



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950724-006)

In The Matter Of:

CARL S. MOWERY, R.Ph.

68 Charlotte Street
Painesville, Ohio 44077
(R.Ph. No. 03-1-04861)

INTRODUCTION

THE MATTER OF CARL S. MOWERY CAME TO HEARING ON JANUARY 23, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

CARL S. MOWERY WAS NOT PRESENT BUT WAS REPRESENTED BY EDWARD T. BRICE, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Frank Bodi, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James L. Gwinnup, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter of Carl S. Mowery dated July 24, 1995.
- (2) Exhibit 1A--Notice of Opportunity letter of James L. Gwinnup dated July 24, 1995.

- (3) Exhibit 1B--Three-page letter from Edward T. Brice dated August 10, 1995, with attachments as follows: copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; two-page copy of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; copy of two-page letter from Carl S. Mowery dated October 18, 1990; copy of two-page letter from Edward T. Brice dated November 12, 1991; copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991; copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl Mowery dated October 16, 1991; copy of five-page Indictment in the Geauga County Common Pleas Court of Carl S. Mowery dated August 1, 1991; copy of pages 1, 6, 7, and Certificate of Service of the Transcript of the Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991; copy of Report and Order Terminating Probation in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993; copy of letter from George R. Simmons dated April 1, 1994; copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; copy of letter from Edward T. Brice dated July 11, 1994; copy of Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration dated June 30, 1996; copy of Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date December 31, 1995; and copy of letter from R. M. Decipeda dated August 1, 1995.
- (4) Exhibit 1C--Two-page Hearing Request letter for James L. Gwinnup and Carl S. Mowery dated August 23, 1995, with attachments as follows: copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991; and copy of letter from David P. Joyce dated September 14, 1992.
- (5) Exhibit 1D--Hearing Schedule letter for Carl S. Mowery dated August 28, 1995.
- (6) Exhibit 1E--Hearing Schedule letter for James L. Gwinnup dated August 28, 1995.
- (7) Exhibit 1F--Letter from Edward T. Brice dated January 10, 1996.
- (8) Exhibit 1G--Copy of letter from David L. Rowland dated January 10, 1996.
- (9) Exhibit 1H--Pharmacist File Front Sheet of Carl Stanford Mowery showing original date of registration as January 23, 1951; Renewal Application for Pharmacist License, No. 03-1-04861, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Carl S. Mowery dated October 11, 1995; and attached copy of letter from R. M. Decipeda dated August 1, 1995.
- (10) Exhibit 1I--Pharmacist File Front Sheet of James Lloyd Gwinnup showing original date of registration as July 31, 1956; and Renewal Application for Pharmacist License, No. 03-3-06248, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of James L. Gwinnup dated July 6, 1995.
- (11) Exhibit 1J--Renewal Applications for Annual License, No. 02-098700, as a Terminal Distributor of Dangerous Drugs of Burton Drug, Inc. for the years of 1987 through 1995.

