

Minutes of the February 2-4, 2015
Meeting of the Ohio State Board of Pharmacy

Monday, February 2, 2015

10:00 a.m. The Ohio State Board of Pharmacy convened in Room South B&C, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

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

Also present were Steven Schierholt, *Executive Director*; Kevin Mitchell, *Assistant Executive Director*; Eric Griffin, *Compliance and Enforcement Supervisor*; Chad Garner, *Director of OARRS*; Cameron McNamee, *Legislative Affairs Liaison* and Nicole Dehner, *Chief Legal Counsel*.

10:04 a.m. 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 **Divinity Distribution**, Cincinnati, Ohio.

10:25 a.m. The hearing ended and the record was closed.

Ms. Yarosh moved that the Board recess in order to consider the 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. Huwer and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

10:46 a.m. The recess ended and the hearing was opened to the public.

R-2015-218 After votes were taken in public session, the Board adopted the following order in the matter of **Divinity Distribution**, Cincinnati, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2014-1474)

In The Matter Of:

Divinity Distribution
c/o James G. Baker
162 Brookhaven Avenue

Cincinnati, Ohio 45215

INTRODUCTION

The Matter of Divinity Distribution came for consideration on February 2, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Divinity Distribution was not present nor represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Michael Poe, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

- | | | |
|-----|---|----------|
| 1. | Notice of Opportunity for Hearing | 11-10-14 |
| 1A. | Procedural | |
| 2. | Wholesale Distributor of Dangerous Drugs Application | 04-05-14 |
| 3. | Certified Copy of Clermont County Court of Common Pleas Documents RE: State of Ohio v. Celestial Nicole Baker | 08-04-11 |
| 4. | Notarized Statement of James G. Baker | 05-27-14 |

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 on or about April 4, 2014, James G. Baker was the owner of Divinity Distribution, located at 162 Brookhaven Ave., Cincinnati, OH 45215, and on April 4, 2014, Divinity Distribution applied for registration as a Wholesale Distributor of Dangerous Drugs.

(2) On or around April 4, 2014, Divinity Distribution c/o James Baker did knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Divinity Distribution/James Baker's application for licensure as a wholesale distributor of dangerous drugs lists 162 Brookhaven Ave., Cincinnati, OH 45215, as the address of the location being licensed. However, upon investigation, an Agent with the Ohio State Board of Pharmacy learned that the structure located at that address is a single family house built in a subdivision. The structure is: built out of brick and vinyl materials, has a first floor and full basement which is partially finished, the lighting on the exterior of the building is not considered "well lighted," there is one porch light by the front door and a LED directional light pointing to the driveway, there is no functional alarm system, there is no area specifically designated for the storage of dangerous drugs, the basement of the building contained abandoned personal items on the floor which made walking through the area difficult, the basement's ceiling is constructed in a drop ceiling manner and several of the drop ceiling tiles were missing and/or displaced, and the drop ceiling had numerous wires protruding from it. The previous tenant of the house was an unnamed daughter of Mr. Baker. She "moved out" of the home which was left in disorganization and disarray. At the time the Agent was at the location it was unknown who has key access to the home. The Agent further learned that James Baker had no intention of operating Divinity at that address; rather, he wanted to obtain the wholesale distributor license and then find a location that could meet the minimum requirements for wholesalers under the Ohio Revised Code (ORC).

(3) On or around April 4, 2014, Divinity Distribution/James Baker did knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Despite the fact that Celestial Baker is listed on documents as an Incorporator of Divinity Distribution, Mr. Baker failed to disclose her when asked on the application for the "name of owner(s)." An investigation revealed by Ms. Baker resided at the same address as Divinity Distribution listed on the application submitted by Mr. Baker, and further, that Ms. Baker pled guilty to misdemeanor theft on August 4, 2011. State of Ohio v. Celestial Nicole Baker, Case No. 2011 CR 0330, Clermont County Court of Common Pleas, Judgment Entry Sentencing Defendant to Jail and Community Control, August 5, 2011. The 90 days she was ordered to serve in the Clermont County jail, were suspended on the condition that she comply with two years of community control. She was order to pay court costs and pay restitution to US Bank in the amount of \$1,558 and to attend any theft class/counseling.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitute a violation of ORC Section 4729.53(A)(3) and Section 4729.56(A)(4).
- (2) The State Board of Pharmacy concludes that paragraph (3) of the Findings of Fact constitutes a violation of ORC Section 4729.53(A)(4) and Section 4729.56(A)(3).
- (3) The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute a violation of ORC Section 4729.56(A)(1).

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 Divinity Distribution and, therefore, denies the Application for a Wholesale Distributor of Dangerous Drugs license submitted by Divinity Distribution on April 4, 2014.

Ms. Huwer moved for Findings of Fact; Ms. Ferris seconded the motion. Motion passed (Aye-6/Nay-0).

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

Ms. Ferris moved for Action of the Board; Mr. Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

10:50 a.m. 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 **Kingston Family Medical**, Kingston, Ohio.

11:19 a.m. The hearing ended and the record was closed.

Mr. Kolezynski moved that the Board recess in order to consider the 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. Huwer and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

11:27 a.m. The recess ended and the hearing was opened to the public.

R-2015-219 After votes were taken in public session, the Board adopted the following order in the matter of **Kingston Family Medical**, Kingston, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2013-1786)

In The Matter Of:

Kingston Family Medical
c/o Franklin D. Demint, D.O.

11 Warren Drive
P.O. Box 646
Kingston, Ohio 45644

INTRODUCTION

The Matter of Kingston Family Medical came for consideration on February 2, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Kingston Family Medical was not present nor represented by Counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Kevin Flaharty, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

- | | | |
|-----|---|----------|
| 1. | Notice of Opportunity for Hearing | 06-26-14 |
| 1A. | Procedural | |
| 2. | Terminal Distributor of Dangerous Drugs Application | 06-17-11 |
| 3. | State Medical Board of Ohio Certified Documents | |
| 3A. | Step II Consent Agreement RE: Franklin D. Demint, D.O. | 03-10-10 |
| 3B. | Step I Consent Agreement RE: Franklin D. Demint, D.O. | 08-12-09 |
| 4. | Certified Copy of Ross County Court of Common Pleas Documents RE: State of Ohio v. Franklin D. Demint | 03-04-11 |

State's Aggravating Exhibits:

5. State Medical Board of Ohio Certified Documents 01-20-15
6. State Medical Board of Ohio Board Order RE: Franklin Demint 11-05-14

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 June 20, 2011, Franklin D. Demint, D.O. was the President and Owner for Kingston Family Medical, located at, 11 Warren Drive, Kingston, OH 45644 and that on said date, Kingston Family Medical submitted an application for registration as a Terminal Distributor of Dangerous Drugs.

