

NOTE: This order was stayed by the court on June 19, 2000.

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-991007-025)

In The Matter Of:

KINSMAN PHARMACY, INC.
c/o Robert C. Sutton, R.Ph.
6416 Kinsman Nickerson Road
Kinsman, Ohio 44428
(Terminal Distributor No. 02-0104350)

INTRODUCTION

THE MATTER OF KINSMAN PHARMACY, INC. CAME TO HEARING ON MAY 2 AND 3, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

KINSMAN PHARMACY, INC. WAS REPRESENTED BY EMMOR F. SNYDER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit RS1--Copy of sixteen-page Notice of Opportunity for Hearing letter of Robert C. Sutton dated October 7, 1999.
- (2) Exhibit DS1--Copy of twelve-page Notice of Opportunity for Hearing letter of Donald Robert Sutton dated October 7, 1999.
- (3) Exhibit KP1--Copy of fifteen-page Notice of Opportunity for Hearing letter of Kinsman Pharmacy, Inc. dated October 7, 1999.

- (4) Exhibit 1A--Hearing request letter in the matters of Kinsman Pharmacy, Inc., Robert C. Sutton, and Donald R. Sutton dated October 25, 1999.
- (5) Exhibit 1B--Copy of Hearing Schedule letter in the matter of Robert C. Sutton dated October 28, 1999; copy of Hearing Schedule letter in the matter of Donald Robert Sutton dated October 28, 1999; and copy of Hearing Schedule letter in the matter of Kinsman Pharmacy, Inc. dated October 28, 1999.
- (6) Exhibit 1C--Copy of Hearing Schedule letter in the matters of Kinsman Pharmacy, Inc., Robert C. Sutton, and Donald R. Sutton dated January 14, 2000.
- (7) Exhibit RS1D--Copy of Pharmacist File Front Sheet of Robert Carter Sutton, Jr. showing original date of registration as August 4, 1952; and two-page copy of Renewal Application for Pharmacist License No. 03-3-05272 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of Robert C. Sutton dated July 14, 1999.
- (8) Exhibit DS1D--Copy of Pharmacist File Front Sheet of Donald Robert Sutton showing original date of registration as August 8, 1979; and two-page copy of Renewal Application for Pharmacist License No. 03-3-12930 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of Donald Robert Sutton dated July 14, 1999.
- (9) Exhibit KP1D--Copy of Renewal Application for DDD License No. 02-0104350 for a terminal distributor of dangerous drugs license from January 1, 1999, to December 31, 1999, of Kinsman Pharmacy, Inc. dated October 21, 1998.
- (10) Exhibit 2--Eight-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated May 2, 1994; and six-page copy of response to inspection report violations signed by Donald Sutton, not dated.
- (11) Exhibit 2A--Eleven-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated May 21, 1996; and copy of eleven-page inspection report with handwritten responses to violations, not signed or dated; copy of prescriptions numbered 408064 and 408065; and copy of handwritten notes on Opryland Hotel letterhead regarding Kinsman Pharmacy patients.
- (12) Exhibit 2B--Handwritten Class II Inventory of Kinsman Pharmacy dated May, 1996; and four-page handwritten Controlled Substance Inventory (Class III-V) of Kinsman Pharmacy dated April 23, 1996.
- (13) Exhibit 3--Nine prescriptions numbered as follows: 408867, 408054, 408052, 409831, 410935, 409975 and 409976, 414249, 409834, and 408855.
- (14) Exhibit 4--Seven prescriptions numbered as follows: 430504, 430090, 425366, 427829, 426383, 425369, and 427036.
- (15) Exhibit 5--Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated February 27, 1996.
- (16) Exhibit 6--Copy of letter from Timothy J. Benedict dated January 22, 1996.
- (17) Exhibit 7--Copy of two-page letter from Donald R. Sutton dated February 28, 1996.
- (18) Exhibit 8--Copy of Kinsman Township Police Department Incident Report, No. 96-141, dated February 28, 1996.
- (19) Exhibit 9--Copy of Kinsman Township Police Department Voluntary Statement of Donald Sutton dated March 5, 1996.
- (20) Exhibit 10--Copy of Kinsman Township Police Department Voluntary Statement of Bonnie Mae Hogan dated March 5, 1996.