- (12) Exhibit 2--Six-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated October 2, 1990, with attached two-page copy of letter from Carl S. Mowery dated October 18, 1990.
- (13) Exhibit 2A--Three-page Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor License No. 02-098700, dated February 5, 1991, with attached letter from Carl S. Mowery dated February 21, 1991.
- (14) Exhibit 3--Prescription No. 264765.
- (15) Exhibit 3A--Refill log sheet dated from January 22, 1991, to January 24, 1991.
- (16) Exhibit 4--Prescription number 263937.
- (17) Exhibit 4A--Refill log sheet dated from January 15, 1991, to January 17, 1991.
- (18) Exhibit 5--Prescriptions numbered 264751 and 264752.
- (19) Exhibit 5A--Refill log sheet dated from January 14, 1991, to January 15, 1991.
- (20) Exhibit 6--Prescription number 262111.
- (21) Exhibit 6A--Refill log sheet dated from December 17, 1990, to December 19, 1990.
- (22) Exhibit 7--Prescription number 261584.
- (23) Exhibit 7A--Amber vial labeled prescription number 261584 dated March 30, 1990.
- (24) Exhibit 7B--Copy of refill log sheet dated from October 1, 1990, to October 2, 1990.
- (25) Exhibit 7C--Copy of prescription number 261590.
- (26) Exhibit 8--Prescription number 249224.
- (27) Exhibit 8A--Refill log sheet dated from January 5, 1990, to January 19, 1990.
- (28) Exhibit 9--Prescription number 240683.
- (29) Exhibit 9A--Refill log sheet dated from February 1, 1990, to February 2, 1990.
- (30) Exhibit 10--Prescription number 240270.
- (31) Exhibit 10A--Refill log sheet dated from February 23, 1990, to February 24, 1990.
- (32) Exhibit 11--Prescription number 240876.
- (33) Exhibit 11A--Refill log sheet dated from January 8, 1990, to January 9, 1990.
- (34) Exhibit 11B--Copy of refill log sheet dated from January 5, 1990, to January 19, 1990.
- (35) Exhibit 12--Prescription number 246821.
- (36) Exhibit 12A--Refill log sheet dated from August 9, 1990, to August 10, 1990.
- (37) Exhibit 13--Prescription number 246247.
- (38) Exhibit 13A--Refill log sheet dated from September 6, 1990, to September 7, 1990.
- (39) Exhibit 14--Prescription number 246922.
- (40) Exhibit 14A--Refill log sheet dated June 4, 1990.
- (41) Exhibit 15--Prescription number 246921.
- (42) Exhibit 16--Prescription number 246642.
- (43) Exhibit 16A--Refill log sheet dated from February 24, 1990, to February 26, 1990.
- (44) Exhibit 17--Prescription number 246761.
- (45) Exhibit 17A--Refill log sheet dated from April 2, 1990, to April 3, 1990.
- (46) Exhibit 18--Prescription number 249545.
- (47) Exhibit 18A--Refill log sheet dated from September 27, 1990, to September 28, 1990.
- (48) Exhibit 19--Prescription number 249790.
- (49) Exhibit 19A--Refill log sheet dated from July 17, 1990, to July 19, 1990.
- (50) Exhibit 20--Prescription number 249846.
- (51) Exhibit 20A--Refill log sheet dated from August 28, 1990, to August 29, 1990.

