

Minutes of the October 6-8, 2014
Meeting of the Ohio State Board of Pharmacy

Monday, October 6, 2014

10:30 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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, R.Ph., *Vice President*; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph. and Fred M. Weaver, R.Ph.

Also present were Eric Griffin, *Interim Executive Director*; David Gallagher, *Interim Compliance Supervisor*; Chad Garner, *Director of OARRS*; Cameron McNamee, *Legislative Affairs Liaison*; Tracy Nave, *Director of Legal Affairs*; Jennifer Utterdyke, *Director of Internship and Licensing* and Charissa Payer, *Assistant Attorney General*.

Ms. Ferris provided the Nursing Board CPG meeting report, and a meeting is scheduled for November.

Mr. Moné provided the PAPC meeting report. Ms. Huwer will not attend the meeting scheduled for October 14, 2014.

Mr. Garner provided the OARRS/I.T. report.

Mr. Gallagher provided the Compliance and Enforcement update.

Ms. Utterdyke provided the Licensing update.

Mr. McNamee provided the Legislative Report.

Mr. Moné acknowledged Ms. Payer for receiving two teamwork awards from the Ohio Attorney General's Office.

11:00 a.m. The scheduled reinstatement hearing for Jennifer Macdonald, R.Ph. was continued.

Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Marchal and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

12:17 p.m. The executive session ended and the meeting was opened to the public.

R-2015-076 The Board received a request to withdraw the pain management application of **Cleveland Migraine Center, LTD.**, Lyndhurst, Ohio. Ms. Yarosh moved that the request to withdraw the application be accepted. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 6.

R-2015-077 The Board received a request to withdraw the pain management application of **Unity Health Network**, Akron, Ohio. Ms. Yarosh moved that the request to withdraw the application be accepted. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

R-2015-078 The Board received a request to withdraw the pain management application of **Unity Health Network**, Stow, Ohio. Ms. Yarosh moved that the request to withdraw the application be accepted. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

R-2015-079 Mr. Cain moved that the request for settlement presented by **Rebecca Noel Heckman**, R.Ph. (03-2-30561) Forest, Ohio, be accepted allowing for sufficient time for the preparation and approval of settlement documentation. The motion was seconded by Mr. Weaver and approved by the Board: Aye – 5/Nay – 1.

12:23 p.m. The Board recessed for lunch.

1:35 p.m. The meeting reconvened in Room South B&C.

The Board was joined by Assistant Attorney General Charissa Payer to create a record in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Anthony Ditommaso**, R.Ph., Youngstown, Ohio.

2:01 p.m. The hearing ended and the record was closed.

The Board was joined by Assistant Attorney General Charissa Payer to create a record in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Lorantffy Care Center, Inc.**, Akron, Ohio.

2:19 p.m. The hearing ended and the record was closed.

Ms. Yarosh moved that the Board recess in order to consider these quasi-judicial matters in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Ferris and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

2:52 p.m. The recess ended and the hearing was opened to the public.

R-2015-080 After votes were taken in public session, the Board adopted the following order in the matter of **Anthony DiTommaso, R.Ph.**, Youngstown, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2012-1419)

In The Matter Of:
Anthony DiTommaso, R.Ph.
851 Stuart Avenue
Youngstown, OH 44512
(R.Ph. Number 03-2-09026)

INTRODUCTION

The Matter of Anthony DiTommaso came for consideration on October 6, 2014, before the following members of the Board: Michael A. Moné, R.Ph, (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Anthony DiTommaso was not present nor was he represented by counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Thomas Miksch, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

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| 1. | Notice of Opportunity for Hearing | 02-04-14 |
| 1A. | Procedural | |
| 2. | Anthony DiTommaso, R.Ph. Board Order | 01-29-88 |
| 3. | Notarized Statement of Sue Ellen Hall | 09-26-12 |
| 4. | Notarized Statement of Lisa Ciccolella | 10-10-12 |
| 5. | CVS #3996 Accountability Statement | 03-13-13 |
| 6. | CVS #3996 Accountability Statement | 03-13-13 |

7.	CVS #3996 Accountability Statement	03-13-13
8.	CVS #3996 Accountability Statement	03-13-13
9.	CVS #3996 Accountability Statement	03-13-13
10.	CVS #3996 Accountability Statement	03-13-13
11.	CVS #3996 Accountability Statement	03-13-13
12.	CVS #3996 Surveillance Camera Footage	09-14-12
13.	CVS #3996 Surveillance Camera Footage	09-14-12
14.	CVS #3996 Surveillance Camera Footage	09-14-12
15.	CVS #3996 Surveillance Camera Footage	09-14-12

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) Records of the State Board of Pharmacy indicate that Anthony DiTommaso was originally licensed in the State of Ohio on August 12, 1968, pursuant to Examination, and his license to practice pharmacy in the State of Ohio has lapsed. Records further reflect that Anthony DiTommaso was previously disciplined by this Board on January 29, 1988.

(2) Anthony DiTommaso did, between December 30, 2011 to October 14, 2012 with purpose to deprive, knowingly obtain or exert control over a dangerous drug, the property of CVS Pharmacy #3996, beyond the express or implied consent of the owner, to wit: Anthony DiTommaso stole 849 tables of carisoprodol 350 mg from CVS Pharmacy #3996, while employed there as a pharmacist. Such conduct constitutes a violation of Section 2913.02(A) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

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

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to Section 4729-9-01(E) of the Ohio Administrative Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Anthony DiTommaso as follows:

(1) 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. 03-2-09026, held by Anthony DiTommaso effective as of the date of the mailing of this Order.

(2) 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. 03-2-09026, held by Anthony DiTommaso effective as of the date of the mailing of this Order.

Anthony DiTommaso, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his 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.

Megan Marchal moved for Findings of Fact; Fred Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

Kilee Yarosh moved for Conclusions of Law; Fred Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

Megan Marchal moved for Action of the Board; Fred Weaver seconded the motion. Motion passed (Aye-5/Nay-1).