- (21) Exhibit 11--Copy of two-page Kinsman Township Police Department Voluntary Statement of Susan Kidd dated February 29, 1996.
- (22) Exhibit 12--Copy of letter from Richard G. Ward, Inspector General, dated May 6, 1996.
- (23) Exhibit 13--Twenty-three-page Transcript of conversations during a tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Agent Lynn Mudra, Agent Frank Bodi, and Agent Supervisor Robert Cole, and Kinsman Pharmacy personnel conducted on February 27, 1996.
- (24) Exhibit 14--Copy of Kinsman Pharmacy Invoice for Investigation Consultation dated March 5, 1996.
- (25) Exhibit 15--Prescription number 431743; empty Revco prescription vial number 0305-305757 dated May 7, 1996; Kinsman Pharmacy Prescription Profile detailed report of Chong Hegedus for the time period of January 1, 1996, to May 21, 1996, dated May 21, 1996; and handwritten notes regarding prescriptions numbered 431743 and 0305-305757.
- (26) Exhibit 16--Seventy-two-page Transcript of conversations during tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Agent David Gallagher, Agent Christopher Reed, Agent Jim Reye, and pharmacy staff conducted on May 21, 1996.
- (27) Exhibit 17--Prescription number 429081.
- (28) Exhibit 18--Prescription number 429082.
- (29) Exhibit 19--Thirteen-page Kinsman Pharmacy Prescription Profile detailed report of Robert Floch for the time period from January 1, 1994, to December 31, 1996, dated June 11, 1997.
- (30) Exhibit 20--Seven-page Kinsman Pharmacy Prescription Profile detailed report of Catherine T. Floch for the time period of January 1, 1993, to May 21, 1996, dated May 29, 1996.
- (31) Exhibit 21--Two sealed bottles labeled Up Your Gas containing 30 tablets each.
- (32) Exhibit 22--Duplicate Main Discount Drug prescription labels numbered 130966 and 130967 dated November 1, 1996, and handwritten notes of George Pavlich, not dated.
- (33) Exhibit 23--Two Kinsman Pharmacy prescription vials: number 435675 containing 80 tablets of Propoxyphene-N 100mg/APAP 650mg dated November 25, 1996, and number 435676 containing 60 tablets of Cyclobenzaprine 10mg dated November 25, 1996, in a white bag displaying patient pay labels from prescriptions numbered 435675 and 435676 dated November 25, 1996.
- (34) Exhibit 24--Prescription number 435675.
- (35) Exhibit 25--Prescription number 435676.
- (36) Exhibit 26--Two Kinsman Pharmacy Prescription Profile reports, one detailed and one abbreviated, of Samuel P. Vacanti for the time period of June 1, 1996, to March 10, 1997, dated March 10, 1997.
- (37) Exhibit 27--Copy of Blue Cross/Blue Shield of Ohio Insurance Card of Samuel P. Vacanti with attached instructions dated November 1, 1992.
- (38) Exhibit 28--Overholt's Pharmacy duplicate labels for prescriptions numbered 389931 and 389932 dated November 14, 1996.
- (39) Exhibit 29--Prescription number 435894 and handwritten note regarding prescription number 435893.