- (52) Exhibit 21--Prescription number 249246.
- (53) Exhibit 22--Prescription number 252042.
- (54) Exhibit 22A--Refill log sheet dated from June 18, 1990, to June 19, 1990.
- (55) Exhibit 23--Prescription number 253593.
- (56) Exhibit 23A--Refill log sheet dated from March 6, 1990, to March 7, 1990.
- (57) Exhibit 24--Prescription number 253858.
- (59) Exhibit 24A--Refill log sheet dated from June 29, 1990, to July 2, 1990.
- (60) Exhibit 25--Prescription number 253748.
- (61) Exhibit 25A--Refill log sheet dated from August 10, 1990, to August 11, 1990.
- (62) Exhibit 26--Prescription number 256735.
- (63) Exhibit 26A--Refill log sheet dated from February 17, 1990, to February 19, 1990.
- (64) Exhibit 26B--Refill log sheet dated from April 6, 1990, to April 9, 1990.
- (65) Exhibit 26C--Refill log sheet dated from April 24, 1990, to April 26, 1990.
- (66) Exhibit 26D--Refill log sheet dated from August 11, 1990, to August 13, 1990.
- (67) Exhibit 26E--Refill log sheet dated September 1, 1990, and from September 4, 1990, to September 6, 1990.
- (68) Exhibit 27--Prescription number 256922.
- (69) Exhibit 27A--Refill log sheet dated from August 20, 1990, to August 22, 1990.
- (70) Exhibit 28--Prescription number 256944.
- (71) Exhibit 28A--Refill log sheet dated from March 13, 1990, to March 15, 1990.
- (72) Exhibit 28B--Refill log sheet dated from June 21, 1990, to June 22, 1990.
- (73) Exhibit 28C--Refill log sheet dated from August 3, 1990, to August 6, 1990.
- (74) Exhibit 29--Prescription number 256736.
- (75) Exhibit 29A--Refill log sheet dated January 2, 1990.
- (76) Exhibit 29B--Copy of refill log sheet dated from February 17, 1990, to February 19, 1990.
- (77) Exhibit 29C--Refill log sheet dated from June 5, 1990, to June 6, 1990.
- (78) Exhibit 29D--Copy of refill log sheet dated from June 29, 1990, to July 2, 1990.
- (79) Exhibit 30--Handwritten letter from Nena Gillian, not dated.
- (80) Exhibit 31--Prescription number 271740.
- (81) Exhibit 32--Prescription number 249860.
- (82) Exhibit 33A--Refill log sheet dated from September 20, 1990, to September 21, 1990.
- (83) Exhibit 33--Prescription number 257182.
- (84) Exhibit 33A--Refill log sheet dated May 22, 1990.
- (85) Exhibit 34--Prescription number 249229.
- (86) Exhibit 34A--Copy of refill log sheet dated from September 27, 1990, to September 28, 1990.
- (87) Exhibit 35--Prescription number 255402.
- (88) Exhibit 35A--Refill log sheet dated from February 12, 1990, to February 13, 1990.
- (89) Exhibit 36--Prescription number 255011.
- (90) Exhibit 36A--Refill log sheet dated from September 19, 1990, to September 20, 1990.
- (91) Exhibit 37--Prescription number 257647.
- (92) Exhibit 37A--Refill log sheet dated from September 14, 1990, to September 17, 1990.
- (93) Exhibit 38--Prescription number 255190.
- (94) Exhibit 38A--Refill log sheet dated from August 25, 1990, to August 27, 1990.
- (95) Exhibit 39--Prescription number 256312.
- (96) Exhibit 40--Prescription number 254864.

- (97) Exhibit 40A--Refill log sheet dated from February 15, 1990, to February 16, 1990.
- (98) Exhibit 41--Prescription number 255179.
- (99) Exhibit 41A--Refill log sheet dated from March 31, 1990 to April 2, 1990.
- (100) Exhibit 41B--Refill log sheet dated from May 15, 1990, to May 16, 1990.
- (101) Exhibit 41C--Refill log sheet dated from June 19, 1990, to June 20, 1990.
- (102) Exhibit 42--Prescription number 255230.
- (103) Exhibit 43--Telephone prescription number 269606, and corresponding hard-copy prescription from the Cleveland Clinic Foundation, No. 856112.
- (104) Exhibit 43A--Refill log sheet dated from September 1, 1990, to September 4, 1990.
- (105) Exhibit 44--Prescription number 264012.
- (106) Exhibit 45--Prescription number 257868.
- (107) Exhibit 46--Copy of letter from Dennis M. Coyne dated November 13, 1991; copy of Ohio State Board of Pharmacy form number PHA-0004, in the matter of Carl S. Mowery dated November 5, 1991; and two-page copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (108) Exhibit 46A--Letter from Dennis M. Coyne dated December 3, 1991; Ohio State Board of Pharmacy form number PHA-0004 in the matter of Carl Mowery dated December 3, 1991; and two-page certified copy of Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 18, 1991.
- (109) Exhibit 51--Refill log sheet dated from January 7, 1992 (sic) to January 9, 1991.
- (110) Exhibit 52--Ohio State Board of Pharmacy form number PHA-0004 in the matter of James L. Gwinnup dated October 25, 1991; and three-page certified copy of Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated October 17, 1991.
- (111) Exhibit 53--Dangerous Drug Distributor Inspection Report of Burton Drug, Inc., Terminal Distributor No. 02-05-1294, dated September 18, 1979; and copy of letter from Carl S. Mowery dated September 20, 1979.

