

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket No. D-980831-009)

In The Matter Of:

**GILBERT ERNEST ART, JR., R.Ph.**  
22052 Sunset Drive  
Newcomerstown, Ohio 43832  
(R.Ph. No. 03-1-17643)

**INTRODUCTION**

THE MATTER OF GILBERT ERNEST ART, JR. CAME TO HEARING ON AUGUST 3, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, 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.

GILBERT ERNEST ART, JR. WAS REPRESENTED BY SAMUEL B. WEINER, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

**SUMMARY OF EVIDENCE**

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

(1) Gilbert Ernest Art, Jr., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Hearing Request letter not dated and attached letter from Jean M. Martin not dated, received by the Board office on August 28, 1998.
- (2) Exhibit 1A--Copy of Hearing Schedule letter dated August 31, 1998.
- (3) Exhibit 1B--Continuance Request letter dated November 4, 1998.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated November 5, 1998.
- (5) Exhibit 1D--Continuance Request letter dated April 1, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated April 8, 1999.
- (7) Exhibit 1F--Copy of Pharmacist File Front sheet of Gilbert Ernest Art, Jr. showing original date of registration as February 24, 1989.
- (8) Exhibit 2--Copy of ten-page Order of the State Board of Pharmacy, Docket No. D-921015-015, dated August 13, 1993.

- (9) Exhibit 3--Three-page handwritten statement of Gilbert E. Art, Jr., R.Ph. dated July 17, 1991.
- (10) Exhibit 4--Copy of four-page handwritten statement of Gilbert Ernest Art, Jr. R.Ph. dated July 25, 1991.

Respondent's Exhibits:

Spiral binder with two-page cover statement from Sam B. Weiner titled, "Summary of the Application for Reinstatement of Gilbert Art" and Respondent's Exhibits 1 through 9 as follows:

- (1) Exhibit 1--Copies of the following: Letter from Tamara L. Brenneman dated July 7, 1999; two-page contact sheet dated from June 16, 1992, through October 1994; four pages of Self-Help, Inc. documents dated September 13, 1993; September 8, 1992; August 6, 1992 and June 16, 1992; Treatment Plan Review of Gilbert Art with final date of July 1, 1994; Treatment Plan of Gilbert Art dated June 24, 1992; Treatment Plan of Gilbert Art dated June 14, 1993; urine drug screen reports of Gilbert Art dated July 9, 1992, August 31, 1992, and April 23, 1993; six two-page Self-Help, Inc. Client Treatment Reports dated August 24, 1992, October 12, 1992, March 25, 1993, May 27, 1993, August 3, 1993, and August 4, 1994; letter from Tamara L. Dessecker dated June 1, 1993; letter from Jean M. Martin not dated.
- (2) Exhibit 2--Copies of the following: Letter from Greg L. Didonato dated April 30, 1999; Certificate to Operate an Alcohol and Drug Addiction Outpatient Treatment Facility, No. 92-018T, issued to Self-Help, Inc.; Certificate to Operate an Alcohol and Drug Addiction Outpatient Treatment Program, No. 94-112T, issued to Self-Help, Inc.; two-page information pamphlet about Self-Help, Inc.; two-page document titled "It's time to wake up...and face your drug abuse problem".
- (3) Exhibit 3--Copies of the following: Letter from Starlene Lewis and Lisa M. Incarnato dated July 23, 1999; Certificate to Operate an Alcohol and Drug Addiction Outpatient Treatment Program, No. 97-420T, issued to Tuscarawas County General Health District; twelve drug urine screen reports of Gilbert Art dated April 21, 1999; April 28, 1999; May 6, 1999; May 11, 1999; May 18, 1999; May 25, 1999; June 3, 1999; June 15, 1999; June 23, 1999; June 29, 1999; July 8, 1999; and July 21, 1999; Tuscarawas County Health Department Alcohol and Addiction Program Care Synopsis of Gilbert E. Art, Jr. dated from April 20, 1999 through July 26, 1999 and six pages of client notes on Gilbert Art; Multiaxial Evaluation Report of Gilbert E. Art, Jr. dated July 26, 1999; three-page Substance Abuse Subtle Screening Inventory of Gilbert Art dated June 8, 1999; five-page Drug Screening Test of Gilbert Art dated June 8, 1999.
- (4) Exhibit 4-- [Content not public]
- (5) Exhibit 5--Copies of the following: Letter from Loan Servicing Center of Southwest Student Services Corporation dated September 29, 1998; Repayment Addendum and Disclosure Statement from Arizona Educational Loan Corporation dated March 11, 1998; two Sallie Mae Servicing Corporation Repayment Obligation dated December 15, 1996 and June 1, 1999; Interest Statement from Sallie Mae Servicing Corporation dated June 1, 1999.