- (40) Exhibit 30--Two Kinsman Pharmacy prescription vials: number 435893 containing 45 tablets of Carisoprodol 350mg dated December 5, 1996, and number 435894 containing 60 tablets of Propoxyphene-N 100mg/APAP 650mg dated December 5, 1996, and a white bag displaying a Kinsman Pharmacy label and patient pay labels for prescriptions numbered 435893 and 435894 dated December 5, 1996.
- (41) Exhibit 31--Two Kinsman Pharmacy Prescription Profile reports, one detailed and one abbreviated, of James R. Martin for the time period of June 1, 1996, to March 10, 1997, dated March 10, 1997.
- (42) Exhibit 32--Copy of Blue Cross/Blue Shield of Ohio Insurance Card of James R. Martin with attached instructions dated November 1, 1992.
- (43) Exhibit 33--Four Kinsman Pharmacy prescription vials: two numbered 435893 containing 90 tablets each of Carisoprodol 350mg dated December 27, 1996, and two numbered 435894 containing 120 tablets each of Propoxyphene-N 100mg/APAP 650mg dated December 27, 1996, and a white bag displaying a Kinsman Pharmacy label and patient pay labels for prescriptions numbered 435893 and 435894 dated December 27, 1996 in evidence bag, Case No. NL-0062, dated December 27, 1996.
- (44) Exhibit 34--Eighteen-page Transcript of conversations during tape-recorded investigation at Kinsman Pharmacy of Agent George Pavlich, Tom Malone, and pharmacy staff conducted on March 10, 1997.
- (45) Exhibit 35--Two Kinsman Pharmacy prescription vials: number 435675 containing 80 tablets of Propoxyphene-N 100mg/APAP 650mg dated January 2, 1997, and number 435676 containing 60 tablets of Cyclobenzaprine 10mg dated January 2, 1997, in a Kinsman Pharmacy white bag displaying patient pay labels from prescriptions numbered 435675 and 435676 dated January 2, 1997.
- (46) Exhibit 36--Four prescriptions numbered as follows: 426170, 426171, 426172, and 428648.
- (47) Exhibit 37--Eleven-page Kinsman Pharmacy Prescription Profile detailed report of Grace Banning for the time period of January 1, 1993, to May 21, 1996, dated May 29, 1996.
- (48) Exhibit 38--Pages 88, 89, and 90 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert Waite, D.O. signed and notarized on September 11, 1997.
- (49) Exhibit 39--Three prescriptions numbered 427721, 424559, and 428182.
- (50) Exhibit 40--Thirteen-page Kinsman Pharmacy Prescription Profile detailed report of Katherine Draa for the time period of January 1, 1993, to May 21, 1996, report dated May 21, 1996.
- (51) Exhibit 41--Pages 3 and 4 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert Waite, D.O. signed and notarized on September 11, 1997.
- (52) Exhibit 42--Four-page Inspector Copy of Dangerous Drug Distributor Inspection Report of Kinsman Pharmacy, Inc., Terminal Distributor No. 02-104350, dated June 11, 1997.
- (53) Exhibit 43--Eight-page Kinsman Pharmacy Prescription Profile detailed report of Barry Savel for the time period of January 1, 1993, to May 21, 1996, report dated May 21, 1996.
- (54) Exhibit 44--Twenty-one prescriptions numbered as follows: 416356, 417130, 417789, 418415, 419084, 419813, 420428, 421185, 421906, 422596, 423330, 424018, 424632, 425179, 425761, 426278, 426848, 427613, 428129, 429233, and 430267.

- (55) Exhibit 45--Five-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, by Agent George Pavlich dated July 6, 1999.
- (56) Exhibit 46--Eight-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of R. Denison Stewart, M.D. signed and notarized on September 23, 1997.
- (57) Exhibit 47--Three prescriptions numbered as follows: 422627, 427511, and 430360.
- (58) Exhibit 48--Pages 108, 109, and 110 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Mary E. Magyar, Office Manager for Gary W. Stucke, D.O. signed and notarized on September 11, 1997.
- (59) Exhibit 49--Two prescriptions numbered as follows: 417124 and 427086.
- (60) Exhibit 50--Pages 111 and 112 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Bridget Donnelly, Office Manager for E. Lee Foster, D.O. signed and notarized on September 11, 1997.
- (61) Exhibit 51--Two prescriptions numbered as follows: 424156 and 430728.
- (62) Exhibit 52--Pages 113 and 114 of Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Mary E. Magyar, Office Manager of Dr. Gary W. Stucke signed and notarized on September 11, 1997.
- (63) Exhibit 53--Nine prescriptions numbered as follows: 411310, 412337, 413829, 416030, 420557, 421862, 422625, 426186, and 428575.
- (64) Exhibit 54--Nineteen-page Kinsman Pharmacy Prescription Profile detailed report of Margaret Goist for the time period of January 1, 1993, to May 21, 1996, dated May 21, 1996.
- (65) Exhibit 55--Four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Bridget Donnelly, Office Manager for D. Lee Foster, D.O. signed and notarized on September 11, 1997.
- (66) Exhibit 56--Four prescriptions numbered as follows: 421578, 426710, 426139, and 426809.
- (67) Exhibit 57--Ten-page Kinsman Pharmacy Prescription Profile detailed report of Betty Logan for the time period of January 1, 1993, to May 21, 1996, dated May 28, 1996.
- (68) Exhibit 58--Three-page Ohio State Board of Pharmacy Report of Investigation, Case No. 96-1222, Statement of Robert M. Waite, D.O. signed and notarized on September 11, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Dale E. Goist dated March 17, 2000.
- (2) Exhibit B--Copy of two-page letter from Barry Savel dated March 25, 2000.
- (3) Exhibit C--Copy of two-page record of prescriptions for Margaret Goist from E. Lee Foster, D.O. dated January 17, 2000.
- (4) Exhibit D--Copy of letter from Robert Floch and Catherine Floch dated February 15, 2000.
- (5) Exhibit E--Copy of letter from Jeffrey A. Bedlion, M.D. dated January 18, 2000.
- (6) Exhibit F--Copy of letter from Rev. Dr. John F. Helgeson dated January 14, 2000.
- (7) Exhibit G--Copy of letter from Timothy D. Compan, not dated.
- (8) Exhibit H--Copy of letter from Robert M. Waite, D.O. dated January 9, 2000.
- (9) Exhibit I--Copy of letter from Brad Smith, Pastor dated February 15, 2000.
- (10) Exhibit J--Copy of letter from Margery Hine dated February 17, 2000.