Respondent Carl Mowery's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated November 12, 1991.
- (2) Exhibit A2--Copy of two-page Judgment of Conviction in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated November 7, 1991.
- (3) Exhibit A3--Copy of two-page Order in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated October 16, 1991.
- (4) Exhibit A4--Copy of five-page Indictment in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated August 1, 1991.
- (5) Exhibit A5--Copy of page 1, 6, 7, and Certificate of Service of the Transcript of Proceedings in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery on September 24, 1991.
- (6) Exhibit A6--Copy of page two of Summary of Presentence Report by Diane Mealey, Geauga County Adult Probation Officer, not dated.
- (7) Exhibit B--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court, Case No. 91 C 000117, of Carl S. Mowery dated July 1, 1994; and copy of letter from Edward T. Brice dated July 11, 1994.

- (8) Exhibit C--Copy of Journal Entry in the Geauga County Common Pleas Court, Case No. 91-C-0117, of Carl Mowery dated January 4, 1993.
- (9) Exhibit D1--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1996.
- (10) Exhibit D2--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1995.
- (11) Exhibit D3--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1994.
- (12) Exhibit D4--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of June 30, 1994.
- (13) Exhibit D5--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1993.
- (14) Exhibit D6--Copy of Certificate of License as Terminal Distributor of Dangerous Drugs, License No. 02-098700, of Burton Drug, Inc. from January 1, 1993, to December 31, 1993.
- (15) Exhibit D7--Copy of Ohio State Board of Pharmacy Terminal Distributor of Dangerous Drugs License, No. 02-098700, of Burton Drug, Inc., expiration date of December 31, 1991.
- (16) Exhibit D8--Copy of Ohio State Board of Pharmacy Wholesale Distributor of Dangerous Drugs License, No. 01-345900, of Burton Drug, Inc., expiration date of December 31, 1991.
- (17) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1994; and copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1995.
- (18) Exhibit E2--Copy of front and back sides of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1992.
- (19) Exhibit E3--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-1-04861, of Carl S. Mowery for a license to practice in Ohio until the expiration date of September 15, 1991.
- (20) Exhibit F1--Copy of two-page letter from Edward T. Brice dated October 12, 1995; and copy of letter from R. M. Decipeda, M.D. dated August 1, 1995.
- (21) Exhibit G--Copy of letter from George R. Simmons dated April 1, 1994.
- (22) Exhibit H--Copy of letter from Detective C. McNabb dated March 23, 1994.
- (23) Exhibit I--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated; copy of Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Drugs dated January 2, 1991; and copy of two-page letter from Carl S. Mowery dated October 18, 1990.
- (24) Exhibit J--Copy of Carl Mowery Proclamation dated October 16, 1995.
- (25) Exhibit K--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; copy of letter from Nick Fischbach dated January 22, 1996; copy of letter from M. J.

Domadia dated January 12, 1996; copy of letter from William J. Martin, Sr., Robert S. Martin, William J. Martin, Jr., and Lisa S. Martin dated January 18, 1996; copy of two-page letter from Dennis Nichols dated January 18, 1996; copy of letter from William H. Armstrong dated January 17, 1996; copy of letter from William Lapointe dated January 17, 1996; copy of letter from Jerry A. Hiscox dated January 19, 1996; copy of letter from Peter M. Lee dated January 18, 1996; copy of two-page letter from Jim Gonczy dated January 19, 1996; copy of letter from Duane F. Ferris dated January 16, 1996; copy of letter from Mark A. Lombardi dated January 17, 1996; copy of two-page letter from Earl Vansant dated January 19, 1996; copy of letter from C. Richard Roose dated January 17, 1996; copy of letter from Roy N. Cluts, not dated; copy of letter from Russ Hurd dated January 18, 1996; and copy of two-page letter from Dorothy H. Lee dated January 23, 1996.

