

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020211-040)

In The Matter Of:

ROBERT C. FERGUSON, R.Ph.

401 Hamilton Street, Apt. 6

Wapakoneta, Ohio 45895

(R.Ph. No. 03-1-13547)

INTRODUCTION

THE MATTER OF ROBERT C. FERGUSON CAME FOR HEARING ON JUNE 5, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

ROBERT C. FERGUSON WAS REPRESENTED BY JEROME R. DOUTE AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Todd Knauss, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Robert C. Ferguson, R.Ph., Respondent

State's Exhibits

1. Copy of Notice of Opportunity For Hearing letter [02-11-2002]
1A-1C. Procedurals
2. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6764504 [04-18-1999]
2A. Copy of Refill Log page with Rx 6764504 Label [10-15-1998]
2B. Copy of Rx 6764504 [06-19-1998]
2C. Food Town Pharmacy Customer Receipt and Patient Prescription Information for Rx 6764504 [10-15-98]
3. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6773366 [04-18-1999]
3A. Copy of Rx 6773366 [10-16-1998]
3B. The Pharm #916 Customer Receipt for Rx 6773366 [02-03-1999]
4. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6771562 [04-18-1999]
4A. Copy of Rx 6771562 [09-24-1998]
4B. Copy of Refill Log page with Rx 6771562 Label [10-24-1998]
4C. Food Town Pharmacy Customer Receipt and Patient Prescription Information for Rx 6771562 [10-24-1998]

5. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6778564 [09-18-1999]
 - 5A. Copy of Rx 6778564 [12-18-1998]
 - 5B. The Pharm #916 Customer Receipt for Rx 6778564 [03-12-1999]
6. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6757379 [9-18-1999]
 - 6A. Copy of Rx 6757379 [03-17-1998]
 - 6B. Copy of Refill Log page with Rx 6757379 Label [10-28-1998]
7. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6780765 [07-06-1999]
 - 7A. Copy of Rx 6780765 [01-20-1999]
 - 7B. Copy of Refill Log pages with Rx 6780765 Labels [02-18-1999, 03-22-1999, 04-21-1999]
 - 7C. The Pharm #916 Customer Receipt for Rx 6780765 [01-20-1999]
8. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6770173 [09-18-1999]
 - 8A. Copy of Refill Log page with Rx 6770173 Label [02-03-1999]
 - 8B. The Pharm #916 Customer Receipt for Rx 6770173 [02-03-1999]
9. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6783996 [09-18-1999]
 - 9A. Copy of Rx 6783996 [02-24-1999]
 - 9B. The Pharm #916 Customer Receipt for Rx 6783996 [02-24-1999]
10. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 4424421 [04-13-1999]
 - 10A. Copy of Rx 4424421 [03-05-1999]
 - 10B. The Pharm #916 Customer Receipt for Rx 4424421 [03-05-1999]
11. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6786347 [04-18-1999]
 - 11A. Copy of Rx 6786347 [03-22-1999]
 - 11B. The Pharm #916 Customer Receipt for Rx 6786347 [03-22-1999]
12. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6786090 [04-15-1999]
 - 12A. Copy of Refill Log page with Rx 6786090 Label [04-14-1999]
 - 12B. The Pharm #916 Customer Receipt for Rx 6786090 [08-03-1999]
13. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6792179 [06-03-1999]
 - 13A. Copy of Rx 6792179 [06-02-1999]
 - 13B. The Pharm #916 Customer Receipt for Rx 6792179 [06-02-1999]
14. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6793810 [07-06-1999]
 - 14A. Copy of Rx 6793810 [06-23-1999] and 6793901 [06-25-1999]
 - 14B. The Pharm #916 Customer Receipt for Rx 6793810 [06-23-1999]
 - 14C. The Pharm #916 Customer Receipt for Rx 6793901 [06-25-1999]
15. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 4425330 [07-06-1999]
 - 15A. Copy of Refill Log page with Rx 4425330 Label [06-24-1999]
 - 15B. The Pharm #916 Customer Receipt for Rx 4425330 [06-24-1999]
16. Professional Liability Claim Report for Rx 6795137 [01-11-2000]
 - 16A. Copy of Rx 6795137 [07-12-1999]
 - 16B. The Pharm #916 Customer Receipt for Rx 6795137 [12-27-1999]

17. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6793997 [09-18-1999]
- 17A. Copy of Refill Log page with Rx 6793997 Label [07-31-1999]
- 17B. The Pharm #916 Customer Receipt for Rx 6793997 [07-31-1999]
18. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6796486 [09-15-1999]
- 18A. Copy of Rx 6796486 [07-31-1999]
19. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6783438 [09-15-1999]
- 19A. Copy of Refill Log page with Rx 6783438 Label [08-19-1999]
- 19B. The Pharm #916 Customer Receipt for Rx 6783438 [08-19-1999]
20. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6799341 [09-19-1999]
- 20A. Copy of Rx 6799341 [09-08-1999]
- 20B. The Pharm #916 Customer Receipt for Rx 6799341 [09-08-1999]
21. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6799422 [09-15-99]
- 21A. Copy of Rx 6799422 [09-08-1999] and Rx 6799560 [09-09-1999]
- 21B. Copy of Telephoned Prescription, Deactivating Rx 6799422
- 21C. The Pharm #916 Customer Receipt for Rx 6799422 [09-08-1999]
- 21D. The Pharm #916 Customer Receipt for Rx 6799560 [09-09-1999]
22. Professional Liability Claim Report for Rx 6786558 [09-28-1999]
- 22A. Copy of Refill Log page with Rx 6786558 Label [09-23-1999]
- 22B. The Pharm #916 Customer Receipt for Rx 6786558 [08-23-1999]
23. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6809171 [03-06-2000]
- 23A. Copy of Rx 6809171 [01-05-2000]
- 23B. The Pharm #916 Customer Receipt for Rx 6809171 [01-05-2000]
24. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 4427295 [03-06-2000]
- 24A. Copy of Refill Log page with Rx 4427295 Label [03-03-2000]
- 24B. The Pharm #916 Customer Receipt for Rx 4427295 [03-03-2000]
25. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6817286 [04-20-2000]
- 25A. Copy of Rx 6817286 [03-31-2000]
- 25B. The Pharm #916 Customer Receipt for Rx 6817286 [04-19-2000]
26. Professional Liability Claim Report for Rx 6841312 [03-18-2001]
- 26A. Copy of Rx 6841312 [02-12-2001]
- 26B. The Pharm #916 Customer Receipt for Rx 6841312 [02-12-2001]
27. Professional Liability Claim Report for Rx 6841521 [02-27-2001]
- 27A. Copy of Rx 6841521 [02-15-2001]
- 27B. The Pharm #916 Customer Receipt for Rx 6841521 [02-15-2001]
28. Professional Liability Claim Report for Rx 6841992 [02-27-2001]
- 28A. Copy of Rx 6841992 [02-21-2001]
- 28B. The Pharm #916 Customer Receipt for Rx 6841992 [02-21-2001]
29. Professional Liability Claim Report for Rx 4431815 [03-06-2001]
- 29A. Copy of Rx 4431875 [02-26-2001] and Deactivated Rx 4431815 [02-21-2001]
- 29B. The Pharm #916 Customer Receipt for Rx 4431815 [02-21-2001]
- 29C. The Pharm #916 Customer Receipt for Rx 4431875 [02-26-2001]