- (11) Exhibit K--Copy of letter from Police Chief Leroy Long dated February 28, 2000.
- (12) Exhibit L--Copy of diagram of Kinsman Pharmacy prescription room and location of seven people within that room.
- (13) Exhibit M--Copy of two-page Response to the Ohio State Board of Pharmacy from Donald R. Sutton, not dated.
- (14) Exhibit N--Copy of three-page Response to the Ohio State Board of Pharmacy from Robert C. Sutton, not dated.

FINDINGS OF FACT

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

- (1) Records of the State Board of Pharmacy indicate that Robert C. Sutton is the Responsible Pharmacist at Kinsman Pharmacy, Inc. pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Kinsman Pharmacy, Inc. did, on or before May 2, 1994, fail to provide personal supervision of the dangerous drugs, to wit: Susan Kidd possessed a key to the non-barricaded pharmacy. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code and not in accordance with Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (3) Kinsman Pharmacy, Inc. did, on or before May 2, 1994, fail to properly execute controlled substance order forms, i.e. D.E.A. 222 forms, to wit: when drugs were received by Kinsman Pharmacy, Inc. pursuant to D.E.A. 222 forms, the forms were not completed as to the amount of controlled substances received nor the date received. Such conduct is in violation of Rule 4729-9-14 of the Ohio Administrative Code, Section 3719.07 of the Ohio Revised Code, and Section 1305.06 of the Code of Federal Regulations.
- (4) Kinsman Pharmacy, Inc. did, on or before May 2, 1994, fail to keep a complete and accurate record of all controlled substances, to wit: Kinsman Pharmacy, Inc. inventories for Schedules III, IV, and V controlled substances had no accountability, opening and closing inventories did not indicate the date and/or the name of the person conducting the inventory. Such conduct is not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Sections 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code.
- (5) Kinsman Pharmacy, Inc. did, on or before May 21, 1996, fail to keep a complete and accurate record of all controlled substances, to wit: after being warned by Board agents on May 2, 1994, Kinsman Pharmacy, Inc. failed to properly prepare biennial inventories for Schedule II controlled substances dated May 1996; and, the inventories for Schedules III, IV, and V controlled substances dated April 23, 1996, were incomplete and not in accordance with Rules 4729-5-11 and 4729-9-14 of the Ohio Administrative Code, Sections 1304.11 through 1304.13 of the Code of Federal Regulations, and Section 3719.07 of the Ohio Revised Code.