Respondent James Lloyd Gwinnup's Exhibits:

- (1) Exhibit A1--Copy of two-page letter from Edward T. Brice dated August 23, 1995.
- (2) Exhibit A2--Copy of two-page Judgment Entry in the Geauga County Common Pleas Court of James L. Gwinnup dated January 25, 1994; and copy of canceled check, No. 261, of James L. Gwinnup dated September 25, 1991.
- (3) Exhibit A3--Copy of letter from David P. Joyce dated September 14, 1992.
- (4) Exhibit B--Copy of three-page letter from Edward T. Brice dated September 21, 1995.
- (5) Exhibit C--Copy of two-page letter from Edward T. Brice dated October 12, 1995.
- (6) Exhibit D1--Copy of letter from H. F. Inderlied, Jr. dated January 22, 1992.
- (7) Exhibit D2--Copy of two-page Judgment of Conviction Nunc Pro Tunc in the Geauga County Common Pleas Court, Case No. 91 C 000101, of James L. Gwinnup dated January 28, 1992.
- (8) Exhibit E1--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1995.
- (9) Exhibit E2--Copy of front side of Ohio State Board of Pharmacy pocket identification card, No. 03-3-06248, of James L. Gwinnup, expiration date of September 15, 1996.
- (10) Exhibit F--Copy of four-page Ohio State Board of Pharmacy Report of Investigation, Case No. 90-1764, regarding Burton Pharmacy dated October 8, 1990; copy of summary of events on October 2, 1990, and February 5, 1991, not signed or dated.
- (11) Exhibit G--Copy of partial list of accomplishments of James Lloyd Gwinnup, not dated.
- (12) Exhibit H--Copy of letter from Forrest W. Burt dated January 18, 1996; copy of two-page letter from Greg Gwinnup dated January 17, 1996; copy of letter from James L. Gwinnup, Jr. dated January 18, 1996; copy of letter from Thomas R. Dietrich dated January 11, 1996; copy of letter from M. J. Domadia dated January 11, 1996; copy of letter from Jason A. Gwinnup dated January 12, 1996; copy of letter from Joseph C. Clark dated January 13, 1996; copy of letter from Mohammad Ansari dated January 15, 1996; copy of letter from Greg Hodgins dated January 15, 1996; copy of letter from Jeffrey R. Gwinnup dated January 15, 1996; copy of letter from Gilbert L. Gwinnup dated January 21, 1996; copy of two-page letter from George R. Simmons dated January 22, 1996; and copy of letter from Donald E. Braunlich dated January 20, 1996.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Carl S. Mowery was originally licensed in the state of Ohio on January 23, 1951, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Further, during the relevant time periods alleged herein, Carl S. Mowery was the Responsible Pharmacist at Burton Drug, Inc., Terminal Distributor No. 02-098700, 14548 Main Street, Burton, Ohio 44021 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-16 of the Ohio Administrative Code.
- (2) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did sell, offer for sale, give away, or deliver at retail or to the consumer without a prescription from a physician, a drug which under federal or Ohio law can be sold only on prescription, to wit: Carl S. Mowery dispensed the following dangerous drugs, on the following dates, after the prescriptions had expired and/or without valid refills:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
264765	12/15/90	Diabinese 250mg	100
264765	01/23/91	Diabinese 250mg	100
263937	01/16/91	Glucotrol 5mg	100
264752	01/14/91	Diabeta 2.5mg	100
262111	06/20/90	Tagamet 200mg	5
262111	12/19/90	Tagamet 200mg	5
261584	10/02/90	Slow K	100
249224	01/18/90	Esgic	30
240683	02/01/90	Tenormin 50mg	100
240270	02/23/90	Hydrodiuril 25mg	25
240876	01/09/90	Ornade	20
240876	01/18/90	Ornade	20
246821	08/09/90	Rynatan	40
246247	09/07/90	Theo-Dur 300mg	100
246922	06/04/90	Ceclor 250mg	150ml
246921	06/04/90	Naldecon Ped.	6oz
246642	02/26/90	Keflex 250mg	20
246761	04/03/90	Hygroton 50mg	100
249545	09/27/90	Premarin 0.625mg	100
249790	07/17/90	Ornade	30
249846	08/28/90	Doxycycline 100mg	10
249246	08/09/90	Ceclor 250mg	20
252042	06/19/90	Lasix 40mg	30
253593	08/08/89	Inderal 20mg	100
253593	03/07/90	Inderal 20mg	100
253858	11/16/89	Kaon CL-10	100
253858	07/02/90	Kaon CL-10	100
253748	08/11/90	Diuril 0.5mg	50
256735	02/17/90	Lasix 20mg	30
256735	04/07/90	Lasix 20mg	30
256735	04/25/90	Lasix 20mg	30
256735	08/13/90	Lasix 20mg	30
256735	09/05/90	Lasix 20mg	30
256922	03/07/90	Triavil 4/50	100
256922	08/22/90	Triavil 4/50	100