R-2015-081

After votes were taken in public session, the Board adopted the following order in the matter of **Lorantffy Care Center, Inc.**, Akron, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2013-1457)

In The Matter Of:

Lorantffy Care Center, Inc.
c/o Otto Bernath, M.D.
2631 Copley Road
Akron, Ohio 44321

INTRODUCTION

The Matter of Lorantffy Care Center came for consideration on October 6, 2014, before the following members of the Board: Michael A. Moné, R.Ph. (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Otto Bernath was not present nor was he represented by counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Thomas Miksch, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

- | | | |
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| 1. | Notice of Opportunity for Hearing | 11-15-13 |
| 1A. | Procedural | |
| 2. | Lorantffy Care Center, Inc. TDDD Application | 03-29-13 |
| 3. | OSMB Board Order for Otto Bernath, M.D. | 01-26-86 |

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) Records of the Board of Pharmacy indicate that on or about March 29, 2013, Otto Bernath, M.D. was the responsible person for Lorantffy Care Center, Inc., 2631 Copley Road, Akron, Ohio 44321, and that on said date, Lorantffy Care Center, Inc. submitted an application for registration as a Terminal Distributor of Dangerous Drugs.
- (2) On or about March 29, 2013, applicant did knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: the application shows a negative answer to the following question: "[h]as the applicant, owner(s),

Responsible Person, any agent, or any employee of the location being licensed, or any officer of the corporation, ever been the subject of disciplinary action by any state or federal agency?" On or around January 8, 1986, Dr. Otto Bernath, M.D., Responsible Person for Lorantffy Care Center, Inc., was disciplined by the State of Ohio Medical Board for allowing unlicensed individuals to write orders and perform treatments on his patients at the Lorantffy Care Center. Dr. Bernath's license to practice medicine in Ohio was suspended for 30 days, followed by a probationary period of three years. In the Matter of Otto Bernath, M.D., Before the State Medical Board of Ohio, January 8, 1986. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes making a false material statement in an application for a license as a terminal distributor of dangerous drugs pursuant to Section 4729.57 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraph (2) 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 (A)(6) of Rule 4729-9-19 of the Ohio Administrative Code.

DECISION OF THE BOARD

Pursuant to Sections 3719.03 and 4729.53 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby refuses to license or register Lorantffy Care Center, Inc. and, therefore, denies the Application for a Terminal Distributor of Dangerous Drugs license submitted by Lorantffy Care Center, Inc. on March 29, 2013.

Richard Kolezynski moved for Findings of Fact; Megan Marchal seconded the motion. Motion passed (Aye-6/Nay-0).

Richard Kolezynski moved for Conclusions of Law; Melinda Ferris seconded the motion. Motion passed (Aye-6/Nay-0).

Melinda Ferris moved for Action of the Board; Edward Cain seconded the motion. Motion passed (Aye-6/Nay-0).

R-2015-082

The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Ahmed Hossam Ibrahim, R.Ph.** (03-2-30652) Westlake, Ohio, be the responsible person for the following pharmacies:

Nord Center's Pharmacy (retail), Lorain (pending)
Community Care Network (retail), Cleveland (02-1546950)

After discussion, Ms. Marchal moved that the Board approve the request for a period of six months. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

R-2015-083 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Dale M. Erickson, Pharm D.** (03-1-14704) Cincinnati, Ohio, be the responsible person for the following pharmacies:

Sardinia Pharmacy (retail), Sardinia (02-0761350)
Ohio Veterans Home Pharmacy (retail), Sardinia (02-1416750)

After discussion, Ms. Yarosh moved that the Board approve the request for a period of one year. The motion was seconded by Mr. Cain and approved by the Board: Aye – 6.

R-2015-084 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **David Baker, R.Ph.** (03-1-22567) Concord, Ohio, be the responsible person for the following pharmacies:

Rite Aid (retail), Euclid (02-1924400)
Diabetic Promotions (mail order), Willowick (02-1380100)

After discussion, Mr. Kolezynski moved that the Board approve the request until such time as an inspection by the Ohio State Board of Pharmacy is conducted and reported to the Board. The motion was seconded by Mr. Cain and approved by the Board: Aye – 5/Nay – 1.

R-2015-085 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **James R. Visconti, R.Ph.** (03-3-28618) Harrison, Ohio, be the responsible person for the following pharmacies:

The Compounding Center (specialty), West Chester (02-2333450)
Mullaney's Pharmacy (retail), West Chester (02-2233100)

After discussion, Ms. Yarosh moved that the Board approve the request for a period of one year. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 6.

R-2015-086 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Jeffrey D. Hill, R.Ph.** (03-2-13205) Loveland, Ohio, be the responsible person for the following pharmacies:

Milford Pharmacy & Wellness Center (retail), Milford (02-0450000)
Hill's Compounding Pharmacy (specialty), Milford (02-1181750)

After discussion, Mr. Kolezynski moved that the Board approve the request for a period of one year. The motion was seconded by Ms. Marchal and approved by the Board:
Aye – 6.

R-2015-087 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Jennifer Lynch, R.Ph.** (03-2-23634) Washington Court House, Ohio, be the responsible person for the following pharmacies:

Fayette Co. Memorial Hospital (hospital), Washington Court House (02-0037150)
Fayette Co. Memorial Hospital (hospital), Washington Court House (02-2427450)

After discussion, Ms. Yarosh moved that the Board approve the request for a period of six months. The motion was seconded by Mr. Cain and approved by the Board:
Aye –5/Abstain – 1.

The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Joseph N. Amaismeier, R.Ph.** (03-1-20918) Hopedale, Ohio, be the responsible person for the following pharmacies:

Center Pharmacy (retail), Wellsville (02-1420750)
Toronto Apothecary (retail), Toronto (02-1872750)

The Board tabled the discussion for additional information.

R-2015-088 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Richelle Huffman, R.Ph.** (03-3-28792) Milford, Ohio, be the responsible person for the following pharmacies:

Fitzgerald Pharmacy (retail), Williamsburg (02-0102450)
Fitzgerald Pharmacy LTC (long term care), Williamsburg (processing)

After discussion, Mr. Kolezynski moved that the Board approve the request for a period of one year after an inspection by the Ohio State Board of Pharmacy. The motion was seconded by Mr. Weaver and approved by the Board: Aye – 6.

R-2015-089 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Ron Rahe, R.Ph.** (03-3-14520) Stow, Ohio, be the responsible person for the following pharmacies:

GEM Edwards Pharmacy (mail order), Hudson (02-0942250)
EHS Pharmacy Services (mail order), Hudson (02-1143550)

After discussion, Ms. Yarosh moved that the Board approve the request for a period of one year. The motion was seconded by Ms. Marchal and approved by the Board:
Aye – 6.

R-2015-090 The Board received an application for the Continuing Education Provider Status of **Christopher P. Shelby, R.Ph.** (03-3-31283) Munroe Falls, Ohio. Ms. Marchal moved that the Continuing Education Provider Status be approved. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 6.

R-2015-091 The Board received an application for the Continuing Education Provider Status of **Lauren Thomas, R.Ph.** (03-2-32867) Niles, Ohio. Ms. Ferris moved that the Continuing Education Provider Status be approved. The motion was seconded by Mr. Cain and approved by the Board: Aye – 6.

3:28 p.m. Ms. Nave and Mr. Garner lead a discussion regarding access to OARRS.

R-2015-092 The Board received a request from **Praneeta M. Dholakia** for approval to retake the NAPLEX exam. Mr. Cain moved to deny the request. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

4:00 p.m. Ms. Nave led a discussion regarding Nebraska MTM/Tri-Med, the Board tabled the discussion and will revisit at a later time.