- (6) Exhibit 6--Copies of the following for Gilbert E. Art: 1994 W-2 Wage and Tax Statement from Shannon Staffing, Inc.; 1994 W-2 Wage and Tax Statement from Artwood Products, Inc.; 1994 W-2 Wage and Tax Statement from Herco, Inc.; 1996 W-2 Wage and Tax Statement from Herco, Inc.; 1995 W-2 Wage and Tax Statement from Herco, Inc.; 1997 W-2 Wage and Tax Statement from Herco, Inc.; 1998 W-2 Wage and Tax Statement from Herco, Inc.; Herco Inc. Payroll Account pay stub for pay period dated July 18, 1999.
- (7) Exhibit 7--Copy of Coshocton County Child Support Enforcement Agency Administrative Adjustment Recommendation dated October 27, 1997. Copy of three-page Separation Agreement of Leslie A. Art and Gilbert E. Art, Jr. dated February 17, 1995.
- (8) Exhibit 8--Copy of Marriage License of Gilbert Ernest Art., Jr. and Tammy Lynn Moore dated July 7, 1997.
- (9) Exhibit 9--Copies of letters as follows: from Chris Dyer dated April 2, 1999 and Tammy L. Art dated July 25, 1999.

#### FINDING OF FACT

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

- (1) Gilbert Ernest Art., Jr. has not complied with the Order of the Board, Docket No. D-921015-015, dated August 13, 1993.

#### ACTION OF THE BOARD

- (A) The State Board of Pharmacy hereby denies the reinstatement petition of Gilbert Ernest Art, Jr. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Gilbert Ernest Art, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while suspended.
- (B) The Board will consider any petition filed by Gilbert Ernest Art, Jr. for a hearing, pursuant to Revised Code Chapter 119., upon the question of reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:
  - (1) Gilbert Ernest Art, Jr. must enter into a contract, after the effective date of this Order, with a certified Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
    - (a) Random, **observed** urine drug screens shall be conducted at least every three months.
      - (i) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

- (ii) Results of urine screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
  - (b) The intervener/sponsor shall provide copies of all urine screen reports to the Ohio Board of Pharmacy in a timely fashion.
  - (c) Regular attendance at an Alcoholics Anonymous, Narcotics Anonymous, or a similar support group meeting is required during outpatient treatment and/or during aftercare, as determined by the treatment provider.
  - (d) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (2) Gilbert Ernest Art, Jr. must provide at the time of petitioning the Board for reinstatement, as was required in the Board's August 13, 1993 Order, written documentation from his treatment provider regarding a minimum of five years compliance with the program pursuant to the new contract.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

**ORDER EFFECTIVE SEPTEMBER 9, 1999**

**ORDER OF THE STATE BOARD OF PHARMACY**

(Docket No. D-921015-015)

In The Matter Of:

**GILBERT ERNEST ART, JR., R.Ph.**  
22052 Sunset Drive  
Newcomerstown, Ohio 43832  
(R.Ph. No. 03-1-17643)

**INTRODUCTION**

THE MATTER OF GILBERT ERNEST ART CAME TO HEARING ON JUNE 21, 1993 AND RECONVENED ON JUNE 22, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY D. MOORE, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; METTA LOU HENDERSON, R.Ph.; PAUL F. LAMPING, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; NICHOLAS R. REPKE; JOSEPH R. SABINO, R.Ph.; AND ROBERT W. VALENTINE, R.Ph.

