise Miller dispensed Kineret but did not know the manufacturer's directions. This is improper.

It is axiomatic to the practice of pharmacy that sterile products, without preservatives, lose their effectiveness and efficacy once removed from the manufacturer's original container. Respondent did this when she knew or should have known that her actions created a danger to her patients.

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 B. Elise Miller as follows:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-12257, held by B. Elise Miller effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-12257, held by B. Elise Miller effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-1-12257, held by B. Elise Miller effective as of the date of the mailing of this Order.

B. Elise Miller, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her license to practice (pocket ID card) and registration (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.

Deborah Lange moved for Findings of Fact; Jerome Wiesenbahn seconded the motion. Motion passed (Aye-7/Nay-0).

Troy Gahm moved for Conclusions of Law; Deborah Lange seconded the motion. Motion passed (Aye-6/Nay-1).

Jerome Wiesenbahn moved for Action of the Board; Donald Casar seconded the motion. Motion passed (Aye-5/Nay-2).

6:00 p.m. Mr. Wiesenhahn moved that the Board receive Per Diem as follows:

| PER DIEM | 12/6 | 12/7 | 12/8 | Total |
|-----------------|-------------|-------------|-------------|--------------|
| Cain | 1 | 1 | 1 | 3 |
| Casar | 1 | 1 | 1 | 3 |
| Gahm | 1 | 1 | 1 | 3 |
| Joyce | 1 | 1 | 1 | 3 |
| Lange | 1 | 1 | 1 | 3 |
| Kolezynski | 1 | 1 | 1 | 3 |
| Moné | 1 | 1 | - | 2 |
| Wiesenhahn | 1 | 1 | 1 | 3 |
| Woodson | 1 | 1 | 1 | 3 |

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

6:01 p.m. Mr. Gahm moved that the meeting be adjourned. The motion was seconded by Ms. Woodson and approved by the Board: *Aye* – 7.

**The Ohio State Board of Pharmacy
approved these Minutes January 12, 2011**