R-2015-093 The Board received a proposed business plan request for HealthSouth Rehabilitation Hospital at Drake from **Joe Walsh**. Ms. Ferris moved to approve the request. The motion was seconded by Ms. Marchal and approved by the Board: Aye – 6.

4:21 p.m. The Board recessed for the day.

Tuesday, October 7, 2014

8:35 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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, R.Ph., *Vice President*; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph. and Fred M. Weaver, R.Ph.

R-2015-094 Mr. Kolezynski moved to appoint Mr. Griffin as the Interim Executive Director effective September 1, 2014. The motion was seconded by Ms. Marchal and approved by the Board: Aye – 6.

R-2015-095 Mr. Kolezynski moved that the Board Minutes of September 8-9, 2014, be approved as written. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 6.

R-2015-096 Mr. Kolezynski moved that the Board Conference Call Minutes of September 23, 2014, be approved as written. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 5/Nay – 0/Abstain – 1.

8:40 a.m. Ms. Ferris moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

10:17 a.m. The executive session ended and the meeting was opened to the public.
The Board Recessed briefly.

10:34 a.m. The meeting reconvened in Room South B&C.
Mr. Moné lead a discussion regarding “Campus” licensing.

10:43 a.m. Mr. Moné continued the discussion regarding Nebraska MTM/Tri-Med.

10:50 a.m. The Board recessed briefly.

11:00 a.m. The meeting reconvened in Room South B&C.
The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Brad D. Salisbury**, R.Ph., Springfield, Pennsylvania.

12:13 p.m. The hearing ended and the record was closed.
Ms. Yarosh moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Marchal and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes..

12:50 p.m. The recess ended and the hearing was opened to the public.

R-2015-097 After votes were taken in public session, the Board adopted the following order in the matter of **Brad D. Salisbury**, R.Ph., Springfield, Pennsylvania.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2014-1253)

In The Matter Of:

Brad D. Salisbury, R.Ph.
3543 Happy Valley Road
East Springfield, PA 16411
(R.Ph. Number 03-2-23355)

INTRODUCTION

The Matter of Brad D. Salisbury came for hearing on October 7, 2014, before the following members of the Board: Michael A. Moné, R.Ph. (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Brad D. Salisbury was represented by Robert J. Garity. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Brad D. Salisbury, Respondent

Respondent's Witness:

1. Brad D. Salisbury, Respondent

State's Exhibits:

1. Notice of Opportunity for Hearing 05-15-14
- 1A-D. Procedurals
2. Notarized Statement of Matthew J. Pallo 05-05-14
3. Notarized Statement of Alan D. Thorne 05-05-14
4. Notarized Statement of Brad Salisbury, R.Ph. 05-12-14
5. DEA 106 form from Walgreens #10518 03-07-14
6. DEA 106 form from Walgreens #9833 03-03-14

Respondent's Exhibits:

- A. Current SARPH Contract and Letter from Executive Director 05-05-14
- B. Chemical Dependency & Mental Health Treatment Documentation 04-24-14

C.	12 Step Meeting Attendance Sheets	04-14-14 through 09-23-14
D.	Continuing Education Certificates	09-04-12 through 08-16-14
E.	Resume	No Date
F.	Letters of Support	08-08-14 through 09-09-14
G.	DrugScan Urine Drop Report	08-26-14

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 Brad D. Salisbury was originally licensed in the State of Ohio on December 9, 1998, pursuant to reciprocity, and his license to practice pharmacy was summarily suspended on May 15, 2014.

(2) Brad D. Salisbury is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Brad D. Salisbury has admitted that he is addicted to the use of controlled substances and that he stole hydrocodone and clonazepam products from the pharmacy where he worked to feed his addiction. Such conduct indicates that he is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) Brad D. Salisbury did, on or between March 2013 and March 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Walgreens Pharmacy #10518, beyond the express or implied consent of the owner, to wit: Brad D. Salisbury admittedly stole clonazepam 2 mg tablets while engaged in the practice of pharmacy. Such conduct is in violation of Sections 2913.02 and 2925.23 of the Ohio Revised Code.

(4) Brad D. Salisbury did, on or between March 2013 and March 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Walgreens Pharmacy #10518, beyond the express or implied consent of the owner, to wit: Brad D. Salisbury admittedly stole hydrocodone/APAP 10/325 mg while engaged in the practice of pharmacy. Such conduct is in violation of Sections 2913.02 and 2925.23 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 constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

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

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(4) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 4729 and 3719 of the Ohio Revised Code and Chapter 4729 of the Ohio Administrative 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 Brad D. Salisbury on May 15, 2014.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-23355, held by Brad D. Salisbury and such suspension is effective as of the date of the mailing of this Order.

(A) Brad D. Salisbury, 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) Brad D. Salisbury, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his 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.

Further, after two (2) years from the effective date of this Order, the Board will consider any petition filed by Brad D. Salisbury 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) Brad D. Salisbury must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) 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) 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) Brad D. Salisbury 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.

(C) Brad D. Salisbury 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.

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

(E) Any reinstatement shall not occur until such time as any criminal intervention in lieu of conviction has been successfully completed.

Kilee Yarosh moved for Findings of Fact; Richard Kolezynski seconded the motion. Motion passed (Aye-6/Nay-0).

Richard Kolezynski moved for Conclusions of Law; Melinda Ferris seconded the motion. Motion passed (Aye-6/Nay-0).

Kilee Yarosh moved for Action of the Board; Megan Marchal seconded the motion. Motion passed (Aye-5/Nay-1).

12:54 p.m. The Board recessed for lunch.

1:25 p.m. The meeting reconvened in Room South B&C.

1:30 p.m. The Board convened in Room South A, 31st Floor of the Vern Riffe Center for Government and the Arts. The following candidates for licensure by reciprocity introduced themselves to the Board, and then participated in a discussion of pharmacy laws and rules with Ms. Terri Ghitman, *OARRS Pharmacist*:

Zeina A. Chehab	Michigan
Carrie Ann Christofield	Kentucky
Hadi E. Dagher	Michigan
Ali Mohamad Fakih	Michigan
Amanda Furnas	South Carolina
Dwaine Spencer Holcomb	Michigan
Matthew D. Holt	Minnesota
Shereen Abdelhalim Keshta	Kentucky
Grace E. Loyola	California
Christopher James Miller	Pennsylvania
Melissa A. Nulton	South Carolina
Vanessa Gabrielle Phillips	Pennsylvania
Nicole Jewel Pryor	Virginia
Erika Jane Smith	Michigan
Marshall Dayne Stewart	Pennsylvania
Kevin J. Stone	Kentucky
Heather Torbic	Massachusetts
Nicholas Paul Zimniski	Pennsylvania

1:53 p.m. The meeting reconvened in Room South B&C.

R-2015-098 Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Case No.2013-2082)

In The Matter Of:

Karen Lynn Newberg, R.Ph.