**SUMMARY OF EVIDENCE**

(A) Testimony

State's Witnesses:

- (1) Gilbert Ernest Art, Respondent
- (2) David Gallagher, Ohio State Board of Pharmacy
- (3) Timothy J. Benedict, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Kenneth Welch, Attorney
- (2) David Slater
- (3) Tamara Dessecker, Self-Help, Inc.
- (4) Cathy Douglas, Morgan Pharmacy, Technician
- (5) Gilbert Ernest Art, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order dated August 4, 1992.
- (2) Exhibit 1A - Hearing Request letter dated August 28, 1992.
- (3) Exhibit 1B - Hearing Schedule letter dated September 2, 1992.
- (4) Exhibit 1C - Continuance Request letter from Gilbert e. Art, Jr., not dated, received in the Board office on October 19, 1992.
- (5) Exhibit 1D - Notice of Opportunity letter dated October 15, 1992.
- (6) Exhibit 1E - Continuance Request letter from Attorney Sherri Blank Lazear dated October 15, 1992.
- (7) Exhibit 1F - Hearing Schedule letter dated October 19, 1992.

- (8) Exhibit 1G - Representation Withdraw letter from Attorney Sherri Blank Lazear dated January 22, 1993.
- (9) Exhibit 1H - Facsimile letter from R. William Meeks dated January 21, 1993; and Motion for Reassignment and Consolidation of Hearing Dates in the matter of Gilbert Ernest Art, Jr., R.Ph. and Morgan Pharmacy, Inc. with attached two-page memorandum dated January 21, 1993.
- (10) Exhibit 11 - Schedule letter dated January 22, 1993.
- (11) Exhibit 2 - Pharmacist File Front sheet of Gilbert Ernest Art, Jr. showing original date of registration as February 24, 1989.
- (12) Exhibit 3 - Notification of Change of Responsible Person form signed by Gilbert Ernest Art, Jr., effective date of July 17, 1989.
- (13) Exhibit 6 - Four-page Dangerous Drug Distributor Inspection Report of Morgan Pharmacy, Terminal Distributor License No. 02-083550, signed and dated on July 17, 1991.
- (14) Exhibit 7 - Four-page pink-sheet response to the Dangerous Drug Distributor Inspection Report of Morgan Pharmacy, not dated.
- (15) Exhibit 8 - Two-page handwritten CII Narcotic Inventory signed by C. Decker, R.Ph. and dated July 17, 1989.
- (16) Exhibit 9 - Two-page computer printout of Morgan Pharmacy, Inc. for Drug Usage by Drug Report, signed by Gilbert Ernest Art, Jr. on July 29, 1991.
- (17) Exhibit 10 - Four-page computer printout of Morgan Pharmacy, Inc. for Drug Usage by Drug Report, dated October 22, 1991.
- (18) Exhibit 11 - Ten prescriptions numbered as follows: 374786, 379512, 407169, 405963, 396711, 389575, 388037, 382529, 381441, and 380711.
- (19) Exhibit 12 - Two-page handwritten statement of Gilbert Ernest Art, Jr. signed and notarized on July 31, 1991.
- (20) Exhibit 13 - Prescription number 393289.
- (21) Exhibit 14 - Morgan Pharmacy, Inc., receipt number 2841, of Mary Beall dated November 2, 1990.
- (22) Exhibit 15 - Handwritten statement of Judy Mizer signed and notarized on October 23, 1991.
- (23) Exhibit 16 - Four-page handwritten statement of Gilbert Ernest Art, Jr. signed and notarized on July 25, 1991.
- (24) Exhibit 17 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Valium 10mg dated November 26, 1991.
- (25) Exhibit 18 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Diazepam 10mg dated November 26, 1991.
- (26) Exhibit 19 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Xanax 1mg dated November 26, 1991.
- (27) Exhibit 20 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Tylenol w/Codeine #3 30mg dated December 2, 1991.
- (28) Exhibit 21 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Tylenol #4 60mg dated November 26, 1991.
- (29) Exhibit 22 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Acetaminophen with Codeine #3 30mg dated November 26, 1991.