30. Professional Liability Claim Report for Rx 6842290 [02-27-2001]
- 30A. Copy of Rx 6842290 [02-23-2001]
- 30B. The Pharm #916 Customer Receipt for Rx 6842290 [02-23-2001]
31. Professional Liability Claim Report for Rx 6837452 [06-09-2001]
- 31A. Copy of Refill Log page with Rx 6837452 Label [02-24-2001]
- 31B. The Pharm #916 Customer Receipt for Rx 6837452 [02-24-2001]
32. Professional Liability Claim Report for Rx 6840448 [03-31-2001]
- 32A. Copy of Refill Log page with Rx 6840448 (for 10 tablets owed) Label [03-21-2001]
- 32B. Copy of Refill Log page with Rx 6840448 (for first 20 tablets) Label [03-21-2001]
33. Professional Liability Claim Report for Rx 6845964 [06-09-2001]
- 33A. Copy of Rx 6845964 [04-11-2001]
- 33B. The Pharm #916 Customer Receipt for Rx 6845964 [05-29-2001]
34. Professional Liability Claim Report for Rx 6846870 [04-26-2001]
- 34A. Copy of Rx 6846870 [04-23-2001]
- 34B. The Pharm #916 Customer Receipt for Rx 6846870 [04-23-2001]
35. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 6849422 [06-19-2001]
- 35A. Copy of Rx 6849422 [05-31-2001]
- 35B. The Pharm #916 Customer Receipt for Rx 6849422 [10-27-2001]
36. Seaway Food Town Prescription Drug Claim/Complaint Report for Rx 4432919 [06-14-2001]
- 36A. Copy of Rx 6850478 [06-14-2001]
- 36B. The Pharm #916 Customer Receipt for Rx 4432919 [06-13-2001]
- 36C. The Pharm #916 Customer Receipt for Rx 6850478 [07-06-2001]
37. Professional Liability Claim Report for Rx 6843820 [08-28-2001]
- 37A. Copy of Refill Log page with Rx 6843820 Label [07-23-2001]
- 37B. The Pharm #916 Customer Receipt for Rx 6843820 [07-23-2001]
38. Robert C. Ferguson Settlement Agreement with the State Board of Pharmacy [05-14-1996]
39. Error in Dispensing Report by Board of Pharmacy Agent Todd Knauss at Pharm #916 [09-24-2001]
40. Dangerous Drug Distributor Inspection Report for Pharm #916 [08-16-2001]

Respondent's Exhibits

- A1. The Pharm #916 Sales Analysis By Time Schedule Report [08/07/2000]
- A2. The Pharm #916 Computer Printouts of Summary Reports Covering November 1998 [05-23-1999]
- A3. The Pharm #916 Computer Printouts of Summary Reports Covering December 1998 [05-23-1999]
- A4. The Pharm #916 Computer Printouts of Summary Reports Covering January 1999 [05-23-1999]
- A5. The Pharm #916 Computer Printouts of Summary Reports Covering February 1999 [05-23-1999]
- A6. The Pharm #916 Computer Printouts of Summary Reports Covering March 1999 [05-23-1999]
- A7. The Pharm #916 Computer Printouts of Summary Reports Covering April 1999 [05-23-1999]
- A8. The Pharm #916 Computer Printouts of Summary Reports Covering May 1999 [06-06-1999]

- A9. The Pharm #916 Computer Printouts of Summary Reports Covering June 1999 [07-04-1999]
- A10. The Pharm #916 Computer Printouts of Summary Reports Covering July 1999 [08-15-1999]
- A11. The Pharm #916 Computer Printouts of Summary Reports Covering August 1999 [09-05-1999]
- A12. The Pharm #916 Computer Printouts of Summary Reports Covering September 1999 [10-23-1999]
- A13. The Pharm #916 Computer Printouts of Summary Reports Covering October 1999 [11-06-1999]
- A14. The Pharm #916 Computer Printouts of Summary Reports Covering November 1999 [12-05-1999]
- A15. The Pharm #916 Computer Printouts of Summary Reports Covering December 1999 [01-02-2000]
- A16. The Pharm #916 Computer Printouts of Summary Reports Covering January 2000 [02-26-2000]
- A17. The Pharm #916 Computer Printouts of Summary Reports Covering February 2000 [03-11-2000]
- A18. The Pharm #916 Computer Printouts of Summary Reports Covering March 2000 [04-08-2000]
- A19. The Pharm #916 Computer Printouts of Summary Reports Covering April 2000 [05-06-2000]
- A20. The Pharm #916 Computer Printouts of Summary Reports Covering May 2000 [06-03-2000]
- A21. The Pharm #916 Computer Printouts of Summary Reports Covering June 2000 [07-15-2000]
- A22. Letter and Psychological Evaluation re Robert C. Ferguson from Frederick P. Ferri, Ph.D. [05-29-2002]
- A23. Affidavit of Leona Booher [06-04-2002]

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. Ferguson was originally licensed by the State of Ohio on February 26, 1980, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that, on May 14, 1996, Robert C. Ferguson entered into a Settlement Agreement after being charged administratively by the Board of Pharmacy for misbranding a drug, falsifying and/or altering computer data, failing to perform prospective drug utilization and lying to and/or withholding truth from a Board agent who was investigating the matter of misbranding medicine.