230 North Ridge Drive
Perrysburg, Ohio 43551
(R.Ph. No. 03-2-17851)

This Settlement Agreement is entered into by and between Karen Lynn Newberg and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Karen Lynn Newberg voluntarily enters into this Agreement being fully informed of her rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Karen Lynn Newberg acknowledges that by entering into this Agreement she has waived her rights under Chapter 119. of the Ohio Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, limit, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Karen Lynn Newberg is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about July 16, 2014, pursuant to Chapter 119. of the Ohio Revised Code, Karen Lynn Newberg was notified of the allegations or charges against her, her right to a hearing, her rights in such hearing, and her right to submit contentions in writing. Karen Lynn Newberg requested a hearing; it was scheduled and continued. The July 16, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the State Board of Pharmacy indicate that Karen Lynn Newberg was originally licensed in the State of Ohio on July 27, 1989, pursuant to Examination, and is currently licensed to practice pharmacy in the State of Ohio. Records reflect that during the relevant time period stated herein that Karen Lynn Newberg was the Responsible Pharmacist at The Drug Store of Perrysburg pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio

Administrative Code. Records further reflect that Karen Lynn Newberg was previously disciplined by this Board on March 2, 2009.

(2) Karen Lynn Newberg did, on or about August 26, 2011, fail to provide supervision and control of dangerous drugs and failed to provide adequate safeguards to assure all dangerous drugs were distributed in accordance with all state and federal laws, to wit: while working as the pharmacist on duty at The Drug Store of Perrysburg, a patient's prescription for metformin 1000mg, Rx #107687, was inadvertently placed in a bag for delivery to a different patient's home. The patient to whom the wrong prescription was delivered stated that he is legally blind and relies on a home healthcare nurse to fill his medication boxes accurately. The patient has a pre-existing condition of renal failure. Karen Lynn Newberg was the pharmacist responsible for checking the prescriptions for the patients at the pharmacy on August 26, 2011. The bottle of metformin 1000mg went to the wrong patient's home and the patient ingested approximately 25 tablets of the drug and was subsequently harmed. Specifically, on or about September 16, 2011, when the patient failed to show up for a dialysis appointment, the dialysis center contacted the patient's apartment complex and requested a welfare check. The patient was found incoherent in his apartment, a squad was called, and the patient was subsequently hospitalized for 7 days for lactic acidosis, seizures, bilateral parotitis, and suffered a non-ST elevation myocardial infarction. The hospital determined that the lactic acidosis was secondary to metformin administration. Such conduct violates Rule 4729-9-11 of the Ohio Administrative Code. Such conduct constitutes failure to provide supervision and control of dangerous drugs, and failure to provide adequate safeguards to assure that dangerous drugs are being distributed in accordance with all state and federal laws, within the meaning of Section 4729.55 of the Ohio Revised Code. Such conduct constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Chapter 4729 of the Revised Code, Sections 3715.52 to 3715.72 of the Revised Code, Chapter 2925. or 3719. of the Revised Code, or any rule adopted by the board under those provisions within the meaning of Section 4729.16 of the Ohio Revised Code

Karen Lynn Newberg neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated July 16, 2014; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

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

(A) Karen Lynn Newberg agrees to the imposition of a monetary penalty of two hundred and fifty Dollars (\$250.00) due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(B) In addition, Karen Lynn Newberg must obtain, within 90 days from the effective date of this Agreement, 6 hours of approved continuing pharmacy education (0.6 CEUs) in medication errors and 6 hours of approved continuing pharmacy education (0.6 CEUs) in patient safety, which may not also be used for license renewal.

If, in the judgment of the Board, Karen Lynn Newberg appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Karen Lynn Newberg acknowledges that she has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Karen Lynn Newberg waives any and all claims or causes of action she may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Karen Lynn Newberg waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-099

Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Case No.2013-2103)

In the Matter of:

Brunswick Internal Medicine, Inc.

c/o Su-Chiao Kuo, M.D.
3724 Center Road #102
Brunswick, Ohio 44212

(Terminal Distributor No. 02-1255400)

This Settlement Agreement is entered into by and between Brunswick Internal Medicine, Inc. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Brunswick Internal Medicine, Inc. enters into this Agreement being fully informed of its rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, the right to appeal. NAME acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

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

WHEREAS, Brunswick Internal Medicine, Inc. is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about May 9, 2014, pursuant to Chapter 119. of the Ohio Revised Code, Brunswick Internal Medicine, Inc. was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, a hearing was scheduled/continued by the Board. The May 9, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that Su-Chiao Kuo, M.D. was the responsible person at Brunswick Internal Medicine, Inc., 3724 Center Road #102, Brunswick Ohio 44212, terminal distributor license number 02-1255400, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule [4729-5-11 or 4729-17-02] of the Ohio Administrative Code.

(2) On or about November 12, 2013, Su-Chiao Kuo, M.D. answered “yes” on Brunswick Internal Medicine, Inc.’s, Terminal Distributor of Dangerous Drugs renewal to the legal question regarding the commission of a criminal offense, to wit: Su-Chiao Kuo, M.D. plead guilty in federal court by way of an Information to one count of misbranding, a misdemeanor of the first degree, in violation of 21 U.S.C. § 331(a). United States of America v. Su-Chiao Kuo, Case No. 1:13 MJ 8012 (WHB), (N.D. Ohio Jan. 14, 2014). She was sentenced to a fine of \$5,000.00 and put on probation for three months, termed to end once her fine was paid in full. A settlement agreement entered into by Su-Chiao Kuo, M.D. and the United States of America on December 1, 2013, reveals that the criminal charges against her arose out of her purchasing, receiving, and administering to her patients, oncology drugs from outside the United States that were not approved by the FDA for use in the United States. Settlement Agreement (December 1, 2013). Such conduct demonstrates a guilty plea to a federal drug law and constitutes a violation of Rule 4729-9-19 of the Ohio Administrative Code, which the Ohio State Board of Pharmacy may consider as evidence that Brunswick Internal Medicine, Inc., no longer meets the requirements for a Terminal Distributor of Dangerous Drugs license under Section 4729.57 of the Ohio Revised Code.

(3) Su-Chiao Kuo, M.D. entered into a settlement agreement on December 1, 2013, with the United States of America, regarding her purchase and receipt of the prescription oncology drugs Taxotere, Gemzar, Irinotecan, Zometa, Camptosar and Kytril, between January 1, 2006 and March 31, 2009. Settlement Agreement (December 1, 2013). According to the settlement agreement, Su-Chiao Kuo, M.D. submitted claims for payment through the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 for administering some of the unapproved oncology drugs to her patients. Under the terms of the settlement, she agreed to pay the United States \$179,840.00. Su-Chiao Kuo, M.D. also agreed to pay, among other things set forth in the settlement, any overpayments she received as a result of submitting false claims for administering some of the unapproved drugs to her patients. Such conduct demonstrates not being of good moral character and habits, and violates Rule 4729-9-19 of the Ohio Administrative Code and Section 4729.57 of the Ohio Revised Code.