- (30) Exhibit 23 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Methylphenidate 20mg dated November 27, 1991.
- (31) Exhibit 24 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Dilaudid 4mg dated November 26, 1991.
- (32) Exhibit 25 - Nine Accountability Statements of Morgan Pharmacy, terminal distributor license number 02-083550, dated November 27, 1991, for the following drugs: Codeine Sulfate 30mg, Codeine Sulfate 60mg, Demerol 50mg, Mepergan Fortis 50mg, M.S. Contin 60mg, Oxycodone 5mg & Acetaminophen 325mg, Ritalin 5mg, Ritalin 10mg, and Seconal Sodium 100mg; and one Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Dilaudid 2mg dated November 26, 1991.
- (33) Exhibit 26 - Three-page handwritten statement of Gilbert E. Art, Jr. signed and notarized on July 17, 1991.
- (34) Exhibit 28 - [Content not public]
  
- (35) Exhibit 29 - [Content not public]
  
- (36) Exhibit 30 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Roxicet 5/325mg dated December 2, 1991.
- (37) Exhibit 31 - Accountability Statement of Morgan Pharmacy, terminal distributor license number 02-083550, for Tylox 5/500 caps.

Respondent's Exhibits:

- (1) Exhibit A - Letter from Tamara L. Dessecker dated June 1, 1993.
- (2) Exhibit B - Three-page computer print-out of Morgan Pharmacy, Inc. for Drug Usage by Drug Report, dated June 4, 1993.
- (3) Exhibit C - [Content not public]
  
- (4) Exhibit D - Ohio Bureau of Employment Services, Notice of Determination of Benefit Rights, Form No. UC-465N (R 1-90), of Gilbert E. Art, Jr., application date of May 19, 1992.
- (5) Exhibit E - United States Bankruptcy Court, Southern District of Ohio, Columbus, Chapter 7, in Re: Gilbert E. Art, Jr., Case No. 2-92-06175, Order and Notice Approving Trustee's Final Account dated February 24, 1993.
- (6) Exhibit F - Thirty-two DEA 222 forms of Morgan pharmacy, inc. number as follows:  
881098223, 881098231, 881098232, 881098234, 881098235, 881098236,  
881098225, 881098224, 881098221, 881098220, 881098219, 881098218,  
881098217, 881098216, 881098242, 881098243, 881098241, 881098226,  
881098239, 881098238, 881098222, 881098240, 880605084, 871465323,  
871465322, 871465321, 871465320, 871465319, 871465318, 871465317,  
871465316, and 871465314.

## 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 Gilbert Ernest Art was originally licensed in the state of Ohio on February 24, 1989, pursuant to examination; and Gilbert Ernest Art was the responsible pharmacist at Morgan Pharmacy; 306 S. College St., Newcomerstown, Ohio 43823, from July 17, 1989 through May 31, 1992. Gilbert Ernest Art's license to practice pharmacy in Ohio was summarily suspended on August 4, 1992 [Content not public]
- (2) Gilbert Ernest Art as responsible pharmacist did, on or about July 17, 1991, at Morgan Pharmacy, 306 S. College St., Newcomerstown, Ohio 43823, permit non-licensed personnel to possess a key to the pharmacy and pharmacy alarm system, to wit: Gilbert Ernest Art allowed Robert Morgan to possess a pharmacy alarm key, which gave Mr. Morgan access and control over the pharmacy and dangerous drug stock. Such conduct is in violation of Rules 4729-5-11 and 4729-9-11 of the Ohio Administrative Code as it relates to Sections 4729.27, 4729.55, and 4729.57 of the Ohio Revised Code.
- (3) Gilbert Ernest Art as responsible pharmacist did, at the time of the change of responsible pharmacist, fail to complete an inventory of the controlled substances on hand. Such conduct is in violation of Rule 4729-5-11(C) of the Ohio Administrative Code and Section 1304.17 of the Code of Federal Regulations.
- (4) Gilbert Ernest Art as responsible pharmacist did fail to keep accurate records of the inventory at the pharmacy, to wit: Gilbert Ernest Art failed to send notification that records of Morgan Pharmacy were being kept in a place other than the pharmacy; and during the inspection at Morgan Pharmacy on July 17, 1991, an agent of the Board of Pharmacy discovered that certain records were unattainable for inventory due to the fact that these records were kept at the residences of the pharmacy owners, Bonnie Morgan and Robert Morgan. Such conduct is in violation of Rule 4729-9-14 of the Ohio Administrative Code and Section 3719.13 of the Ohio Revised Code.
- (5) Gilbert Ernest Art as responsible pharmacist did fail to maintain complete and accurate records of controlled substances, to wit: on October 16, 1991, Gilbert Ernest Art purged records from the pharmacy's automated data processing system, and destroyed records that were originally entered into the data processing system within the previous thirty-six months, thus, rendering such records unavailable for inspection. Such conduct is in violation of Rule 4729-5-17 of the Ohio Administrative Code and Section 3719.13 of the Ohio Revised Code.