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
256944	03/14/90	Lanoxin 0.125mg	100
256944	06/22/90	Lanoxin 0.125mg	100
256944	08/03/90	Lanoxin 0.125mg	100
256736	01/02/90	Aldactone 25mg	60
256736	02/17/90	Aldactone 25mg	60
256736	04/25/90	Aldactone 25mg	60
256736	06/05/90	Aldactone 25mg	60
256736	06/30/90	Aldactone 25mg	60

Such conduct is in violation of Section 3715.52(B)(12) of the Ohio Revised Code.

- (3) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did knowingly sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while working at Burton Drug, Inc., Carl S. Mowery or someone under his control sold the following drugs, in the following amounts, without a legitimate prescription and without a legitimate medical purpose:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
*****	12/28/89	Darvocet N-100	100
271740	12/14/90	Percocet	25
249860	09/20/90	Xanax 0.5mg	50
257182	05/22/90	Xanax 0.5mg	50
249229	09/27/90	Dalmane 15mg	30
255402	02/13/90	Tylenol with Codeine 30mg	50
255011	09/20/90	Phenergan w/Codeine	8oz
257647	09/17/90	Tranxene 7.5mg	50
255190	08/27/90	Darvocet N-100	15
256312	08/11/90	Darvocet N-100	?
254864	02/16/90	Librium 5mg	100
255179	03/31/90	Tylenol with Codeine 30mg	30
255179	04/24/90	Tylenol with Codeine 30mg	30
255179	05/15/90	Tylenol with Codeine 30mg	30
255179	06/19/90	Tylenol with Codeine 30mg	30

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

- (4) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did knowingly 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: while working at Burton Drug, Inc., Carl S. Mowery or someone under his control sold the following drugs, in the following amounts, without a legitimate prescription and without a legitimate medical purpose:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
255230	10/22/88	Seconal 100mg	30
269606	09/04/90	Percocet	30

Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (5) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist did fail to record pertinent information on the original