(2) Robert C. Ferguson did, on or about October 15, 1998, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Procardia XL 60mg, Rx 6764504, Robert C. Ferguson dispensed Procardia XL 30mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(3) Robert C. Ferguson did, on or about October 16, 1998, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Cephalexin 250mg, Rx 6773366, Robert C. Ferguson dispensed Cephalexin 500mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(4) Robert C. Ferguson did, on or about October 24, 1998, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for trazodone 50mg, Rx 6771562, Robert C. Ferguson dispensed desipramine 50mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(5) Robert C. Ferguson did, on or about December 18, 1998, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Cyclocort Cream, Rx 6778564, Robert C. Ferguson dispensed Cyclocort Ointment. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(6) Robert C. Ferguson did, on or about December 28, 1998, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Ovcon 50, Rx 6757379, Robert C. Ferguson dispensed Ovcon 35. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(7) Robert C. Ferguson did, on or about January 20, 1999, February 18, 1999, March 22, 1999, and again on April 21, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Zyrtec 10mg, take one daily as needed, Rx 6780765, Robert C. Ferguson dispensed Zyrtec 10mg, take one, 3 times daily, as needed. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(8) Robert C. Ferguson did, on or about February 3, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Magna C-7 Forte, Rx 6770173, Robert C. Ferguson dispensed Magna C-7. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(9) Robert C. Ferguson did, on or about February 24, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for trifluoperazine 2mg, Rx 6783996, Robert C. Ferguson dispensed trihexyphenidyl 2mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(10) Robert C. Ferguson did, on or about March 5, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Limbitrol 5/12.5mg, Rx 4424421, Robert C. Ferguson dispensed Librax. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(11) Robert C. Ferguson did, on or about March 22, 1999, dispense a generic drug when the patient had instructed Robert C. Ferguson not to substitute for the brand, to wit: when Robert C. Ferguson received a prescription for Estrace 0.5mg, Rx 6786347, Robert C. Ferguson dispensed estradiol 0.5mg. When the patient brought the medication back to the pharmacy, Robert C. Ferguson took the vial and placed the proper label on it, but Robert C. Ferguson did not replace the generic medication with the brand named drug. Such conduct is in violation of Section 4729.38 of the Ohio Revised Code.

(12) Robert C. Ferguson did, on or about April 14, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Estraderm 0.1mg, Rx 6786090, Robert C. Ferguson dispensed Climara 0.1mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(13) Robert C. Ferguson did, on or about June 2, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Dexamethasone 0.5/5ml 3ml TID, Rx 6792179, Mr. Ferguson dispensed Dexamethasone 0.5/5ml 3tsp TID. Robert C. Ferguson told the patient that he believed she would notice the mistake, and thus Robert C. Ferguson did not call her when Mr. Ferguson discovered the error. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(14) Robert C. Ferguson did, on or about June 23, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Minocin 100mg, Rx 6793810, Robert C. Ferguson dispensed minocycline 50mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(15) Robert C. Ferguson did, on or about June 24, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Darvon Cpd-65, Rx 4425330, Robert C. Ferguson dispensed Propacet 100mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(16) Robert C. Ferguson did, on or about July 12, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Prempro 0.625/5mg, Rx 6795137, Robert C. Ferguson dispensed Prempro 0.625/2.5 mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(17) Robert C. Ferguson did, on or about July 31, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for HCTZ 25mg, Rx 6793997, Robert C. Ferguson dispensed HCTZ 50mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(18) Robert C. Ferguson did, on or about July 31, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Fioricet, Rx 6796486, Robert C. Ferguson dispensed the drug but placed the patient's daughter's name on the vial rather than that of the patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(19) Robert C. Ferguson did, on or about August 19, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Lipitor 20mg, Rx 6783438, Robert C. Ferguson dispensed Lipitor 10 mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(20) Robert C. Ferguson did, on or about September 8, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Prednisone 2mg, RX 6799341, Robert C. Ferguson dispensed Prednisone 20mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(21) Robert C. Ferguson did, on or about September 8, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for MetroGel-Vaginal 0.75%, Rx 6799422, Robert C. Ferguson dispensed MetroGel Topical 0.75%. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(22) Robert C. Ferguson did, on or about September 23, 1999, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Wellbutrin 100 mg, Rx 6786558, Robert C. Ferguson dispensed Wellbutrin SR 100mg. The patient indicated that this was the second incident. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(23) Robert C. Ferguson did, on or about January 5, 2000, and again on February 2, 2000, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Cardizem CD 120 mg, Rx 6809171, Robert C. Ferguson labeled the vial as if Robert C. Ferguson had dispensed a generic drug other than what Robert C. Ferguson had in fact dispensed. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(24) Robert C. Ferguson did, on or about March 3, 2000, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Lorazepam 0.5mg, Rx 4427295, Robert C. Ferguson dispensed Alprazolam 0.5mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(25) Robert C. Ferguson did, on or about April 19, 2000, dispense a generic drug when the physician had written DAW on the prescription, to wit: when Robert C. Ferguson received a prescription for Inderal LA 80mg, Rx 6817286, Robert C. Ferguson dispensed propranolol LA 80mg. Such conduct is in violation of Section 4729.38 of the Ohio Revised Code.