- (6) Gilbert Ernest Art as responsible pharmacist did, as a continuing course of conduct, make improper generic substitutions, to wit: when dispensing prescriptions written for Tylox 5/500 capsules, Gilbert Ernest Art and/or a pharmacist under his control dispensed Roxicet 5/500 tablets, thus, substituting tablets for capsules. The following ten prescriptions are examples of this conduct:

<u>Rx. No.</u>	<u>Date</u>	<u>Rx. No.</u>	<u>Date</u>
374786	11/20/89	388037	07/23/90
379512	02/03/90	389575	08/24/90
380711	02/24/90	396711	12/28/90
381441	03/08/90	405963	06/18/91
382529	03/27/90	407169	07/16/91

Such conduct is in violation of Section 4729.38 of the Ohio Revised Code.

- (7) Gilbert Ernest Art did, soon after November 2, 1990, with the purpose to deprive, knowingly obtain a dangerous drug beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art admitted to stealing 21 units of MS Contin 30mg, which had been returned from Riverside Manor Nursing Home, prescription number 393289. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (8) Gilbert Ernest Art did, approximately five months after obtaining returned prescription number 393289 written for MS Contin, admit to ingesting one unit of MS Contin 30mg.
- (9) Gilbert Ernest Art did, approximately five months after obtaining returned prescription number 393289, knowingly 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: Gilbert Ernest Art admitted selling the unused 20 units of MS Contin 30mg, prescription number 393289, to Mark Hennis, without a prescription. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (10) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 622 units of Valium 10mg, a Schedule IV controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (11) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 622 units (20% of the store's drug supply) of Valium 10mg, a Schedule IV controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (12) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 1033 units of Diazepam 10mg, a Schedule IV controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (13) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 1033 units (7% of the store's drug supply) of Diazepam 10mg, a Schedule IV controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (14) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 869 units of Xanax 1mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (15) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 869 units (23.5% of the store's drug supply) of Xanax 1mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (16) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 776 units of Tylenol #3, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (17) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell or abet the sale of a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 776 units (approximately 9% of the store's drug supply) of Tylenol #3, a Schedule III controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (18) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 938 units of Tylenol #4, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (19) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell or abet the sale of a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 938 units (approximately 22% of the store's drug supply) of Tylenol #4, a Schedule III controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (20) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 489 units of APAP with Codeine 30mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (21) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell or abet the sale of a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 489 units (approximately 9% of the store's drug supply) of APAP with Codeine 30mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (22) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 760 units of Methylphenidate 20mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (23) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell or abet the sale of a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 760 units (approximately 44% of the store's drug supply) of Methylphenidate 20mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (24) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Morgan Pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control stole 20 units of Dilaudid 4mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (25) Gilbert Ernest Art as responsible pharmacist did, between April 27, 1989, and July 25, 1991, knowingly sell or abet the sale of 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: Gilbert Ernest Art and/or a pharmacist under his control sold, without prescription, 20 units (approximately 7% of the store's drug supply) of Dilaudid 4mg, a Schedule II controlled substance. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (26) Gilbert Ernest Art as responsible pharmacist did, between the dates of April 27, 1989, and July 25, 1991, fail to keep records of controlled substances dispensed and sold from the pharmacy, to wit: Gilbert Ernest Art and/or a pharmacist under his control sold drugs without having received prescriptions and Gilbert Ernest Art did not make record of such sales. Such conduct is in violation of Section 3719.07(G) of the Ohio Revised Code, and Rules 4729-5-14 and 4729-5-17 of the Ohio Administrative Code.