Brunswick Internal Medicine, Inc. neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated May 9, 2014; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Brunswick Internal Medicine, Inc. knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Brunswick Internal Medicine, Inc. agrees to the imposition of a monetary penalty of one thousand dollars (\$1000.00) due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(B) Brunswick Internal Medicine, Inc. agrees to appoint a new Responsible Person who qualifies for this position under State and Federal law within 30 days of the effective date of this Agreement.

(C) In addition, Su-Chiao Kuo, M.D. must obtain, within 90 days from the effective date of this Agreement, 12 hours of continuing education in Ethics from an approved medical education provider, evidence of which must be submitted to the Board within 120 days of this agreement.

(D) Su-Chiao Kuo, M.D. may not serve as Responsible Person for any license held by Brunswick Internal Medicine, Inc. at any point in the future.

Brunswick Internal Medicine, Inc. acknowledges that it has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged

violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Brunswick Internal Medicine, Inc. waives any and all claims or causes of action it may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Brunswick Internal Medicine, Inc. waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-100 Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Case No.2013-1778)

In The Matter Of:

Robert P. Fudge, R.Ph.
4345 Wyandotte Woods Boulevard
Dublin, Ohio 43016
(R.Ph. No. 03-3-09815)

This Settlement Agreement is entered into by and between Robert P. Fudge and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Robert P. Fudge voluntarily enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Robert P. Fudge acknowledges that by entering into this Agreement he has waived his rights under Chapter 119. of the Ohio Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, limit, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Robert P. Fudge is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about April 29, 2014, pursuant to Chapter 119. of the Ohio Revised Code, Robert P. Fudge was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Robert P. Fudge requested a hearing; it was scheduled and continued. The April 29, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the State Board of Pharmacy indicate that Robert P. Fudge was originally licensed in the State of Ohio on July 26, 1971, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.

(2) Robert P. Fudge did, on or about September 30, 2013, plead guilty to disorderly conduct, to wit: on his pharmacist license renewal that he signed on August 23, 2013, and submitted to the Ohio State Board of Pharmacy, Robert P. Fudge answered "yes" to the legal question: "Are charges pending or have you been convicted of a felony or misdemeanor other than a minor traffic violation (even if expunged or sealed)?" An investigation into his positive answer revealed that on or about June 10, 2013, Dublin Police responded to a domestic violence/assault call at his residence located in Dublin, Ohio, incident Report Case # 01-13-001854, Dublin Ohio Division of Police. The alleged domestic violence incident involved a physical altercation with his wife. Robert P. Fudge's actions on or about June 10, 2013, resulted in his guilty plea to, and conviction for, disorderly conduct. *State of Ohio v. Robert Fudge*, Case No. 13 CRB 13648, Franklin County Municipal Court. Robert P. Fudge was fined \$50, which was suspended because he spent 2 days in jail. The court recommended that he undergo counseling for anger management. Robert P. Fudge admitted the above-referenced conduct and subsequent guilty plea to disorderly conduct to an Ohio State Board of Pharmacy Agent on October 9, 2013. Such conduct constitutes not being of good moral character and habits within the meaning of Section 4729.08(B) of the Ohio Revised Code.

Robert P. Fudge neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated April 29, 2014; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

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

(A) The State Board of Pharmacy hereby reprimands Robert P. Fudge for his actions in this matter.

(B) Robert P. Fudge agrees to the imposition of a monetary penalty of two hundred and fifty (\$250.00) due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

If, in the judgment of the Board, Robert P. Fudge appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all

possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Robert P. Fudge acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

R-2015-101 Mr. Moné announced the following Settlement Agreement has been signed by all parties and is now effective.

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Case No.2014-1041)

In The Matter Of:

David Paul Harper, R.Ph.

491 Autumn Hill Lane

Hamilton, Ohio 45011

(R.Ph. No. 03-1-27412)

This Settlement Agreement is entered into by and between David Paul Harper and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

David Paul Harper voluntarily enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. David Paul Harper acknowledges that by entering into this Agreement he has waived his rights under Chapter 119. of the Ohio Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, limit, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, David Paul Harper is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about April 11, 2014, pursuant to Chapter 119. of the Ohio Revised Code, David Paul Harper was notified of the allegations or charges against him, his right to a hearing, his/her rights in such hearing, and his/her right to submit contentions in writing. David Paul Harper requested a hearing; it was scheduled and continued. The

April 11, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the State Board of Pharmacy indicate that David Paul Harper was originally licensed in the State of Ohio on July 17, 2006, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.

(2) David Paul Harper did, on or about September 9, 2013, knowingly make a false statement or knowingly swear or affirm the truth of a false statement previously made, with purpose to secure the issuance by a governmental agency of a license or registration, to wit: David Paul Harper answered "no" on his pharmacist license renewal application to the question, "Within the last 18 months, have you been arrested, are charges pending or been convicted of a felony or misdemeanor?" However, in an interview with a State Board of Pharmacy Agent on January 15, 2014, David Paul Harper admitted that on June 3, 2012, he was pulled over in Butler County, Ohio, by a Sheriff's Deputy, initially for a marked lane violation, but then the Deputy smelled marijuana on him and asked him to submit to a urine screen, which he refused. Upon search of his vehicle incidental to arrest, the Deputy found a bag of marijuana and a glass pipe. David Paul Harper was arrested for operating a vehicle while intoxicated, drug possession, possession of drug paraphernalia and a marked lane driving offense. State of Ohio v. David P. Harper, Ticket #A396799, Case No. C1201860, Butler County, Ohio. On December 19, 2012, David Paul Harper plead guilty to a reduced charge of reckless operation of a motor vehicle. State of Ohio v. David P. Harper, Case No. TRC 1201860 A, Butler County Area II Court. For purposes of sentencing, the Court merged the marked lane violation into his sentence related to his guilty plea to reckless operation. State of Ohio v. David P. Harper, Case No. TRC 1201860 B, Butler County Area II Court. David Paul Harper was sentenced to 180 days in jail, but given credit for 177 days and ordered to attend a 3-day DIP (Driver Intervention Program), his driver's license was suspended for 180 days, he was placed on 2 years non-reporting probation, and ordered to pay a \$300 fine and court costs. Such conduct constitutes falsification in violation of Section 2921.13 of the Ohio Revised Code and constitutes not being of good moral character and habits within the meaning of Rule 4729-5-04 of the Ohio Administrative Code and/or being guilty of gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

David Paul Harper neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated April 11, 2014; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

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

(A) After consideration of the record as a whole, the State Board of Pharmacy hereby reprimands David Paul Harper for his actions in this matter.

(B) David Paul Harper agrees to the imposition of a monetary penalty of two hundred and fifty (\$250.00) due and owing within 30 days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(C) In addition, David Paul Harper must obtain, within 90 days from the effective date of this Agreement, 3 hours of approved continuing pharmacy education (0.3 CEUs) in law and ethics, which may not be used for license renewal.