(26) Robert C. Ferguson did, on or about February 12, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Monodox 100mg, one at bedtime, Rx 6841312, Robert C. Ferguson dispensed the drug but stated incorrect directions for use as apply at bedtime. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(27) Robert C. Ferguson did, on or about February 15, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Remeron Sol 15mg, Rx 6841521, Robert C. Ferguson dispensed Remeron Sol 30mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(28) Robert C. Ferguson did, on or about February 21, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Maxzide 25mg, Rx 6841992, Robert C. Ferguson dispensed Maxzide 75mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(29) Robert C. Ferguson did, on or about February 21, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Darvocet N-100, Rx 4431815, Robert C. Ferguson dispensed a drug but labeled the vial with the name of a person who was not the patient and Robert C. Ferguson dispensed the medication to someone other than the intended patient. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(30) Robert C. Ferguson did, on or about February 23, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for HCTZ 25mg, Rx 6842290, Robert C. Ferguson dispensed hydroxyzine HCL 25mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(31) Robert C. Ferguson did, on or about February 24, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Dallery ER, Rx 6837452, Robert C. Ferguson dispensed generic Dallery-JR. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(32) Robert C. Ferguson did, on or about March 21, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Zyprexa 5mg, Rx 6840448, Robert C. Ferguson dispensed Zyrtec 10mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(33) Robert C. Ferguson did, on or about April 11, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Atarax 25mg, two at HS, Rx 6845964, Robert C. Ferguson dispensed generic Atarax 25mg, three at HS. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(34) Robert C. Ferguson did, on or about April 23, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Zoloft 50mg, Rx 6846870, Robert C. Ferguson dispensed Zoloft 100mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(35) Robert C. Ferguson did, on or about May 31, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Synthroid 0.25 mg, Rx 6849422, Robert C. Ferguson dispensed Synthroid 0.025 mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(36) Robert C. Ferguson did, on or about June 13, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Penicillin 500mg, Rx 4432919, Robert C. Ferguson dispensed Darvocet N-100. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(37) Robert C. Ferguson did, on or about July 31, 2001, misbrand a drug, to wit: when Robert C. Ferguson received a prescription for Wellbutrin SR 150mg, Rx 6843820, Robert C. Ferguson dispensed Wellbutrin SR 100mg. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (37) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (2) through (37) of the Findings of Fact constitute being 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.

(3) The State Board of Pharmacy concludes that paragraphs (2) through (37) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 3715. and 4729. 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 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy takes the following actions in the matter of Robert C. Ferguson:

(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 pharmacist identification card, No. 03-1-13547, held by Robert C. Ferguson 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 pharmacist identification card, No. 03-1-13547, held by Robert C. Ferguson 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 pharmacist identification card, No. 03-1-13547, held by Robert C. Ferguson effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Robert C. Ferguson must return the 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.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-2).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JULY 11, 2002

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-960117-032)

In The Matter Of:

ROBERT C. FERGUSON, R.Ph.
401 Hamilton Street, Apt. 6
Wapakoneta, Ohio 45895
(R.Ph. No. 03-03-1-13547)

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

Robert C. Ferguson 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 and the right to a formal adjudication hearing on the issues contained herein.

