



# OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

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TEL: 614/466-4143

E-MAIL: [exec@bop.state.oh.us](mailto:exec@bop.state.oh.us)

FAX: 614/752-4836

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-050719-004)

In The Matter Of:

**STRASBURG PHARMACY**  
c/o Michael Dennis, R.Ph.  
1120 North Wooster Avenue  
Strasburg, Ohio 44680  
(T.D. No. 02-1383200)

### INTRODUCTION

THE MATTER OF STRASBURG PHARMACY CAME FOR HEARING COMMENCING ON NOVEMBER 6, 2006, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JAMES E. TURNER, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

STRASBURG PHARMACY WAS REPRESENTED BY SCOTT P. SANDROCK. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

#### State's Witnesses:

1. David Gallagher, Ohio State Board of Pharmacy
2. Robert B. Kubasak, R.Ph.

#### Respondent's Witnesses:

1. Michael T. Dennis, R.Ph.
2. Chad Kenneth Kanouff

#### State's Exhibits:

- SP-1. Notice of Opportunity For Hearing letter for Strasburg Pharmacy [07-19-05]
- MD-1. Notice of Opportunity For Hearing letter for Michael T. Dennis, R.Ph. [07-19-05]
- AF-1. Notice of Opportunity For Hearing letter for Amy Lynn Froman, R.Ph. [07-19-05]
- SP-1A. Hearing Request letter from Scott P. Sandrock for Strasburg Pharmacy [08-08-05]
- MD-1A. Hearing Request letter from Scott P. Sandrock for Michael T. Dennis, R.Ph. [08-08-05]
- AF-1A. Notice of Appearance of Counsel and Hearing Request letter from Douglas E. Graff for Amy Lynn Froman, R.Ph. [07-27-05]
- SP-1B. Hearing Schedule letter for Strasburg Pharmacy [08-11-05]
- MD-1B. Hearing Schedule letter for Michael T. Dennis, R.Ph. [08-11-05]

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- AF-1B. Hearing Schedule letter for Amy Lynn Froman, R.Ph. [08-01-05]
- SP, MD-1C. Hearing Continuance letter for Strasburg Pharmacy and Michael T. Dennis, R.Ph. [12-28-05]
- AF-1C. Motion for Continuance letter from Douglas E. Graff for Amy Lynn Froman, R.Ph. [12-12-05]
- SP-1D. Hearing Continuance letter for Strasburg Pharmacy [01-12-06]
- MD-1D. Hearing Continuance letter for Michael T. Dennis, R.Ph. [01-12-06]
- AF-1D. Hearing Continuance letter for Amy Lynn Froman, R.Ph. [12-12-05]
- SP, MD-1E. Hearing Continuance Request letter for Strasburg Pharmacy and Michael T. Dennis, R.Ph. [08-31-06]
- AF-1E. Letter from William T. Winsley to Douglas E. Graff [12-28-05]
- SP, MD-1F. Hearing Continuance letter for Strasburg Pharmacy and Michael T. Dennis, R.Ph. [09-06-06]
- AF-1F. Hearing Continuance letter for Amy Lynn Froman, R.Ph. [01-12-06]
- SP-1G. Ohio Dangerous Drug Distributor Computer Record of Strasburg Pharmacy
- MD-1G. Ohio Pharmacist Computer Record of Michael T. Dennis
- AF-1G. Ohio Pharmacist Computer Record of Amy Lynn Froman
- SP, MD-1H. Copy of Subpoenas for Donna (Dana) Coutts, Dr. Edward D. DeHaas, and Bruce Rich [10-27-06]
- AF-1H. Amy Lynn Froman's Revised Request for Issuance of Subpoenas and Subpoenas Duces Tecum [10-30-06]
- AF-1I. Motion to Quash submitted by Sally Ann Steuk, Assistant Attorney General [11-01-06]
- AF-1J. Motion to Quash submitted by Amanda K. Spies, Tuscarawas County Prosecuting Attorney [11-03-06]
- SP, MD-1K. Hearing Continuance letter for Strasburg Pharmacy and Michael T. Dennis, R.Ph. [11-20-06]
- AF-1K. Hearing Continuance letter for Amy Lynn Froman, R.Ph. [11-20-06]
- 2. Copy of Notarized Statement of Ted T. Nussbaum [01-13-04]
- 3. Copy of Notarized Statement of Brad White [01-28-04]
- 4. Copy of Notarized Statement of Janine A. O'Neill [01-29-04]
- 5. Copy of Notarized Statement of Dana I. Coutts [01-29-04]
- 6. Eleven colored photographs [not dated]
- 7. Copy of telephone prescriptions for Lorcet 10/650 mg and Soma 350 mg [not dated]
- 8. Copy of letter from Erin L. Jones, Clinical Director of Professional Pain Management of Ohio, Inc. (PPMO) to Strasburg Pharmacy [02-07-03]
- 9. 4,159 hydrocodone/APAP 10 mg prescriptions issued by PPMO and filled at Strasburg Pharmacy
- 10. 4,125 carisoprodol 350 mg prescriptions issued by PPMO and filled at Strasburg Pharmacy
- 11. Transcript of Interview of Michael Dennis, R.Ph. [12-01-03]
- 12. Transcript of Interview of Amy Froman, R.Ph. [12-04-03]
- 14. Excel Spreadsheet of Round Trip Distances Travel Time For PPMO Patients [not dated]
- 18. Pin Map of Kentucky, West Virginia and Ohio Tri-State Region [not dated]
- 21. Excel Chart of Ohio's 2003 Top 12 Retail Pharmacies Purchasing Hydrocodone/APAP 10 mg Solid Dosage Products [not dated]
- 24. PPMO Price Sheet [not dated]
- 25. Excel Spreadsheet of Strasburg hydrocodone/APAP 10 mg Sales/Purchases [not dated]
- 26. Excel Spreadsheet of Strasburg carisoprodol 350 mg Sales/Purchases [not dated]
- 27. PPMO Price Increase Notice to Customers [not dated]