If, in the judgment of the Board, David Paul Harper appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

David Paul Harper acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

David Paul Harper waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. David Paul Harper waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

2:00 p.m.

The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Bryan Hunter Greenwood**, R.Ph., Newcomerstown, Ohio.

Ms. Ferris recused herself from the hearing.

3:38 p.m.

The Board recessed briefly.

3:50 p.m.

The meeting reconvened in Room South B&C.

3:55 p.m.

The hearing ended and the record was closed.

Ms. Yarosh moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v.*

State Medical Bd. (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

4:31 p.m. The recess ended and the hearing was opened to the public.

R-2015-102 After votes were taken in public session, the Board adopted the following order in the matter of **Bryan Hunter Greenwood**, R.Ph., Newcomerstown, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2013-1374)

In The Matter Of:

Bryan Hunter Greenwood, R.Ph.

837 2nd Street, South East, Apt. C.

New Philadelphia, OH 44663

(R.Ph. Number 03-3-31141)

INTRODUCTION

The Matter of Bryan Hunter Greenwood came for hearing on October 7, 2014, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Melinda J. Ferris, Recused.

Bryan Hunter Greenwood was represented by Stephen A. Anderson. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Thomas Miksch, Ohio State Board of Pharmacy
2. Bryan Hunter Greenwood, R.Ph., Respondent

Respondent's Witnesses:

None

State's Exhibits:

1. Notice of Opportunity for Hearing
1A-E. Procedurals

04-11-14

2.	Notarized Statement of Sue A. Thiebaud	04-18-13
3.	Notarized Statement of Karen Miller	04-18-13
4.	Notarized Statement of Charles Zimomra	04-18-13
5.	Notarized Statement of Stephanie Capron, <i>Ritzman HR</i>	05-15-13
6.	Notarized Statement of Denise Nine	04-18-13
7.	Release of Patient Information Form	05-20-13
8.	Ritzman Pharmacy #206 Patient Drug History	04-18-13
9.	Copy of RX6091808 w/label	01-29-13
10.	Copy of RX6091809 w/label	01-29-13
11.	Copy of RX515551	10-04-12
12.	Copy of RX0489714	03-21-12
13.	Notarized Statement of Kristen MacEwen	06-27-13
14.	Notarized Statement of Karen Fletcher	06-27-13
15.	OSBP Request for Information Letter to Rene Miller	04-22-13
16.	Notarized Statement of Bryan Greenwood, R.Ph.	05-20-13
17.	Ritzman Pharmacy #206 RX's QA Verified Report	04-11-13

Respondent's Exhibits:

A.	PFCS Letter	05-21-14
B.	PFCS Letter	06-02-14
C.	Shepherd Hill Discharge Summary	06-18-14
D.	PRO Contract	08-18-14
E.	Quest I.O.P. Certification of Completion	07-31-14
F.	Quest Recovery Discharge Report	09-03-14
G.	Shepherd Hill Aftercare Progress Report	09-15-14
H.	Prescription History	09-02-14
I.	Meeting Attendance Sheets	06-05-14 through 10-06-14
J.	Affidavit of Lindsay Lewis	06-23-14
K.	Affidavit of Barry D. Horton Jr.	09-24-14
L.	Letter from Jarrod Grossman	09-15-14
M.	Urine Screen Results	07-31-14
N.	Affidavit of Karen Fletcher	09-29-14

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 Bryan Hunter Greenwood was originally licensed in the State of Ohio on June 21, 2011, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Bryan Hunter Greenwood 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: On February 29, 2012 Bryan Hunter Greenwood was observed while off-duty and not supposed to be working, practicing pharmacy at Omnicare located at 219 W. 12th Street, Dover, Ohio 44622, in an impaired state. Specifically, Bryan Hunter Greenwood came to work when he was not scheduled to be there, smelling of alcohol and exhibiting strange behaviors that caused the pharmacist on duty concern about his ability to check medication. Bryan Hunter Greenwood admitted to the pharmacist on duty, R.Ph. Fletcher, that he had been drinking. Despite being asked multiple times to leave the premises because he was impaired, he refused do so. Such conduct demonstrates abusing drugs and/or being impaired physically or mentally to such a degree that renders Bryan Hunter Greenwood unfit to practice pharmacy, and indicates that he is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) Bryan Hunter Greenwood 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: On April 11, 2013 while Bryan Hunter Greenwood was practicing pharmacy at the Ritzman Pharmacy #206, located at 830 South Second Street, Coshocton, Ohio 43812, he was practicing pharmacy in an impaired state. Specifically, pharmacy technicians and others who were present at the pharmacy that day, observed, among other things, him slurring his words, staggering on his feet and exhibiting unstable body movements, functioning as if he were confused or dazed, and putting prescriptions in the wrong bags for patients. Such conduct demonstrates abusing drugs and/or being impaired physically or mentally to such a degree that renders Bryan Hunter Greenwood unfit to practice pharmacy, and indicates that he is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) 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 unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (2) and (3) 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 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 pharmacy identification card, No. 03-3-31141, held by Bryan Hunter Greenwood and such suspension is effective as of the date of the mailing of this Order.

(A) Bryan Hunter Greenwood, 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) Bryan Hunter Greenwood, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his 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.

Further, after one (1) year from the Notice of Opportunity for hearing dated April, 11, 2014, the Board will consider any petition filed by Bryan Hunter Greenwood 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:

(1) Bryan Hunter Greenwood must obtain, within sixty days after the effective date of this Order, a full psychiatric evaluation by a licensed psychiatrist and must abide by the treatment plan as designed by that psychiatrist. The psychiatrist must provide an initial status report, which includes the recommended treatment plan, to the Board within, ten days after completing the assessment.

(2) Bryan Hunter Greenwood must enter into a **new** contract, signed within sixty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

- (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) Alcohol must be added to the standard urine drug screen. A breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.
- (c) Results of all drug and alcohol 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.

(3) The intervener/sponsor shall submit to the Board reports, 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.

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

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

(C) Bryan Hunter Greenwood must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with the licensed psychiatrist's recommended treatment plan;

(2) A report by the licensed psychiatrist regarding Bryan Hunter Greenwood's fitness for readmission into the practice of pharmacy;

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

(4) 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;

(5) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Bryan Hunter Greenwood must show successful completion of the NAPLEX examination or an equivalent examination and the MPJE examination or an equivalent examination approved by the Board.

(E) Upon such time as the Board may consider reinstatement, Bryan Hunter Greenwood will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

Richard Kolezynski moved for Findings of Fact; Megan Marchal seconded the motion. Motion passed (Aye-5/Nay-0).

Kilee Yarosh moved for Conclusions of Law; Fred Weaver seconded the motion. Motion passed (Aye-5/Nay-0).