- (6) Kinsman Pharmacy, Inc. did, on or before May 2, 1994, fail to record required information when dispensing prescriptions, to wit: Kinsman Pharmacy, Inc. failed to record prescription information such as date, dispensing pharmacist, drug dispensed and quantity, the brand or generic manufacturer of the drug dispensed, or the manual initials of the dispensing pharmacist. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Sections 3719.05 and 4729.38 of the Ohio Revised Code.
- (7) Kinsman Pharmacy, Inc. did, prior to May 2, 1994, fail to keep accurate records of all exempt drugs including hypodermics dispensed, to wit: Kinsman Pharmacy, Inc. failed to keep a record of each transaction, including the date, the type and quantity of articles furnished, and the name, address, and signature of the person to whom the articles were furnished. Such conduct is in violation of Sections 3719.15, 3719.16, and 3719.172 of the Ohio Revised Code.
- (8) Kinsman Pharmacy, Inc. did, after being warned by Board agents on May 2, 1994, fail to record required information when dispensing prescriptions, to wit: Kinsman Pharmacy, Inc. failed to record, either manually or in the computer system, the brand or generic manufacturer, and pharmacists were not manually initialing the original prescriptions. Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code (as was in effect during said time period), and Sections 3719.05 and 4729.38 of the Ohio Revised Code.
- (9) Kinsman Pharmacy, Inc. did, on or about February 27, 1996, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, hamper or impede a public official in the performance of his lawful duties, to wit: Kinsman Pharmacy, Inc. failed to provide previously requested documents during an inspection, and due to confrontation, employees of the State Board of Pharmacy were unable to complete the inspection. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period), and Sections 2921.31 and 3719.27 of the Ohio Revised Code.
- (10) Kinsman Pharmacy, Inc. did, on or about May 9, 1996, utter a false or forged prescription for dangerous drugs, to wit: Kinsman Pharmacy, Inc. filled prescription number 431743 for four unit doses of Flagyl 500mg which was originally dispensed at Revco #305 when there had been no transfer. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period).
- (11) Kinsman Pharmacy, Inc. did, on or before May 21, 1996, allow a registered pharmacist to practice pharmacy without a photograph attached to his current identification card, to wit: after being warned on May 2, 1994, for not carrying his identification card on his person, Robert C. Sutton was found practicing pharmacy without a photo attached to his identification card. Such conduct is in violation of Rule 4729-5-02 of the Ohio Administrative Code (as was in effect during said time period).

- (12) Kinsman Pharmacy, Inc. did, on or before May 21, 1996, fail to keep complete and accurate records in its automated data system, to wit: prescriptions numbered 429082 and 429081, written for Patient #3, were located in the profile for Patient #4 and the original prescriptions for Patient #3 were affixed with computer labels for Patient #4. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code (as was in effect during said time period).
- (13) Kinsman Pharmacy, Inc. did, on or about May 21, 1996, fail to maintain personal supervision over the dangerous drug stock to prevent theft or diversion, to wit: Kinsman Pharmacy, Inc. possessed stock bottles of Up Your Gas, containing Ephedrine (Ma Huang), outside the confines of Kinsman Pharmacy, Inc. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code (as was in effect during said time period).
- (14) Kinsman Pharmacy, Inc. did, on or about November 25, 1996, fail to file a copy of the original prescriptions in accordance with the rules and regulations adopted by the State Board of Pharmacy, to wit: Kinsman Pharmacy, Inc. filled prescriptions numbered 435675 and 435676, using the information on empty vials which originated from Main Discount Drug, when there had been no legitimate transfer. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (15) Kinsman Pharmacy, Inc. did, on or about November 25, 1996, fail to record required information when dispensing prescriptions, to wit: Kinsman Pharmacy, Inc. failed to record prescription information pursuant to transferred prescriptions numbered 435675 and 435676 such as full name and address of patient, date of issuance, date of dispensing, pharmacist from which the prescription was transferred, and original number of refills. Such conduct is in violation of Rules 4729-5-17, 4729-5-24, and 4729-5-30 of the Ohio Administrative Code.
- (16) Kinsman Pharmacy, Inc. did, on or about November 25, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435675 and 435676, Kinsman Pharmacy, Inc. failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Kinsman Pharmacy, Inc. failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (17) Kinsman Pharmacy, Inc. did, on or about November 25, 1996, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Kinsman Pharmacy, Inc. over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, charging brand-name co-pays when dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code.