(2) On or around June 17, 2011, Franklin D. Demint, D.O. did knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: he answered "no" on his application for licensure as a terminal distributor of dangerous drugs with pain management classification to the question: "Does the applicant or owner(s), or any agent or employee of the applicant/owner(s), or any officer of the corporation, have charges pending or have a conviction of a felony or a misdemeanor other than a minor traffic violation (even if expunged or sealed)?," when in fact, he plead guilty on March 4, 2011, to one count of Possession of Marijuana, a felony of the fifth degree, State of Ohio v. Franklin D. Demint, Case No. 10 CR 537 (Ross Co. 2011). Franklin D. Demint, D.O. was ordered to successfully continue his treatment plan with the Pickaway Area Recovery Services and the State Medical Board of Ohio until he was rehabilitated, to pay court costs, and to perform 150 hours of community service, 20 hours of which had to involve drug lectures by him.

(3) On or around June 17, 2011, Franklin D. Demint, D.O. did disclose to the Ohio State Board of Pharmacy that he had been the subject of disciplinary action, to wit: on his application for licensure as a terminal distributor of dangerous drugs with pain management classification he answered "yes" to the question: "[h]as the applicant or owner(s) or any agent or employee of the applicant or owner(s), ever been the subject of disciplinary action by any state or federal agency?" Based on his positive answer, a background investigation was conducted and revealed that on or around August 12, 2009, he entered into a Step I Consent Agreement with the State Medical Board of Ohio ("Medical Board"). Step I Consent Agreement Between Franklin Donald DeMint, D.O. and the State Medical Board of Ohio (2009). Franklin D. Demint, D.O. was

disciplined by the Medical Board for illegally possessing controlled substances, and for utilizing controlled substances for himself and family members under circumstances that did not constitute an emergency, nor did he perform and document a proper physical examination prior to dispensing or prescribing the medication at issue. Franklin D. Demint, D.O. admitted in the Step I Agreement that he lied to the Medical Board on his biennial license renewal and said he was not dependent on any chemical substance when in fact he had engaged in the habitual daily use of marijuana from 1997 through 2009. The Medical Board suspended his license to practice osteopathic medicine for an indefinite period of not less than 180 days, and ordered him to follow terms and provisions set forth in the Step I Agreement. Then, on or about March 10, 2010, Franklin D. Demnit, D.O. entered into a Step II Consent Agreement with the Medical Board. **Step II Consent Agreement Between Franklin Donald DeMint, D.O. and the State Medical Board of Ohio (2010).** The Medical Board reinstated his license to practice osteopathic medicine, and placed him on a minimum probationary term of 5 years, which he is currently still serving.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (2) and (3) of the Findings of Fact constitute failure to meet the qualifications of a terminal distributor set forth in Ohio Revised Code Section 4729.55 and Ohio Administrative Code Rule 4729-9-19(A)(1) through Rule 4729-9-19(A)(4) and (A)(6).
- (2) The State Board of Pharmacy concludes that the evidence admitted in the State's case in chief was sufficient to support conclusions (1) and (2). The aggravating circumstances presented in the State's exhibits (5) and (6) provided additional evidence of each of the listed Ohio Revised Code and Ohio Administrative Code violations.

DECISION OF THE BOARD

Pursuant to Sections 3719.03, 4729.55 and 4729.57 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 Kinston Family Medical and, therefore, denies the Application for a Terminal Distributor of Dangerous Drugs with a Pain Management Clinic Classification license submitted by Kingston Family Medical on June 20, 2011.

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

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

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

SO ORDERED.

11:31 a.m. The Board recessed for lunch.

1:05 p.m. The meeting reconvened in Room South B&C.

Ms. Ferris provided the Nursing Board CPG meeting report.

Ms. Huwer provided the PAPC meeting report.

Mr. Mitchell provided the Licensing update.

Mr. Griffin provided the Compliance and Enforcement update.

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

Ms. Payer provided the AG report.

1:25 p.m. **Jarrold Grossman, PharmD**, *REM Corporation*, gave a presentation to the Board regarding the Smart Pac Central Fill system.

1:57 p.m. The Board recessed briefly.

2:06 p.m. The meeting reconvened in Room South B&C.

R-2015-220 The Board received a request for an approval to Ohio Administrative Code Rule 4729-5-11 (A) (1) requesting that **Vivekanand Manocha, M.D.** (35.087792) Springboro, Ohio, be the responsible person for the following pain management clinics:

Interventional Spine & Pain Center (PMC), Springboro (02-2141300)

Interventional Spine & Pain Center (PMC), Centerville (02-2391300)

Interventional Spine & Pain Center (PMC), Vandalia (02-2391350)

After discussion, Ms. Ferris moved that the Board approve the specific request indefinitely. The motion was seconded by Mr. Cain and approved by the Board:

Aye – 4/ Nay – 2.

R-2015-221 The Board received a request from **Ashley Sweeny, R.Ph.**, *Ohio State University*, for an exemption to Ohio Administrative Code Rule 4729-3-01. Mr. Weaver moved that the Board approve the specific request. The motion was seconded by Ms. Ferris and approved the Board: Aye – 5/ Nay – 1.

R-2015-222 The Board received an application for the Continuing Education Provider Status of **Andrew Roecker, R.Ph.** (03-3-24254) Dublin, Ohio. Ms. Yarosh moved that the

Continuing Education Provider Status be approved. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

2:31 p.m. **Jarrod Grossman, PharmD, PRO**, gave a presentation to the Board regarding the Pharmacist Rehabilitation Organization.

3:07 p.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 Ms. Ferris and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

5:55 p.m. The meeting reconvened in Room South B&C.

The Board recessed for the day.

Tuesday, February 3, 2015

8:43 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*; Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

R-2015-223 Mr. Moné announced that the request for settlement presented by **Medi-Stat RX** (02-2080100) Foley, Alabama, be accepted allowing for sufficient time for the preparation and approval of settlement documentation.

R-2015-224 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. 2013-1915)

In The Matter Of:

Gabriel Steiner, R.Ph.
367 Nature Trail
Westerville, Ohio 43082
(R.Ph. No. 03-1-10903)

This Settlement Agreement is entered into by and between Gabriel Steiner 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.