- (27) Gilbert Ernest Art is addicted to or abusing drugs to such a degree as to render him unfit to practice pharmacy, to wit: Gilbert Ernest Art admittedly stole large quantities of controlled substances from his employer, Morgan Pharmacy, in part for his own personal use; and Gilbert Ernest Art has admitted to ingesting drugs such as Valium and Xanax.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (1), (7), and (9) through (25) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) 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 paragraphs (2) through (7), and (9) through (26) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (8) and (27) of the Findings of Fact constitute being addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (4) through (6), (9), (11), (13), (15), (17), (19), (21), (23), (25), and (26) 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Gilbert Ernest Art, Jr. on August 4, 1992.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Gilbert Ernest Art, Jr.:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card held by Gilbert Ernest Art, Jr. indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Gilbert Ernest Art, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Five years after the date of the mailing of this Order, Gilbert Ernest Art, Jr. may petition the Board to hold a Chapter 119. hearing to determine whether or not the Board will consider reinstating his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) Gilbert Ernest Art, Jr. must enter into a contract with a certified Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment program acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
    - (a) random observed urine screens shall be conducted at least every three months.
    - (b) regular attendance at an Alcoholics Anonymous, Narcotics Anonymous, or a similar support group meeting is required during out-patient treatment and/or during aftercare, as determined by the treatment provider.
    - (c) the program shall immediately report to the Board of Pharmacy any violations of the contract.
  - (2) Gilbert Ernest Art must provide, at the time of petitioning the Board for reinstatement, written documentation from his treatment provider regarding compliance with the program pursuant to the contract.

Division (B) of Section 4729.16 of the Revised Code provides that: "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 (Aye-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

**ORDER EFFECTIVE AUGUST 13, 1993**

**SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING**

August 4, 1992

GILBERT ERNEST ART, JR., R.Ph.  
22052 Sunset Drive  
Newcomerstown, Ohio 43832

Re: Ohio Registered Pharmacist  
Number 03-1-17643

Dear Pharmacist:

Records of the Board indicate that you are a pharmacist registered by this Board to practice pharmacy in the state of Ohio.

In accordance with Section 2929.17 of the Ohio Revised Code, [Content not public]

YOU ARE HEREBY NOTIFIED that Section 3719.121(C) of the Ohio Revised Code states, in pertinent part:

(C) On receiving notification pursuant to section 2929.17 or 3719.12 of the Revised Code, the Board under which ... Pharmacist ... has been licensed or registered shall immediately suspend the license or registration of that person on his plea of guilty to, or a judicial finding of, a felony drug abuse offense . . .

WHEREFORE, PURSUANT TO SECTION 3719.121(C) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS HEREBY SUSPENDED. This suspension shall remain in effect until an adjudicatory hearing is held by the Board under Chapter 119. of the Revised Code, during which time you may not engage in the practice of pharmacy. If you request a hearing within 30 days of the time of mailing of this notice, such will be afforded. You may appear at such hearing in person, by or with your attorney, or you may present your position, arguments, or contentions in writing; and at this hearing, you may present evidence and examine any witnesses appearing for and against you.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "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.

(D-920804-009)

BY ORDER OF THE STATE BOARD OF PHARMACY

**SUMMARY SUSPENSION ORDER EFFECTIVE AUGUST 4, 1992**

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.  
(Order Effective August 13, 1993)*