- (18) Kinsman Pharmacy, Inc. did, on or about December 5, 1996, intentionally make and/or knowingly possess a false or forged prescription, to wit: Kinsman Pharmacy, Inc. dispensed medications pursuant to prescriptions numbered 435893 and 435894 by allowing an extra refill upon transfer from Overholt Pharmacy. Such conduct is in violation of Rule 4729-5-24 of the Ohio Administrative Code and Section 2925.23 of the Ohio Revised Code.
- (19) Kinsman Pharmacy, Inc. did, on or about December 5, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Kinsman Pharmacy, Inc. failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Kinsman Pharmacy, Inc. failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (20) Kinsman Pharmacy, Inc. did, on or about December 27, 1996, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Kinsman Pharmacy, Inc. failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Kinsman Pharmacy, Inc. failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (21) Kinsman Pharmacy, Inc. did, on or about December 27, 1996, fail to record name and/or initials of the dispensing pharmacist on the alternate recordkeeping system, to wit: when dispensing medication pursuant to prescriptions numbered 435893 and 435894, Robert C. Sutton used the computer initials of Donald R. Sutton. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code.
- (22) Kinsman Pharmacy, Inc. did, on or about March 10, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Kinsman Pharmacy, Inc. was unable to locate prescription number 435893 dated December 5, 1996. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-5-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (23) Kinsman Pharmacy, Inc. did, on or about January 2, 1997, fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medication pursuant to prescriptions numbered 435675 and 435676, Kinsman Pharmacy, Inc. failed to review the original prescriptions for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and Kinsman Pharmacy, Inc. failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (24) Kinsman Pharmacy, Inc. did, on or about January 2, 1997, with purpose to deprive, knowingly obtain or exert control over the property of another by deception, to wit: Kinsman Pharmacy over-charged the patient \$4.00, pursuant to prescriptions numbered 435675 and 435676, by charging brand-name co-pays when dispensing generic medications. Such conduct is in violation of Sections 2913.02 and 4729.38 of the Ohio Revised Code.

- (25) Kinsman Pharmacy, Inc. did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Kinsman Pharmacy, Inc. created the following prescription refills for Patient #1, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time period).

- (26) Kinsman Pharmacy, Inc. did, on or about the following dates, sell at retail dangerous drugs, to wit: Kinsman Pharmacy, Inc. sold the following dangerous drugs to Patient #1 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/24/95	426170	Tegretol 200mg	30	DRS
12/26/95	426170	Tegretol 200mg	30	DRS
01/27/96	426170	Tegretol 200mg	30	DRS
02/26/96	426170	Tegretol 200mg	30	DRS
03/23/96	426170	Tegretol 200mg	30	DRS
11/24/95	426171	Calan SR 240mg	30	DRS
12/26/95	426171	Calan SR 240mg	30	DRS
01/27/96	426171	Calan SR 240mg	30	DRS
02/26/96	426171	Calan SR 240mg	30	DRS
03/23/96	426171	Calan SR 240mg	30	DRS
12/26/95	426172	Prinivil 10mg	30	DRS
01/27/96	426172	Prinivil 10mg	30	DRS
02/26/96	426172	Prinivil 10mg	30	DRS
03/23/96	426172	Prinivil 10mg	30	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (27) Kinsman Pharmacy, Inc. did, on or about February 26, 1996, and March 23, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion, Kinsman Pharmacy, Inc. created prescription refills for Patient #1 pursuant to prescription number 428648, written for 30 unit doses of Tylenol w/Codeine #3, when there had been no valid order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (28) Kinsman Pharmacy, Inc. did, on or about February 26, 1996, and March 23, 1996, sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion, Kinsman Pharmacy sold 30 unit doses of Tylenol w/Codeine #3 pursuant to prescription number 428648 to Patient #1 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code (as was in effect during said time period).
- (29) Kinsman Pharmacy, Inc. did, on or about September 1, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: Kinsman Pharmacy, Inc. created a refill for Patient #7, pursuant to prescription number 424559 written for 30 unit doses of propoxyphene napsylate 100mg/APAP 650mg, when there had been no such order from an authorized prescriber. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (30) Kinsman Pharmacy, Inc. did, on or about September 1, 1995, sell a controlled substance in an amount less than the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Kinsman Pharmacy, Inc. sold 30 unit doses of propoxyphene napsylate 100mg/-APAP 650mg to Patient #7 pursuant to prescription number 424559 without a legitimate purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).
- (31) Kinsman Pharmacy, Inc. did, on or before June 11, 1997, fail to preserve prescriptions on file, subject to inspection by the proper officers of the law, to wit: Kinsman Pharmacy, Inc. was unable to locate prescriptions numbered 410686, 411023, 411162, 411995, 412814, 413731, 414686, 415414, 431182, and 431964. Such conduct is in violation of Rules 4729-5-09, 4729-5-17, and 4729-9-22 of the Ohio Administrative Code and Section 4729.37 of the Ohio Revised Code.
- (32) Kinsman Pharmacy, Inc. did, from June 10, 1993, through May 18, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: throughout this 774-day time period, Kinsman Pharmacy, Inc. dispensed, on 158 occasions, 9,510 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2, when 4,644 unit doses was the maximum amount authorized by a physician. Of those dispensings, 53% were made by Donald R. Sutton, R.Ph. Kinsman Pharmacy, Inc. created refills and/or refilled prescriptions too quickly, over-dispensing 4,866 unit doses. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (33) Kinsman Pharmacy, Inc. did, on or about June 10, 1993, through May 18, 1996, sell a controlled substance in an amount exceeding one hundred times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Kinsman Pharmacy, Inc. sold 4,866 unit doses of Hydrocodone 5mg/APAP 500mg to Patient #2 without authorization by the prescribing physician and without a legitimate purpose. Of these dispensings, 53% were made by Donald R. Sutton, R.Ph. Such conduct is in violation of Chapter 4729-5 of the Ohio Administrative Code and Section 2925.03(A)(10) of the Ohio Revised Code (as was in effect during said time period).
- (34) Kinsman Pharmacy, Inc. did, from July 5, 1995, through May 10, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed occasion Kinsman Pharmacy, Inc. dispensed 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (35) Kinsman Pharmacy, Inc. did, from July 5, 1995, and through May 10, 1996, sell a controlled substance in an amount equal to or exceeding three times the bulk amount, but in an amount less than one hundred times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Kinsman Pharmacy, Inc. sold 100 unit doses of Darvocet N-100 to Patient #3 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/05/95	422627	DRS
12/05/95	427511	DRS
01/22/96	429082	DRS
03/02/96	429082	DRS
04/12/96	430359	RCS
05/10/96	430359	DRS

Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period).

- (36) Kinsman Pharmacy, Inc. did, from July 15, 1994, through June 28, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Kinsman Pharmacy, Inc. dispensed 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (37) Kinsman Pharmacy, Inc. did, from July 15, 1994, through June 28, 1995, sell a controlled substance in an amount less than the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Kinsman Pharmacy, Inc. sold 50 unit doses of Darvocet N-100 to Patient #4 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
07/15/94	417124	RMZ
11/02/95	427086	DRS
02/20/95	427086	DRS
05/25/95	424156	DRS
06/28/95	424156	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).

- (38) Kinsman Pharmacy, Inc. did, from August 8, 1993, through February 27, 1996, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each occasion Kinsman Pharmacy, Inc. dispensed Talacen to Patient #5 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM
04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS

03/16/95	422625	20	DRS
03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS
02/07/96	428575	25	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (39) Kinsman Pharmacy, Inc. did, from August 10, 1993, through February 7, 1996, sell a controlled substance in an amount exceeding the bulk amount but in an amount less than three times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Kinsman Pharmacy, Inc. sold Talacen to Patient #5 without a valid prescription and/or without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Quantity</u>	<u>R.Ph.</u>
08/10/93	411310	25	RCS
08/18/93	411310	25	DRS
01/04/94	413829	25	RCS
02/02/94	413829	25	PJM
04/12/94	416030	25	DRS
04/18/94	416030	25	DRS
11/14/94	420557	30	DRS
11/22/94	420557	30	DRS
12/05/94	420557	30	DRS
12/16/94	420557	30	DRS
12/26/94	420557	30	DRS
01/06/95	420557	30	RMZ
01/16/95	421862	30	DRS
01/24/95	421862	30	DRS
02/01/95	421862	30	RCS
02/09/95	421862	30	RCS
03/16/95	422625	20	DRS
03/25/95	422625	30	RCS
04/07/95	422625	30	WMC
09/14/95	426186	20	RCS
09/23/95	426186	30	RCS
10/02/95	426186	30	DRS
01/27/96	428575	25	DRS
02/07/96	428575	25	DRS

Such conduct is in violation of Chapter 4729-5 of the Ohio Administrative Code and Section 2925.03(A)(7) of the Ohio Revised Code (as was in effect during said time period).

- (40) Kinsman Pharmacy, Inc. did, on or about the following dates, make or utter false or forged prescriptions for dangerous drugs, to wit: Kinsman Pharmacy, Inc. created the following prescription refills for Patient #5, purporting to be legitimate, when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4% cream	1 tube	DRS
02/28/94	412337	Terazol 7 0.4% cream	1 tube	DRS
06/06/94	412337	Terazol 7 0.4% cream	1 tube	DRS

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code (as was in effect during said time periods).