Gabriel Steiner 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. Gabriel Steiner 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, Gabriel Steiner is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about May 30, 2014, pursuant to Chapter 119. of the Ohio Revised Code, Gabriel Steiner 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. Gabriel Steiner requested a hearing; it was scheduled and continued. The May 30, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the State Board of Pharmacy indicate that Gabriel Steiner was originally licensed in the State of Ohio on July 30, 1974, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Gabriel Steiner did, on or about October 18, 2013, administer the Flumist vaccine to a patient who did not meet the specified age criteria of fourteen years of age or older, to wit: he received a prescription for Flumist, RX #480101, and administered the vaccine to G.D., a seven year old patient. Such conduct is in violation of the immunization administration protocol under Rule 4729-5-38(C) of the Ohio Administrative Code, and Section 4729.41(A)(1)(a) of the Ohio Revised Code.
- (3) Gabriel Steiner did, on or about October 18, 2013, administer the Flumist vaccine to a patient who did not meet the specified age criteria of fourteen years of age or older, to wit: he received a prescription for Flumist, RX #480104, and administered the vaccine to I.D., a seven year old patient. Such conduct is in violation of the immunization administration protocol under Rule 4729-5-38(C) of the Ohio Administrative Code, and Section 4729.41(A)(1)(a) of the Ohio Revised Code.

Gabriel Steiner neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated May 30, 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, Gabriel Steiner knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Gabriel Steiner agrees to the imposition of a monetary penalty of two hundred 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, Gabriel Steiner must obtain, within 90 days from the effective date of this Agreement, four hours of approved continuing pharmacy education (0.4 CEUs) in law and/or immunizations, which may not also be used for license renewal.

If, in the judgment of the Board, Gabriel Steiner 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, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may 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.

Gabriel Steiner 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.

Gabriel Steiner 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. Gabriel Steiner waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-225

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
VOLUNTARY SURRENDER WITH DISCIPLINARY ACTION PENDING
PERMANENT SURRENDER
(Case Number 2013-2102)

In The Matter Of:

Summit Pain Specialists Pharmacy

4302 Allen Road, Suite 300

Stow, Ohio 44224

(Terminal Distributor Number 02-2097600)

This Settlement Agreement is entered into by and between Summit Pain Specialists Pharmacy 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, regarding Summit Pain Specialists Pharmacy's (TDDD No. 02-2097600).

Summit Pain Specialists Pharmacy 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 and the right to a formal adjudication hearing on the issues contained herein.

Summit Pain Specialists Pharmacy is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that would be filed by the Board against Summit Pain Specialists Pharmacy and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Summit Pain Specialists Pharmacy license to practice pharmacy in the State of Ohio, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

(A) The Ohio State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.

(B) Summit Pain Specialists Pharmacy neither admits nor denies the allegations pending in the Board's investigation; however, the Board has initiated and conducted an investigation pursuant to the mandate of Sections 3719.18 and 4729.25 of the Ohio Revised Code.

(C) Summit Pain Specialists Pharmacy acknowledges that it has been made aware of the investigation and has not failed to cooperate in said investigation. Summit Pain Specialists Pharmacy further acknowledges that it has not been promised or given anything to indicate that the State of Ohio will not proceed with criminal charges; that criminal charges may be or may have been filed pursuant to the discretion of the appropriate prosecuting attorney and/or grand jury. The execution of this agreement does not affect, and is not affected by, any such criminal proceedings.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of the filing of formal ADMINISTRATIVE charges and/or holding a 119.

hearing at this time, Summit Pain Specialists Pharmacy knowingly and voluntarily **SURRENDERS PERMANENTLY TO THE STATE BOARD OF PHARMACY IT'S LICENSE (TDDD NO. 02-2097600) AND REGISTRATION TO OPERATE A PHARMACY, WITH DISCIPLINARY ACTIONS PENDING.**

Summit Pain Specialists Pharmacy 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.

Summit Pain Specialists Pharmacy 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. Summit Pain Specialists Pharmacy waives any rights of appeal regarding its surrender of License No. 02-2097600 pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-226

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. 2013-1606)

In the Matter of:

Firelands Physician Group
c/o Jeffrey A. Biro, D.O.
1605 State Route 60
Vineyard Square Plaza #9
Vermillion, Ohio 44089

This Settlement Agreement is entered into by and between Firelands Physician Group 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.

Firelands Physician Group 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. Firelands Physician Group 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, Firelands Physician Group is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about November 15, 2013, pursuant to Chapter 119. of the Ohio Revised Code, Firelands Physician Group 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 and continued by the Board. The November 15, 2013, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that on or about June 10, 2013, Jeffrey A. Biro was the responsible person for Firelands Physician Group, 1605 State Route 60, Vineyard Square Plaza #9, Vermillion, Ohio 44089 and that on said date, Firelands Physician Group submitted an application for registration as a Terminal Distributor of Dangerous Drugs.

(2) On or about June 10, 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]ave you, as the person accepting responsibility by signing this form, ever been the subject of disciplinary action by any state or federal agency?” On or around May 12, 1993, Jeffrey A. Biro, D.O., responsible person indicated on the above-stated application for a change of responsible person, entered into a Consent Agreement with the State Medical Board of Ohio. The Consent Agreement resulted from Dr. Biro’s false response on his 1992 application to renew his medical license. Specifically, Dr. Biro failed to report that his clinical privileges had been revoked by Meridia Hillcrest Hospital. As a result of the Consent Agreement, Dr. Biro was publicly reprimanded and subject to certain probationary terms. Consent Agreement Between Jeffrey A. Biro, D.O. and The State Medical Board of Ohio, May 12, 1993. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Firelands Physician Group neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated November 15, 2013; 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, Firelands Physician Group knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Firelands Physician Group agrees to the imposition of a monetary penalty of Two Thousand Five Hundred Dollars (\$2500.00) due and owing within thirty days from the effective date of this Agreement. The monetary penalty should be made payable to

the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

(B) Firelands Physician Group has submitted sufficient information to the Board to establish substantial compliance with the required qualifications of a TDDD and are thereby granted a license.

Firelands Physician Group 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.

Firelands Physician Group 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. Firelands Physician Group waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-227

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. -2012-1278

In the Matter of:

TOWNE PHARMACY

c/o MICHAEL DELLA-VENTURA, R.Ph.

2 Washington Avenue

Dunellen, NJ 08812

(Terminal Distributor Number 02-2215250)

This Settlement Agreement is entered into by and between Towne Pharmacy 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.