prescription, to wit: on the following prescriptions listed below, Carl S. Mowery or someone under his control failed to record required information such as manual initials, patient address, physician information, generic substitution information, and/or refill information:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
264765	11/30/89	Diabinese 250mg	100
263937	12/04/89	Glucotrol 5mg	100
264752	01/10/90	Diabeta 2.5mg	100
262111	09/11/89	Tagamet 200mg	10
264012	12/01/89	Procardia 10mg	100
261584	08/01/89	Slow K	100
249224	12/24/87	Esgic	30
240683	06/17/86	Tenormin 50mg	100
240270	08/29/86	Hydrodiuril 25mg	25
240876	10/07/86	Ornade	20
246821	08/13/87	Rynatan	40
246247	07/01/87	Theo-Dur 300mg	100
246922	07/24/87	Ceclor 250mg	150ml
246921	07/24/87	Naldecon Ped	6oz
246642	08/01/87	Keflex 250mg	20
246761	07/21/87	Hygroton 50mg	100
249545	09/02/87	Premarin 0.625mg	100
249790	12/28/88	Ornade	30
249846	01/26/88	Doxycycline 100mg	10
249246	12/**/87	Ceclor 250mg	20
252042	05/05/88	Lasix 40mg	30
253593	07/21/88	Inderal 20mg	100
253858	08/**/88	Kaon CL-10	100
253748	08/08/88	Diuril 0.5mg	50
256735	12/**/88	Lasix 20mg	30
256922	01/06/89	Triavil 4/50	100
256944	01/07/89	Lanoxin 0.125mg	100
256736	12/29/88	Aldactone 25mg	60
257868	11/01/89	Diabeta 5mg	30

Such conduct is in violation of Rules 4729-5-17 and 4729-5-30 of the Ohio Administrative Code.

- (6) Prior to October 2, 1990, Carl S. Mowery as the Responsible Pharmacist permitted nonlicensed personnel to possess a key to the pharmacy, to wit: Carl S. Mowery allowed his daughter, Susan Mowery, to possess a key to Burton Drug, Inc., which gave her access and control over the pharmacy and dangerous drug stock. Further, the refrigerator, containing dangerous drugs, was in a location that was not within the pharmacy area, and therefore, accessible to nonlicensed personnel. Such conduct is in violation of Rules 4729-9-05 and 4729-9-11 of the Ohio Administrative Code.
- (7) As the responsible pharmacist, Carl S. Mowery did hold or offer for sale drugs which were adulterated, to wit: vials of outdated dangerous drugs and vials of outdated controlled substances were interspersed throughout the dispensing shelves and/or in the refrigerator. Further, the pharmacy area, including the dispensing shelves, was cluttered and filthy. Such conduct is in violation of Section 3715.52(B)(1) of the Ohio Revised Code.

- (8) On or about the following dates, Carl S. Mowery as the Responsible Pharmacist dispensed drugs pursuant to improper prescriptions and kept them in the pharmacy, to wit: Carl S. Mowery or someone under his control dispensed the following controlled substance prescriptions disregarding the need for required information such as the full name of patient, patient address, physician DEA number, physician address, and/or dispensing date:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
255230	10/22/88	Seconal 100mg	30
269606	09/04/**	Percocet	30
271740	12/14/90	Percocet	25
249860	01/26/88	Xanax 0.5mg	50
257182	01/17/89	Xanax 0.5mg	50
249229	11/23/87	Dalmane 15mg	30
255402	10/29/88	Tylenol with Codeine 30mg	50
257647	02/03/89	Tranxene 7.5mg	50
255190	10/20/88	Darvocet N-100	15
256312	12/10/88	Darvocet N-100	**
254864	10/06/88	Librium 5mg	100
255179	10/19/88	Tylenol with Codeine 30mg	30

Such conduct is in violation of Section 3719.05 of the Ohio Revised Code.

- (9) On or about September 24, 1991, Carl S. Mowery pled guilty to Attempt to Violate Section 4729.37 of the Ohio Revised Code and to Rule 4729-5-30 of the Ohio Administrative Code on December 15, 1990, a lesser included offense of the eighteen counts of said indictment, in violation of Section 2923.02 and 4729.37 of the Ohio Revised Code and Rule 4729-5-30 of the Ohio Administrative Code, and being first degree misdemeanors.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (9) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (9) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) and (7) through (9) 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 Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-04861, held by Carl S. Mowery effective as of the date of the mailing of this Order. Further, the Board will reinstate Carl S. Mowery's license to practice pharmacy in Ohio after he takes and successfully completes the law examination(s) required, at the time he takes the examination(s), in paragraph (B)(1) of Rule 4729-5-31 of the Ohio Administrative Code.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.