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28. Dangerous Drug Distributor Inspection Report of Strasburg Pharmacy [12-01-03]; Response [12-16-03]
29. Dangerous Drug Distributor Inspection Report of Strasburg Pharmacy [02-12-04]; Response [02-20-04]
30. Dangerous Drug Distributor Inspection Report of Strasburg Pharmacy [02-16-04]; Response [02-20-04]
31. Opinion of Robert Kubasak, R.Ph. [08-04-04]; Resume of Robert B. Kubasak, R.Ph. [not dated]
- 32A. Copy of West Group Ohio Administrative Code (OAC) Section 4729-5-30 (Manner of Issuance of a Prescription)
- 32B. Copy of Code of Federal Regulation 21 CFR 1306.04 (Purpose of Issue of Prescription)
- 32C. Copy of OAC Section 4731-21-02 (Utilizing Prescription Drugs for the Treatment of Intractable Pain)
- 32D. Copy of OAC Section 4729-5-20 (Prospective Drug Utilization Review)
- 32E. Copy of Westlaw Ohio Revised Code (ORC) 2925.03 (Trafficking Offenses)
- 32F. Anderson's ORC 4729.51 (Persons Who May Sell, Purchase, Distribute or Deliver Dangerous Drugs)

### Respondent's Exhibits:

- A. Licensure letter from Sharon A. Prentice to Strasburg Pharmacy with attachment [06-06-03]
- D. Ohio State Board of Pharmacy News, [www.pharmacy.ohio.gov](http://www.pharmacy.ohio.gov), August 2004
- F. Copy of letter from Erin L. Jones, Clinical Director of Professional Pain Management of Ohio, Inc. (PPMO) to Strasburg Pharmacy [02-07-03]
- G. Ohio Medical Board License Information in re Edward Douglas DeHaas, [www5.state.oh.us/med/license](http://www5.state.oh.us/med/license) [09-22-03]
- H. Sealed
- I. Excel Spreadsheet of PPMO Rx Growth at WalMart in 2003 [not dated]
- M-HH. Twenty-three letters of Support [10-27-04 to 11-16-04]
- JJ. Copy of twenty-eight page Petition of Support [10-22-04 to 11-08-04]

### 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:

See attached Notice of Opportunity for Hearing letter dated July 19, 2005. The following paragraphs were dismissed on November 6, 2006 pursuant to agreement: paragraphs 33, 245, 290, 309, 315, 321, 330, 382, 386, 409, 421, 482, 554, 678, 703, 718, 788, 1000, 1045, 1064, 1070, 1076, 1085, 1137, 1141, 1164, 1176, 1237, 1309, 1433, 1458, and 1473.

The Board is cognizant that both rule 4729-5-21 (formerly embodied in rule 4729-5-30) of the Ohio Administrative Code and Section 1306.04 of Title 21 of the Code of Federal Regulations state that a pharmacist has a corresponding responsibility with the prescriber to ensure that a prescription is issued for a legitimate medical purpose by a licensed prescriber in the usual course of professional practice. This is axiomatic in the pharmacy profession. This means that a pharmacist must review every prescription

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for legitimacy and must then make a professional judgment on whether or not to fill the prescription. Every pharmacist is accountable to this Board and to society for what he knew or should have known due to professional training, experience, licensure, and continuing pharmacy education in pharmacy law. Obviously, the dispensing pharmacist need not review the prescriber's patient chart; rather, the required judgment to be exercised must be based upon the pharmacist's extensive knowledge and training in drug therapy, the pharmacist's knowledge of the patient (obtained through profile information required by rule 4729-5-18 of the Ohio Administrative Code, a review of that profile as required by rule 4729-5-20 of the Ohio Administrative Code, and other discussions with the patient pursuant to rule 4729-5-22 of the Ohio Administrative Code), and the pharmacist's knowledge of the prescriber's practice, particularly as it relates to other similar practices in the region.

These pharmacists shirked their responsibilities in this regard, ignoring numerous obvious indicators of illegal prescribing activity on the part of the physicians involved in this case. Some of these indicators include the large numbers of patients who drove very long distances to come to these physicians and this pharmacy and the almost identical treatment of a problem (pain) that requires individualization of treatment dosages and drugs more than any other health-related problem. Individualized treatment for pain is required in all aspects of health care and is specifically stated in rule 4731-21-02 of the Ohio Administrative Code, yet was clearly ignored by these pharmacists. Moreover, it is significant that practically all of the patients from these prescribers paid cash for their prescriptions instead of using insurance as is usually the case for the overwhelming percentage of prescriptions filled today. It is clear that these pharmacists consciously ignored their obligations to the patients simply for monetary gain.

### CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that each of the paragraphs in the Findings of Fact constitute being guilty of violating any provision of Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that each of the paragraphs in the Findings of Fact constitute being guilty of violating any provision of the federal drug abuse control laws or Chapter 2925. as provided in Division (A)(5) of Section 4729.57 of the Ohio Revised Code.

### DECISION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby revokes the Terminal Distributor license, No. 02-1383200, held by Strasburg Pharmacy effective as of the date of the mailing of this Order. Further, the Board suspends the revocation provided there are no similar violations within the next year.

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

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by filing the original Notice of Appeal with the State Board of Pharmacy and a copy with the appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

**BY ORDER OF THE STATE BOARD OF PHARMACY**

ORDER MAILED & EFFECTIVE: JANUARY 11, 2007

By: \_\_\_\_\_  
William T. Winsley, M.S., R.Ph., Executive Director