Towne Pharmacy 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. Towne Pharmacy 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, Towne Pharmacy is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about September 15, 2014, pursuant to Chapter 119. of the Ohio Revised Code. Towne Pharmacy 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. The September 15, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that Towne Pharmacy was licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and their Ohio license has lapsed. Records further reflect during the relevant time periods stated herein, Michael Della-Ventura was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) Towne Pharmacy did, from April 2012 through July 27, 2012, sell at retail dangerous drugs when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Towne Pharmacy dispensed tramadol without valid prescriptions. These purported prescriptions were generated from Internet sales and the electronic signature authorization of out-of-state physicians for patients that reside in Ohio. From April 23, 2012, to June 1, 2012, a total of 645 prescriptions for tramadol were dispensed by Towne Pharmacy resulting in 113,040 tablets being shipped into Ohio.

(3) Towne Pharmacy did, from April 2012 through July 27, 2012, fail to perform their corresponding responsibility, to wit: Towne Pharmacy dispensed tramadol without valid prescriptions. These purported prescriptions were generated from Internet sales and the electronic signature authorization of out-of-state physicians for patients that reside in Ohio. Towne Pharmacy knowingly dispensed these purported prescriptions though the physician had not conducted a physical examination. From April 23, 2012, to June 1, 2012, a total of 645 prescriptions for tramadol were dispensed by Towne Pharmacy resulting in 113,040 tablets being shipped into Ohio.

(4) Towne Pharmacy did, on or about June 12, 2012, knowingly fail to perform prospective drug utilization review as required by Ohio Administrative Code Section 4729-5-20, when they dispensed a dangerous drug that would suggest over utilization, to wit: tramadol. The patient's previous purported prescriptions for a quantity of 180

tramadol each were dispensed on May 7, 2012, May 10, 2012, and May 14, 2012. Such conduct, if proven, is in violation of Ohio Administrative Code Section 4729-5-20, and constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating provisions of Chapter 4729. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

(5) Towne Pharmacy did, on or about May 8, 2012, knowingly fail to perform prospective drug utilization review as required by Ohio Administrative Code Section 4729-5-20, when they dispensed a dangerous drug that would suggest over utilization, to wit: tramadol. The patient's previous purported prescriptions for a quantity of 180 tramadol was dispensed on May 7, 2012. Such conduct, if proven, is in violation of Ohio Administrative Code Section 4729-5-20, and constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating provisions of Chapter 4729. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

(6) Towne Pharmacy did, on or about May 29, 2012, knowingly fail to perform prospective drug utilization review as required by Ohio Administrative Code Section 4729-5-20, when they dispensed a dangerous drug that would suggest over utilization, to wit: tramadol. The patient's previous purported prescriptions for a quantity of #180 tramadol was dispensed on May 17, 2012. Such conduct, if proven, is in violation of Ohio Administrative Code Section 4729-5-20, and constitutes being guilty of dishonesty or unprofessional conduct in the practice of pharmacy; and/or guilty of willfully violating provisions of Chapter 4729. of the Ohio Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code.

Towne Pharmacy neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 14, 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, Towne Pharmacy knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) The State Board of Pharmacy hereby revokes permanently the Terminal Distributor of Dangerous Drugs License, No. 02-2215250, held by Towne Pharmacy effective as of the date of the mailing of this Agreement.

(B) Towne Pharmacy and Michael Della-Ventura, R.Ph. agree that no owner, employee or pharmacist employed by Towne Pharmacy at any time from April 2012 to present will ever apply for a Terminal Distributor of Dangerous Drugs license in the state of Ohio.

(C) Towne Pharmacy agrees that they will not ship dangerous drugs of any kind into Ohio.

Towne Pharmacy 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 initiate by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Towne Pharmacy 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. Towne Pharmacy waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-228 Mr. Moné announced the appointment of Melinda J. Ferris to the CPG Committee.

R-2015-229 Mr. Moné announced the appointment of Margaret A. Huwer to the PAPC Committee.

8:57 a.m. The Board recessed for the Public Rules Hearing.

The public hearing concerning the proposed new and amended rules began in Room South A, 31st Floor of the Riffe Center, with the following members in attendance:

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

9:13 a.m. The public rules hearing ended.

The meeting reconvened in Room South B&C.

Mr. McNamee provided the Legislative Update.

R-2015-230 After discussion Ms. Ferris moved to approve the proposed amendment to Rule 4729-8-02. The motion was seconded by Mr. Weaver and approved by the Board: Aye – 6.

R-2015-231 After discussion Ms. Ferris moved to approve the proposed amendment to Rule 4729-8-03. The motion was seconded by Mr. Kolezynski and approved by the Board: Aye – 6.

R-2015-232 After discussion Mr. Weaver moved to approve that Effective March 19, 2015, pharmacist and pharmacy interns that comply with the training and protocol requirements pursuant to section 4729.41 and rules 4729-5-36 and 5-37, may administer the zoster vaccine according to the age criteria specified in the F.D.A. approved labeling, as provided in OAC 4729-5-38. The motion was seconded by Ms. Ferris and approved by the Board: Aye – 6.

9:43 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 **Laurie Thompson-Palmer, R.Ph.** (03-3-14361) Bexley, Ohio.

10:37 a.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. Huwer and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

11:17 a.m. The recess ended and the hearing was opened to the public.

R-2015-233 After votes were taken in public session, the Board adopted the following order in the matter of **Laurie Thompson-Palmer, R.Ph.** (03-3-14361) Bexley, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY
(Case Number 2013-1865)

In The Matter Of:

Laurie Thompson-Palmer, R.Ph.
2836 Elm Avenue
Bexley, Ohio 43209
(03-3-14361)

INTRODUCTION

The Matter of Laurie Thompson-Palmer came for hearing on February 3, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Laurie Thompson-Palmer was represented by Sam Shamansky. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Laurie Thompson-Palmer, R.Ph.