Richard Kolezynski moved for Action of the Board; Edward Cain seconded the motion. Motion passed (Aye-4/Nay-1).

4:35 p.m. The Board recessed briefly.

4:45 p.m. The meeting reconvened in Room South B&C.

The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Douglas Allan Berry**, R.Ph., Delaware, Ohio.

6:15 p.m. The hearing ended and the record was closed.

Mr. Kolezynski moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Yarosh and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

6:30 p.m. The recess ended and the hearing was opened to the public.

R-2015-103 After votes were taken in public session, the Board adopted the following order in the matter of **Douglas Allan Berry**, R.Ph., Delaware, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2014-1103)

In The Matter Of:

Douglas Allan Berry, R.Ph.

P.O. Box 1366

Westerville, OH 43086

(R.Ph. Number 03-2-16365)

INTRODUCTION

The Matter of Bryan Hunter Greenwood came for hearing on October 7, 2014, before the following members of the Board: Michael A. Moné, R.Ph. (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Douglas Allan Berry was represented by Robert D. Noble and Sanjay Bhatt. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Douglas Allan Berry, R.Ph., Respondent
2. Dustin Robison, Ohio State Board of Pharmacy

Respondent's Witness:

1. Douglas Allan Berry, R.Ph., Respondent

State's Exhibits:

- | | | |
|-------|--|----------|
| 1. | Notice of Opportunity for Hearing | 04-29-14 |
| 1A-E. | Procedurals | |
| 4. | Notarized Statement of Dr. John Michael Dipietra | 01-27-14 |
| 5. | Copy of RX6950402 w/label | 03-22-13 |
| 6. | Copy of RX6950401 w/label | 03-22-13 |
| 7. | Copy of RX6950403 w/label | 03-22-13 |
| 8. | Copy of RX6953864 w/label | 05-10-13 |
| 9. | Copy of RX6964051 w/label | 10-03-13 |
| 10. | Copy of RX6970155 w/label | 12-31-13 |
| 11. | Copy of RX6970154 w/label | 12-31-13 |
| 12. | Pharmacist Termination Notification | 02-06-14 |

Respondent's Exhibit:

- | | | |
|----|-------------------|----------|
| A. | Patient Assesment | 03-06-13 |
|----|-------------------|----------|

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 Allan Berry was originally licensed in the State of Ohio on August 12, 1986, pursuant to Reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.

(2) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on March 22, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX # 6950403 for 90 Lisinopriol 10mg tablets, a dangerous drug, with 4 refills, at Wal-Mart Pharmacy #10-2726. Such conduct

constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(3) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on March 22, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX # 6950402 for 30 Singular 10mg tablets, a dangerous drug, with 5 refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(4) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on March 22, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX #6950401 for Flonase 50MCG spray, a dangerous drug, with 11 refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(5) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on May 10, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX #6953864 for 30 Crestor 20mg tablets, a dangerous drug, with 11 refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(6) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on October 3, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX #0696451 for 30 Singular 10mg tablets, a dangerous drug, with 5 refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(7) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on December 31, 2013, he wrote and filled his own prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX #6970155 for ProAir Inhaler, with 3 refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(8) Douglas Allan Berry did, on or about February 4, 2014, admit to an Ohio State Board of Pharmacy Agent that on December 31, 2013, he wrote and filled his own

prescription at Wal-Mart Pharmacy #10-2726, to wit: Douglas Allan Berry used Dr. DePietra's name and created forged prescription RX #6970154 for 30 Prednisone 10mg, a dangerous drug, with no refills, at Wal-Mart Pharmacy #10-2726. Such conduct constitutes the illegal processing of drug documents, a felony of the fifth degree, in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (8) of the Findings of Fact constitute being guilty of acts constituting a felony 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 (8) 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) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (2) through (8) 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 Chapters 4729 and 3719 of the Ohio Revised Code and Chapter 4729 of the Ohio Administrative 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 imposes a monetary penalty of one thousand dollars (\$1000.00) on Douglas Allan Berry and payment in full is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

Further, the Board hereby places on probation for six (6) months the pharmacist identification card, No. 03-2-16365, held by Douglas Allan Berry, effective as of the date of the mailing of this Order. The terms of probation are as follows:

(A) Within six (6) months from the date of this Order, Douglas Allan Berry must show successful completion of the Multistate Pharmacy Jurisprudence Examination (MPJE) or an equivalent examination approved by the Board.

(B) Douglas Allan Berry must obtain, within six (6) months from the effective date of this Order, twelve (1.2) CEUs of approved continuing pharmacy education in Ohio Law and Ethics, which may not also be used for license renewal. If proof of successful completion is not submitted to the Board office before the end of the probation period, Douglas Allan Berry will remain on probation until this condition is achieved.

(C) Douglas Allan Berry's license is deemed to be not in good standing until successful completion of the probationary period.

(D) Douglas Allan Berry may not be a Responsible Pharmacist or serve as a preceptor.

(E) Douglas Allan Berry must not violate the drug laws of Ohio, any other state, or the federal government.

(F) Douglas Allan Berry must abide by the rules of the State Board of Pharmacy.

(G) Douglas Allan Berry must comply with the terms of this Order.

(H) 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.

Douglas Allan Berry 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.

Richard Kolezynski moved for Findings of Fact; Kilee Yarosh seconded the motion. Motion passed (Aye-6/Nay-0).

Kilee Yarosh moved for Conclusions of Law; Melinda Ferris seconded the motion. Motion passed (Aye-6/Nay-0).

Melinda Ferris moved for Action of the Board; Kilee Yarosh seconded the motion. Motion passed (Aye-6/Nay-0).

6:35 p.m. The Board recessed for the day.

Wednesday, October 8, 2014

8:30 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:

Michael A. Moné, R.Ph., *President*; Kilee S. Yarosh, R.Ph., *Vice President*; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph. and Fred M. Weaver, R.Ph.

Mr. McNamee presented proposed rules for Board approval.

R-2015-104 After discussion Mrs. Yarosh moved that the adoption of the Rules packet be approved for CSI. The motion was seconded by Mr. Kolezynski and approved by the Board:
Aye – 5.

R-2015-105 After discussion Ms. Ferris moved to authorize the filing of the Rules packet with proposed changes, excluding 4729-5-13. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 5.

8:50 a.m. The Board recessed briefly.

9:00 a.m. The meeting reconvened in Room South B&C.

9:13 a.m. The Board was joined by Assistant Attorney General Charissa Payer to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. in the matter of **Christopher Durand Baker**, R.Ph., Nashport, Ohio.

10:20 a.m. The hearing ended and the record was closed.

Mr. Kolezynski moved that the Board recess in order to consider this quasi-judicial matter in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision, et al.* (1998) 81 Ohio St.3d 58. The motion was seconded by Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Weaver – yes; and Yarosh – yes.