- (41) Kinsman Pharmacy, Inc. did, on or about the following dates, sell at retail dangerous drugs, to wit: Kinsman Pharmacy, Inc. sold the following drugs to Patient #5 pursuant to unauthorized refills:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/10/93	412337	Terazol 7 0.4% cream	1 tube	DRS
02/28/94	412337	Terazol 7 0.4% cream	1 tube	DRS
06/06/94	412337	Terazol 7 0.4% cream	1 tube	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (42) Kinsman Pharmacy, Inc. did, from March 27, 1995, through November 24, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: on each listed occasion Kinsman Pharmacy, Inc. dispensed 30 unit doses of Darvocet N-100 to Patient #6 by creating unauthorized refills pursuant to the following prescriptions:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (43) Kinsman Pharmacy, Inc. did, from March 27, 1995, through November 24, 1995, sell a controlled substance in an amount less than the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: on each occasion Kinsman Pharmacy, Inc. sold 30 unit doses of Darvocet N-100 to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>R.Ph.</u>
03/27/95	421578	DRS
06/08/95	421578	WMC
11/24/95	426710	DRS

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code (as was in effect during said time period).

- (44) Kinsman Pharmacy, Inc. did, on or about November 7, 1995, through May 15, 1996, make or utter false or forged prescriptions for dangerous drugs, to wit: Kinsman Pharmacy, Inc. created the following prescription refills for Patient #6 purporting to be legitimate when there had been no valid order from an authorized prescriber:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

Such conduct is in violation of Section 4729.61(C) [as was in effect at the time of the acts, currently Section 2925.23(A)] of the Ohio Revised Code.

- (45) Kinsman Pharmacy, Inc. did, from on or about November 7, 1995, through May 15, 1996, sell at retail dangerous drugs, to wit: Kinsman Pharmacy, Inc. sold the following dangerous drugs to Patient #6 without a legitimate purpose:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>R.Ph.</u>
11/07/95	426139	Vasotec	30	DRS
12/04/95	426139	Vasotec	30	DRS
05/15/96	426139	Vasotec	30	DRS
12/04/95	426809	Ticlid 250mg	60	DRS
01/10/96	426809	Ticlid 250mg	60	DRS
02/16/96	426809	Ticlid 250mg	60	RCS
04/01/96	426809	Ticlid 250mg	60	DRS
05/15/96	426809	Ticlid 250mg	60	DRS

Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (46) Kinsman Pharmacy, Inc. did, on or about March 10, 1997, knowingly make a false statement in a record required by Chapter 3719. of the Ohio Revised Code, to wit: in order to mislead Compliance Agent George Pavlich during an inspection, Donald R. Sutton, a pharmacist employed by Kinsman Pharmacy, Inc., entered a false address into the patient profile of James R. Martin. Such conduct is in violation of Sections 2925.23(A) and 3719.05 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6), (8), (9), (11) through (16), (18) through (23), (31), (33), and (39) of the Findings of Fact constitute violating a rule of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.

- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (6), (8), (10), (14), (17), (22), (24), (25), (26), (31), (40), (41), (44), and (45) of the Findings of Fact constitute violating provisions of Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) through (9), (18), (27) through (30), (32) through (39), (42), (43), and (46) of the Findings of Fact constitute violating provisions of the federal narcotic law or Chapter 2925. or 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Revised Code as provided in Division (A)(7) of Section 4729.57 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Kinsman Pharmacy, Inc.:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license, No. 02-0104350, held by Kinsman Pharmacy, Inc. effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license, No. 02-0104350, held by Kinsman Pharmacy, Inc. effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license, No. 02-0104350, held by Kinsman Pharmacy, Inc. effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the terminal distributor of dangerous drugs license, No. 02-0104350, held by Kinsman Pharmacy, Inc. effective as of the date of the mailing of this Order.

Division (B)(1) of Section 4729.57 of the Ohio Revised Code requires that, upon the revocation of a license issued to a terminal distributor of dangerous drugs, the distributor shall immediately surrender the license to the Board. The license should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JUNE 14, 2000

NOTE: This order was stayed by the court on June 19, 2000.