Respondent's Witnesses:

1. Laurie Thompson-Palmer, R.Ph.

State's Exhibits:

1. Notice of Opportunity for Hearing 07-02-14
1A-1E. Procedurals
2. Certified Copy of Franklin County Municipal Court 09-05-13
Documents RE: State of Ohio /City of Columbus v Laurie T. Palmer
Case No. 2013 TRC 163293
3. Arrest Report No. 13BEX-6342-AR 07-30-13
4. Notarized Statement of Laurie T. Palmer 10-08-13
5. Pharmacist Renewal Application (Online) 08-23-11
6. Certified Copy of Franklin County Municipal Court 03-16-11
Documents RE: State of Ohio/City of Columbus v Laurie T. Palmer
Case No. 2011 CR B 003380

Respondent's Exhibits:

- A. Letter from Franklin County Municipal Court RE: Laurie T. Palmer 01-23-15

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 Laurie Thompson-Palmer was originally licensed in the State of Ohio on July 31, 1981, pursuant to examination and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Laurie Thompson-Palmer is addicted to or abusing drugs or alcohol and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: on or around September 5, 2013, Laurie Thompson-Palmer pled guilty to one count of OVI in Franklin County Municipal Court. *State of Ohio v. Laurie T. Palmer*, Case No. 2013 TR C 163293, Franklin County Municipal Court. The facts that form the basis for the cited guilty plea stem from her involvement in an automobile accident in the City of Bexley. The Court sentenced her to twenty days in jail, seventeen of which were suspended. Laurie Thompson-Palmer was accepted into the Court's ADAP program, which if successfully completed will result in the reduction of her charge to Reckless Operation. Such program requires participation

in Alcoholics Anonymous three times a week, among other things. Additionally, Laurie Thompson-Palmer admitted to consuming one bottle of wine per day and twice admitted to Board Agents that she has suffered from alcoholism since 2009.

CONCLUSIONS OF LAW

(1) 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 her unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-14361, held by Laurie Thompson-Palmer and such suspension is effective as of the date of the mailing of this Order.

(A) Laurie Thompson-Palmer, 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) Laurie Thompson-Palmer, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her license to practice (pocket ID card) and registration (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, only upon completion of no less than six (6) months involvement with an Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider, the Board will consider any petition filed by Laurie Thompson-Palmer 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) Laurie Thompson-Palmer 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 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) Laurie Thompson-Palmer must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing liquor and/or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.

(C) Laurie Thompson-Palmer 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.

Upon such time as the Board may consider reinstatement, Laurie Thompson-Palmer will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

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

Ms. Huwer moved for Conclusions of Law; Mr. Cain seconded the motion. Motion passed (Aye-6/Nay-0).

Ms. Yarosh moved for Action of the Board; Mr. Cain seconded the motion. Motion passed (Aye-5/Nay-1).

SO ORDERED.

11:19 a.m. The Board recessed briefly.

11:26 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 **Andy Chau Minh Duong, R.Ph.** (03-2-33288) Huntington, West Virginia.

11:42 a.m. The hearing ended and the record was closed.

Ms. 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; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

The board recessed for lunch.

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*:

Farah Deeba Ahmed
Lynn N. Anyaele
Fernand Betancourt

Indiana
New Jersey
Florida

Abigail Suzanne Hay	Kentucky
Dean Heidt	Pennsylvania
Kathleen Alice Hurd	New York
Brittany A. Johnson	Kentucky
Ha Na Kim	Maryland
Sumie George Maly	Michigan
Tami L. Morford	New York
Keith Reed	Pennsylvania
Adam John Reyna	Wisconsin
Jennifer Juliette Sell	Michigan
Fergenet W. Tsegaye	Washington
Casey Ray Watts	West Virginia

1:45 p.m. The Board recessed briefly

1:49 p.m. The meeting reconvened in Room South B&C.

R-2015-234 After votes were taken in public session, the Board adopted the following order in the matter of **Andy Chau Minh Duong, R.Ph.** (03-1-29673) Huntington, West Virginia.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2013-2049)

In The Matter Of:

Andy Chau Minh Duong, R.Ph.
1616 Spring Valley Drive, Apt. 16
Huntington, WV 25704

INTRODUCTION

The Matter of Andy Chau Minh Duong came for hearing on February 4, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Andy Chau Minh Duong was not present nor represented by counsel. However, Mr. Duong submitted his contentions in writing. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Kevin Kinneer, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

1. Proposal to Deny/Notice of Opportunity for Hearing 11-19-13
1A-D. Procedurals
2. Application for Examination as a Pharmacist 06-21-13
3. Letter from Andy Duong to the Ohio State Board of Pharmacy 11-26-13
4. Letter from Andy Duong to the Ohio State Board of Pharmacy 01-25-14
5. Copy of Certified Documents 04-16-13
RE: State of Nebraska v. Chau M.H. Duong, Case No. 99-86

Respondent's Exhibits:

- A. Letter to the Ohio State Board of Pharmacy 12-08-14

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 Andy Chau Minh Duong submitted an application for examination as a pharmacist on or about June 21, 2013.
- (2) Records further indicate that Andy Chau Minh Duong was originally licensed to practice pharmacy in the state of West Virginia on October 10, 2013, and is currently licensed. Andy Chau Minh Duong is also licensed to practice pharmacy as an intern in California and Hawaii.
- (3) Andy Chau Minh Duong did, on or about June 21, 2013, knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement was made with purpose to secure the issuance by a governmental agency of a license or registration, to wit: he submitted an Application for Examination as a Pharmacist to the Ohio State Board of Pharmacy and answered "no" to the legal question that asks "Have you ever been charged or convicted of a felony or a misdemeanor other than a minor traffic violation (even if expunged or sealed)?" His negative answer to the aforementioned legal question was provided despite the fact that on or about February 28, 1999, he was convicted of assault, a 3rd degree misdemeanor, in Sarpy County, Nebraska. State of Nebraska v. Chau M.H. Duong, Case No. CR. 99-86,

NE D.C. Sarpy Co. Andy Chau Minh Duong admitted said conviction to the Ohio State Board of Pharmacy in a letter dated January 25, 2014, and to an Agent for the Board during a telephone interview on March 10, 2014. Andy Chau Minh Duong states in his letter that as a result of his conviction for assault, he was sentenced to 18 months of probation, ordered to participate in an anger management program, and ordered to complete 60 hours of community service. Further, he states in his letter that on or about April 16, 2013, his petition to set aside his conviction was granted by the court. During his March 10, 2014, interview with the Board Agent, he stated that he believed it was okay to answer "no" to the legal question cited above because his conviction had been set aside.

DECISION OF THE BOARD

On the basis of the Findings of fact set for above and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the application for reciprocity submitted by Andy Chau Minh Duong, contingent upon Andy Chau Minh Duong attending the Reciprocity Review session within twelve (12) months of the effective date of this order.

Mr. Weaver moved for Findings of Fact; Ms. Huwer seconded the motion. Motion passed (Aye-6/Nay-0).