Robert C. Ferguson is knowingly and voluntarily acknowledging that, in order to settle the disciplinary charges that have been filed by the Board against Robert C. Ferguson and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Robert C. Ferguson's 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 4729.16 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) On or about January 17, 1996, pursuant to Chapter 119. of the Ohio Revised Code, Robert C. Ferguson 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. Further, a hearing was requested and scheduled for March 6, 1996; however, the hearing was continued by the Board.
- (C) Robert C. Ferguson, in the same manner as a plea of no contest in a Court of Law, knowingly and voluntarily does not contest the evidence upon which the Board of Pharmacy bases its decision. Robert C. Ferguson was notified of the following allegations and the Board herein adjudicates the same:
 - (1) Records of the Board of Pharmacy indicate that Robert C. Ferguson was originally licensed in the state of Ohio on February 26, 1980, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that during the relevant time period alleged herein, Robert C. Ferguson was the Responsible Pharmacist at The Pharm #918, Sidney, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Robert C. Ferguson as the Responsible Pharmacist did, on or about February 24, 1994; March 1, 1994; March 6, 1994; March 12, 1994; March 17, 1994; and March 28, 1994; misbrand a drug, to wit: upon receiving refill prescriptions for Melphalan (Alkeran®) 2mg to be taken by the patient 5 tablets daily for 5 days each month with 6 refills, Robert C. Ferguson or someone under his control dispensed the medication with directions for use as 5 tablets daily for 5 days refillable but failed to indicate "each month" in the directions for use. The patient followed the directions for use indicated on the bottle, obtained refills immediately upon consumption of the prescription, and thus consumed 5 tablets each day for one month. The patient suffered harm and had an emergency blood transfusion. When questioned about the prescriptions, Robert C. Ferguson indicated to Board of Pharmacy agents that "it would be very tedious to check each drug for which the computer generated a label to see if there were something that [the pharmacist] would need to check on with the patient;" and Robert C. Ferguson stated that the questioning agent "was making the assumption that he [the pharmacist] would know how this drug is normally used." Such conduct is in violation of Section 3715.52(B) of the Ohio Revised Code.
- (3) Robert C. Ferguson as the Responsible Pharmacist did, on or about April 24, 1994, and again on or about May 7, 1994, knowing there was no privilege to do so, falsify or alter computer data, to wit: after incorrect data had been entered into patient records at The Pharm #918, which caused patient harm, and after several refills had been dispensed, Robert C. Ferguson or a pharmacist under his control altered the original prescription data to falsely indicate that the error had not been made. Robert C. Ferguson admitted to Board agents that he lied about the incidents in order to cover for the pharmacist under his control. Such conduct is in violation of Section 2913.42(B) of the Ohio Revised Code.
- (4) Robert C. Ferguson as the Responsible Pharmacist did, from February 17, 1994, to April 12, 1994, continuously fail to perform prospective drug utilization review and patient counseling, to wit: when dispensing medications to a patient pursuant to prescription numbers 6624893 and 6627340, Robert C. Ferguson or a pharmacist under his control failed to review the original prescription and/or refill information for over-utilization, incorrect drug dosage and duration of drug treatment, and misuse; and, Robert C. Ferguson or someone under his control failed to offer patient counseling. Such conduct is in violation of Rules 4729-5-20 and 4729-5-22 of the Ohio Administrative Code.
- (5) Robert C. Ferguson did, on or about June 24, 1994, knowingly make a false statement when made for the purpose to mislead a public official in performing his official function, to wit: Robert C. Ferguson admittedly lied to and/or withheld the truth from a Board agent who was investigating the matter of misbranded medication. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Robert C. Ferguson knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

Robert C. Ferguson agrees to the imposition of a monetary penalty of nine hundred fifty dollars (\$950.00) due and owing within 30 days of 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 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

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

Robert C. Ferguson 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.

Robert C. Ferguson 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.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Robert C. Ferguson agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of Board President's signature below.

SIGNED AND EFFECTIVE MAY 14, 1996