10:38 a.m. The recess ended and the hearing was opened to the public.

R-2015-106 After votes were taken in public session, the Board adopted the following order in the matter of **Christopher Durand Baker**, R.Ph., Nashport, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2014-1396)

In The Matter Of:

Christopher Durand Baker, R.Ph.
6845 Stamer Lane
Nashport, Ohio 43830
(R.Ph. Number 03-1-32263)

INTRODUCTION

The Matter of Christopher Durand Baker came for hearing on October 8, 201, before the following members of the Board: Michael A. Moné, R.Ph. (presiding); Edward T. Cain,

Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Christopher Durand Baker was not represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

Margaret A. Huwer, R.Ph., Absent.

Megan E. Marchal, R.Ph., Absent.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Thomas Miksch, Ohio State Board of Pharmacy
2. Christopher Durand Baker, R.Ph., Respondent

Respondent's Witnesses:

None

State's Exhibits:

1. Notice of Opportunity for Hearing 04-25-14
- 1A-C. Procedurals
2. Video Surveillance 04-01-14
3. Notarized Statement of Christopher Durand Baker, R.Ph. 04-16-14
4. DEA 106 form for Kroger Pharmacy N-891 05-06-14
5. Kroger Pharmacy On Hand Sheets 01-16-14 through 04-15-14

Respondent's Exhibits:

None

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 Christopher Durand Baker was originally licensed in the State of Ohio on July 25, 2012, pursuant to examination, and his license to practice pharmacy was summarily suspended effective April 25, 2014.

(2) Christopher Durand Baker is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Christopher Durand Baker has admitted that he is addicted to the use of controlled substances and that he stole approximately 100-200 mg of hydrocodone products per day from the pharmacy where he worked to feed his addiction.

Christopher Durand Baker was observed multiple times stealing and consuming controlled substances at his place of employment, while practicing pharmacy. Such conduct indicates that he is within the ambit of Sections 3719.121(A) & (B) and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) Christopher Durand Baker did, on or between April 9, 2014 and April 10, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Kroger Pharmacy #N-891, beyond the express or implied consent of the owner, to wit: Christopher Durand Baker was observed on video surveillance stealing approximately 208 tablets of hydrocodone/APAP 10/325 mg during his shift while practicing pharmacy. Such conduct is in violation of Sections 2913.02 and 2925.23 of the Ohio Revised Code.

(4) Christopher Durand Baker did, on or between April 11, 2014 and April 14, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Kroger Pharmacy #N-891, beyond the express or implied consent of the owner, to wit: Christopher Durand Baker was observed on video surveillance stealing approximately 72 tablets of hydrocodone/APAP 10/325 mg during his shift while practicing pharmacy. Such conduct is in violation of Sections 2913.02 and 2925.23 of the Ohio Revised Code.

(5) Christopher Durand Baker did, on or about April 13, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Kroger Pharmacy #N-891, beyond the express or implied consent of the owner, to wit: Christopher Durand Baker was observed on video surveillance stealing approximately 5ml of hydrocodone bitartrate and homatropine methylbromide 5mg/1.5mg per 5ml syrup during his shift while practicing pharmacy. Christopher Durand Baker consumed this drug by drinking directly from the stock bottle and replacing the bottle on the shelf. Such conduct is in violation of Sections 2913.02 and 2925.23 of the Ohio Revised Code.

(6) Christopher Durand Baker did, on or about April 13, 2014, cause a drug to be adulterated, to wit: Christopher Durand Baker was observed on video surveillance consuming approximately 5ml of hydrocodone bitartrate and homatropine methylbromide 5mg/1.5mg per 5ml syrup directly from the stock bottle during his shift while practicing pharmacy. He then replaced the bottle on the shelf for use with patients of the pharmacy. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (3) through (6) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

(4) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 4729, 3719, and 2925 of the Ohio Revised Code and Chapter 4729 of the Ohio Administrative 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 Christopher Durand Baker on April 25, 2014.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-32263, held by Christopher Durand Baker and such suspension is effective as of the date of the mailing of this Order.

(A) Christopher Durand Baker, 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) Christopher Durand Baker, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his 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.

Further, after two (2) years from the effective date of this Order, the Board will consider any petition filed by Christopher Durand Baker 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) Christopher Durand Baker must obtain, within sixty days after the effective date of this Order, a full chemical dependency evaluation by a certified addictionologist and must abide by the treatment plan as designed by that addictionologist. The addictionologist must provide an initial status report, which includes the recommended treatment plan, to the Board within ten days after completing the assessment.

(B) Christopher Durand Baker must enter into a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) 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) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.
- (c) Results of all drug and alcohol 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.

(C) Christopher Durand Baker 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) Christopher Durand Baker must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with the certified addictionologist's recommended treatment plan;

(2) A report by the certified addictionologist regarding Christopher Durand Baker's fitness for readmission into the practice of pharmacy;

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

(4) 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;

(5) Compliance with the terms of this Order.

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

(F) Any reinstatement shall not occur until such time as any criminal intervention in lieu of conviction has been successfully completed.

Richard Kolezynski moved for Findings of Fact; Fred Weaver seconded the motion. Motion passed (Aye-5/Nay-0).

Kilee Yarosh moved for Conclusions of Law; Melinda Ferris seconded the motion. Motion passed (Aye-5/Nay-0).

Melinda Ferris moved for Action of the Board; Kilee Yarosh seconded the motion. Motion passed (Aye-5/Nay-0).

10:40 a.m. The Board recessed briefly.

10:52 a.m. The meeting reconvened in Room South B&C.

Mr. Moné led a discussion regarding the Budget.

R-2015-107 Mr. Cain moved that the amended version B of the budget proposal be approved. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 4/Nay – 2.

11:47 a.m. Mr. Kolezynski moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised Code. The motion was seconded by Mr. Weaver and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Kolezynski –yes; Marchal – yes; Yarosh – yes; and Weaver – yes.


1:35 p.m. The executive session ended and the meeting was opened to the public.


R-2015-108 Mr. Kolezynski moved that the Board receive Per Diem as follows:

PER DIEM	9/22	9/26	10/6	10/7	10/8	Total
Cain	0	0	1	1	1	3
Ferris	1	0	1	1	1	4
Huwer	0	0	0	0	0	0
Kolezynski	0	0	1	1	1	3
Marchal	0	0	1	1	1	3
Moné	0	1	1	1	1	4
Weaver	0	0	1	1	1	3
Yarosh	0	0	1	1	1	3

Ms. Marchal seconded the motion and it was approved by the Board: Aye – 6.

R-2015-109 Ms. Marchal moved that the meeting be adjourned. The motion was seconded by Mr. Weaver and approved by the Board: Aye – 6.


 _____ Date: 4 Nov 2014
 Michael A. Moné, R.Ph., President


 _____ Date: 11/4/2014
 Eric Griffin, Interim Executive Director