Ms. Ferris moved for Action of the Board; Mr. Kolezynski seconded the motion. Motion passed (Aye-5/Nay-1).

SO ORDERED.

R-2015-235 Mr. Moné announced that the request for continuance regarding **Charles Edward Bedel, R.Ph.** (03-2-34002) Union, Kentucky is approved.

R-2015-236 Mr. Moné announced that the request for continuance regarding **X-Gen Pharmaceuticals** (01-2037200) Horseheads, New York is approved.

R-2015-237 Mr. Moné announced that the request for continuance regarding **Healthwarehouse.com** (02-1835150) Florence, Kentucky is approved.

R-2015-238 Mr. Moné announced that the request for continuance regarding **Lisette M. Schuette, R.Ph.** (03-2-21578) Wauseon, Ohio is approved.

R-2015-239 Mr. Moné announced that the request to withdraw the Pain Management Clinic application of **Oncology Hematology Consultants of Southeastern Ohio, Inc.**, Zanesville, Ohio is approved.

1:52 p.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; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

2:40 p.m. The meeting reconvened in Room South B&C.

The Board recessed for the day.

Wednesday, February 4, 2015

9:00 a.m. The Ohio State Board of Pharmacy convened in Room South B&C, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

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

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 **Steven Jeffrey Huffman, R.Ph.**, Bolivar, Ohio.

10:03 a.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. Huwer and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

10:18 a.m. The recess ended and the hearing was opened to the public.

R-2015-240 After votes were taken in public session, the Board adopted the following order in the matter of **Steven Jeffrey Huffman, R.Ph.**, Bolivar, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2013-1449)

In The Matter Of:

Steven Jeffrey Huffman, R.Ph.
590 Olde Orchard Drive North East
Bolivar, Ohio 44612
(License No. 03-3-16068)

INTRODUCTION

The Matter of Steven Jeffrey Huffman came for hearing on February 4, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Steven Jeffrey Huffman was represented by Douglas E. Graff. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. Greg Whitney, Ohio State Board of Pharmacy
2. Steven Jeffrey Huffman, R.Ph., Respondent

Respondent's Witnesses:

1. Steven Jeffrey Huffman, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity for Hearing 08-22-14
1A-1D. Procedurals
2. Anonymous Letter to Rite Aid #2408 04-26-13
3. Copy of RX#0702252 08-29-10
4. Patient History Report for Steven Huffman 11-29-05 through 10-15-13
5. Notarized Statement of Dr. Julie Lavinder 01-21-14
6. Copy of RX#0827064 07-13-12
8. Notarized Statement of Dr. Michael Fomich 09-24-12
9. Statement of Steven Huffman, Rite Aid Corporation 10-14-13
10. Copy of RX#0827094 07-14-12

Respondent's Exhibits:

A. Resumé for Steven Huffman No Date

FINDINGS OF FACT

The State of Ohio and respondent, by and through counsel, stipulate to the following Findings of Fact, which are accepted and adopted by the Board:

(1) Records of the State Board of Pharmacy indicate that Steven Jeffrey Huffman was originally licensed in the State of Ohio on August 2, 1985, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.

(2) Steven Jeffrey Huffman did, on or about August 29, 2010, knowingly make a false statement in a prescription, order, report, or record required by Chapter 3719. or 4729. of the Ohio Revised Code, and by deception, with purpose to deprive Rite Aid Pharmacy #2408 of property or services, knowingly obtained or exerted control over a dangerous drug, beyond the express or implied consent of Rite Aid Pharmacy #2408, to wit: a false phone-in prescription for 24 capsules of Cephalexin 500mg, Rx# 0702252, purporting to have been authorized by Dr. Julie Lavinder, was created and dispensed by Steven Jeffrey Huffman from Rite Aid #2408 for his personal use without a legitimate prescription.

(3) Steven Jeffrey Huffman did, on or about July 13, 2012, with purpose to defraud, or knowing that he was facilitating a fraud, and with purpose to deprive Rite Aid Pharmacy #2408 of property or services, knowingly obtain or exert control over a dangerous drug, beyond the express or implied consent of Rite Aid Pharmacy #2408, to wit: Steven Jeffrey Huffman forged a false phone-in prescription for TrueTrack Glucose Test Strips under "On Hold," Rx #0827064, and later dispensed same to himself for his personal use under Rx#0827067.

CONCLUSIONS OF LAW

The State of Ohio and respondent, by and through counsel, stipulate to the following Conclusions of Law, which are accepted and adopted by the Board:

(1) The State Board of Pharmacy concludes that paragraphs (2) and (3) 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.

(2) Further, as a result of the evidence and testimony presented, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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 2925.23(A), 2925.23(B)(3), 2925.23(F)(2) of the

Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

(A) Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby imposes a monetary penalty of two thousand five hundred dollars (\$2,500) on Steven Jeffrey Huffman 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.

(B) Steven Jeffrey Huffman must obtain, within one (1) year from the effective date of this Order, six (0.6 CEUs) of approved continuing pharmacy education. Three (0.3 CEUs) must be in law and three (0.3 CEUs) in ethics, which may not be used for license renewal.

(C) Steven Jeffrey Huffman shall not fill prescriptions for self or family members.

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

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

SO ORDERED.

The Board recessed briefly

10:23 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 **Jeffrey Paul Poploski, R.Ph.**, Sagamore Hills, Ohio.

11:18 a.m. The hearing ended and the record was closed.

Mr. Weaver 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. Ferris and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

11:38 a.m. The recess ended and the hearing was opened to the public.

R-2015-241 After votes were taken in public session, the Board adopted the following order in the matter of **Jeffrey Paul Poploski, R.Ph.**, Sagamore Hills, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2014-1891)

In The Matter Of:

Jeffrey Poploski, R.Ph.
544 Continental Drive
Sagamore Hills, Ohio 44067
(License No. 03-1-25741)

INTRODUCTION

The Matter of Jeffrey Poploski came for hearing on February 3, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Jeffrey Poploski was represented by Roberty J Garrity. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

None

Respondent's Witnesses:

1. Jeffrey Poploski, R.Ph., Respondent

State's Exhibits:

1. Summary Suspension/ Notice of Opportunity for Hearing 09-25-14
1A-1C. Procedurals
2. Sagamore Hills Incident/Offense Report 09-16-14
#20-14272 RE: Attempted Suicide-Jeffrey Poploski
3. Statement of Jamie Whited, R.Ph. 09-17-14
4. Macedonia Incident/Offense Report 10-15-14
5. Voluntary Statement of Jeffrey Poploski 11-10-14
6. Notarized Statement of Jeffrey Poploski 01-09-15

7. Photocopy of 3 bottles of Oxycodone Hydrochloride
 Tablets, USP, 15mg Tablets, NDC 10702-008-01

Respondent's Exhibits:

- | | | |
|----|---|---------------------------|
| A. | Current Pro Contract & UDS Results | 09-16-14 |
| B. | Chemical Dependency Treatment Documentation | 10-29-14 |
| C. | 12 Step Meeting Attendance | 10-06-14 through 02-01-15 |
| D. | Restitution | 12-08-14 |
| E. | Resumé | No Date |
| F. | Letters of Support | Various Dates |

FINDINGS OF FACT

The State of Ohio and Respondent, by and through counsel, stipulate to the following Findings of Fact, which are accepted and adopted by the Board:

(1) Records of the Board of Pharmacy indicate that Jeffrey Poploski was originally licensed in the State of Ohio on August 12, 2003 pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that during the relevant time period stated herein, Jeffrey Poploski was the Responsible Pharmacist at Walgreen's #07719.

(2) At the time of the Summary Suspension dated September 25, 2014, the continuation of Jeffrey Poploski's professional practice presented a danger of immediate and serious harm to others, to wit: Jeffrey Poploski was impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Jeffrey Poploski did, on or about September 16, 2014, ingest three-hundred oxycodone IR 15mg tablets, which he stole from the pharmacy where he worked, in an attempt to commit suicide. Jeffrey Poploski subsequently was transported to Sagamore Hills Medical Center where he was treated for this apparent overdose. At that time he remained under the care of physicians and was reported suffering from very violent outbursts and hallucinations. Jeffrey Poploski acknowledged before the Board he is an alcoholic, which also lead to abuse of controlled substances.

(3) Jeffrey Poploski did, on or about September 16, 2014, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Walgreens #07719, beyond the express or implied consent of the owner, to wit: he stole six manufacturer bottles of oxycodone IR 15 mg during his shift while practicing pharmacy.

CONCLUSIONS OF LAW

The State of Ohio and respondent, by and through counsel, stipulate to the following Conclusions of Law, which are accepted and adopted by the Board:

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

(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 (3) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Jeffrey Poploski on September 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. 03-1-25741, held by Jeffrey Poploski and such suspension is effective as of the date of the mailing of this Order.

(A) Jeffrey Poploski, 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) Jeffrey Poploski, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after October 1, 2015, the Board will consider any petition filed by Jeffrey Poploski 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) Jeffrey Poploski must maintain and abide by current contract, signed November 5, 2014, with the Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider.

(B) Jeffrey Poploski 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) Jeffrey Poploski must obtain, within thirty (30) days prior to his reinstatement hearing, 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.

(D) Jeffrey Poploski must provide, at the reinstatement petition hearing, documentation of the following:

(1) Compliance with psychiatric treatment plan.

(2) Compliance with the current contract (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.);

(3) 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;

(4) 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.

Ms. Yarosh moved for Action of the Board; Mr. Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

SO ORDERED.

The Board recessed briefly

11:46 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 **Melissa Sue Dunham, R.Ph.**, Wheelersburg, Ohio.

12:55 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. Kolezynski and a roll-call vote was conducted by President Moné as follows: Cain – yes; Ferris – yes; Huwer – yes; Kolezynski –yes; Weaver – yes and Yarosh – yes.

1:28 p.m. The recess ended and the hearing was opened to the public.

R-2015-242 After votes were taken in public session, the Board adopted the following order in the matter of **Melissa Sue Dunham, R.Ph.**, Wheelersburg, Ohio.

ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2014-1773)

In The Matter Of:

Melissa Sue Dunham, R.Ph.

801 Central Avenue
Wheelersburg, Ohio 45694
(License No. 03-2-28191)

INTRODUCTION

The Matter of Melissa Sue Dunham came for hearing on February 4, 2015, before the following members of the Board: Michael A. Moné, R.Ph.; (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Margaret A. Huwer, R.Ph.; Richard F. Kolezynski, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

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

Melissa Sue Dunham was represented by Christopher Connor. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

None

Respondent's Witnesses:

1. Melissa Sue Dunham, R.Ph., Respondent
2. Greg Dunham, Respondent's Father

State's Exhibits:

- | | | |
|-------|--|----------|
| 1. | Summary Suspension/Notice of Opportunity for Hearing | 08-08-14 |
| 1A-E. | Procedurals | |
| 2. | Urine Screen Result RE: Melissa Dunham | 07-28-14 |
| 3. | Copy of RX#4509356-01600590 and RX#2241169-01600590 | 07-28-14 |
| 4. | Copy of RX#2241010-01600590 | 07-28-14 |
| 5. | Copy of RX#4509357-01600590 | 07-28-14 |
| 6. | Kroger Pharmacy Daily Reporting Log | 07-28-14 |
| 7. | Notarized Statement of Melissa Dunham | 08-05-14 |

Respondent's Exhibits:

- | | | |
|----|--|---------------------------|
| A. | Pro Contract | 09-16-14 |
| B. | Dublin Springs Partial Hospitalization Program
Completion Statement | 08-29-14 |
| C. | Dublin Springs Intensive Outpatient Program
Completion Statement | No Date |
| D. | Random Urine Screens: First Lab Report | 01-20-15 |
| E. | Meeting Attendance Sheets | 09-16-14 through 01-29-15 |
| F. | Meeting Attendance Calendar | 09-16-14 through 01-29-15 |
| G. | Letters of Support | Various Dates |

FINDINGS OF FACT

The State of Ohio and Respondent, by and through counsel, stipulate to the following Findings of Fact, which are accepted and adopted by the Board:

- (1) Records of the Board of Pharmacy indicate that Melissa Sue Dunham was originally licensed in the State of Ohio on August 17, 2007, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) On or about July 31, 2014, Melissa Sue Dunham tested positive for the presence of cocaine, a controlled substance, in her bodily fluids without a valid prescription or legitimate medical reason. Melissa Sue Dunham has admitted to Board Agents that she ingested cocaine recreationally on or around July 26, 2014 and that she has used this substance on various occasions in the past. Further,

Melissa Sue Dunham practiced pharmacy as a registered pharmacist with this substance in her system.

CONCLUSIONS OF LAW

The State of Ohio and respondent, by and through counsel, stipulate to the following Conclusions of Law, which are accepted and adopted by the Board:

(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 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 her unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Melissa Sue Dunham on August 8, 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. 03-2-28191, held by Melissa Sue Dunham and such suspension is effective as of the date of the mailing of this Order.

(A) Melissa Sue Dunham, 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) Melissa Sue Dunham, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after August 1, 2016, the Board will consider any petition filed by Melissa Sue Dunham 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) Melissa Sue Dunham 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 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 five (5) separate days 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) Melissa Sue Dunham must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.

(C) Melissa Sue Dunham must continue psychological counseling during the duration of her Board Order.

(D) Respondent 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, included but not limited to, proof of continued psychological counseling.

(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.

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

SO ORDERED.

R-2015-243 Mr. Kolezynski moved that the Board Minutes of January 5-7, 2015, be approved as amended. The motion was seconded by Mr. Yarosh and approved by the Board:
Aye – 6.

R-2015-244 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. 2013-2087)

In the Matter of:

Village Fertility Pharmacy
c/o Stuart P. Levine, R.Ph.
335 Bear Hill Road
Waltham, MA 02451

(Terminal Distributor Number 02-2331350)

This Settlement Agreement is entered into by and between Village Fertility Pharmacy 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.

Village Fertility Pharmacy 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. Village Fertility Pharmacy 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, Village Fertility is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about June 25, 2014, pursuant to Chapter 119. of the Ohio Revised Code, Village Fertility 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 and continued by the Board. The June 25, 2014, Notice of Opportunity for Hearing contains the following allegations or charges:

(1) Records of the Board of Pharmacy indicate that Village Fertility Pharmacy is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Stuart P. Levine is the Responsible Pharmacist pursuant to Rule 4729-17-02 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) Village Fertility Pharmacy ("Village")/Stuart Levine, R.Ph., Responsible Person, has ceased to meet the qualifications for licensure as a terminal distributor of dangerous drugs, to wit: Village answered "yes" to the legal question on its TDDD renewal application that asks: "within the past 18 months has the responsible person or owner(s), or any agent employee of the responsible person/owner(s), or any officer of the corporation been the subject of a disciplinary action by any state or federal agency?" A background investigation into Village's "yes" answer revealed that the pharmacy had been disciplined by the Massachusetts Board of Pharmacy ("MA Board") in August of 2013. Specifically, on or around August 20, 2013, Village entered into a Consent Agreement for Probation with the MA Board. In the Matter of Village Fertility Pharmacy, PHA 2013-0020, Massachusetts Board of Registration in Pharmacy, Consent Agreement for Probation, August 20, 2013. The facts that form the basis of the

disciplinary action against Village include deficiencies pertaining to compounding of sterile medications, including violations of the United State Pharmacopoeia (USP) Chapter <797>, and the fact that Village was shipping medications into states where it was not licensed. The MA Board issued a Cease and Desist and Quarantine Notice against Village on February 20, 2013, and a nationwide recall was issued for affected lots of a sterile compounded product. In the Matter of Village Fertility Pharmacy, PHA 2013-0020, Massachusetts Board of Registration in Pharmacy, Cease and Desist and Quarantine Notice, February 20, 2013. Under the Agreement, Village's license was placed on probation for 36 months and the pharmacy agreed to complete a certificate program in sterile compounding.

(3) On or before July 9, 2013, Village Fertility Pharmacy ("Village")/Stuart Levine, R.Ph., Responsible Person, dispensed dangerous drugs into Ohio without an Ohio license in violation of Section 4729.51 of the Revised Code, to wit: Village was not licensed in Ohio as a terminal distributor of dangerous drugs until July 9, 2013, however, Village's dispensing records for 2011 show that prescriptions were dispensed into Ohio, including compounded medications that were involved in a recall, prior to July 9, 2013.

(4) On or before July 9, 2013, Village Fertility Pharmacy ("Village")/Stuart Levine, R.Ph., Responsible Person, dispensed dangerous drugs into Ohio without an Ohio license in violation of Section 4729.51 of the Revised Code, to wit: Village was not licensed in Ohio as a terminal distributor of dangerous drugs until July 9, 2013, however, Village's dispensing records for 2012 show that prescriptions were dispensed into Ohio, including compounded medications that were involved in a recall, prior to July 9, 2013.

(5) On or before July 9, 2013, Village Fertility Pharmacy ("Village")/Stuart Levine, R.Ph., Responsible Person, dispensed dangerous drugs into Ohio without an Ohio license in violation of Section 4729.51, to wit: Village was not licensed in Ohio as a terminal distributor of dangerous drugs until July 9, 2013, however, Village's dispensing records for 2013 show that prescriptions were dispensed into Ohio, including compounded medications that were involved in a recall, prior to July 9, 2013.

For these reasons, the State Board of Pharmacy will determine whether to take action pursuant to Section 4729.57 of the Ohio Revised Code.

Village Fertility Pharmacy neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated June 25, 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, Village Fertility Pharmacy knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Village Fertility Pharmacy agrees to the imposition of a monetary penalty of five-thousand dollars (\$5,000.00) 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) Village Fertility Pharmacy agrees to pay for the flight, hotel and car rental expenses, if necessary, for an Ohio State Board of Pharmacy compliance agent/specialist in order to conduct an inspection of the licensed site. The inspection will be conducted within one hundred and twenty (120) days from the signed and effective agreement.

Village Fertility Pharmacy 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.

Village Fertility Pharmacy 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. Village Fertility Pharmacy waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

R-2015-245 After discussion Ms. Ferris moved that the adoption of the Rules packet for 4729-01 and 4729-2-02 be approved as amended for JCARR. The motion was seconded by Ms. Yarosh and approved by the Board: Aye – 6.

3:04 p.m. Mr. Schierholt led a discussion regarding Sunrise Treatment Center.

R-2015-246 Mr. Kolezynski moved that the Board receive Per Diem as follows:

PER DIEM	2/2	2/3	2/4	Total
Cain	1	1	1	3
Ferris	1	1	1	3
Huwer	1	1	1	3
Kolezynski	1	1	1	3
Marchal	0	0	0	0
Moné	1	1	1	3
Weaver	1	1	1	3
Yarosh	1	1	1	3

Mr. Weaver seconded the motion and it was approved by the Board: Aye – 6.

R-2015-247 Mr. Cain moved that the meeting be adjourned. The motion was seconded by Ms. Huwer and approved by the Board: Aye – 6.



Michael A. Moné, R.Ph., President Date: 3/4/2015



Steven W. Schierholt, Esq., Executive Director Date: 3/4/15