



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

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URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-040914-022)

In The Matter Of:

GARY SASS, R.Ph.

2048 Buckeye Drive
Sharpsville, Pennsylvania 16150
(R.Ph. No. 03-1-18015)

INTRODUCTION

THE MATTER OF GARY SASS CAME FOR HEARING ON APRIL 5, 2006, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE R. EASTMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

GARY SASS WAS NOT REPRESENTED BY COUNSEL. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses

None

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [09-14-04]
 - 1A-1B. Procedurals
 - 1C. Addendum Notice [12-14-04]
 - 1D-1G. Procedurals
 - 1H. Addendum Notice [10-03-05]
 - 1I-1O. Procedurals
2. Two Blank Prescription Forms from Shawn M. Donatelli, D.O., Doctors Pain Clinic [not dated]
3. Voided Prescription for Percocet 5/325 [08-11-04]
4. Dangerous Drug Distributor Inspection Report [08-11-04]
5. Copy of Prescription for Percocet 5/325 [08-11-04]
6. Rx #N209732 [08-13-04]
7. CVS Pharmacy Receipt for Rx #209734 and Rx #209732 [08-13-04]; Rx #209732 Customer Receipt [08-13-04]; Photocopy of Medicine Vial for Rx # 209732 [08-13-04]
8. Bureau of Criminal Identification and Investigation Laboratory Report [09-01-04]

9. Notarized Statement of Kimberly A. Carney [07-11-05]
10. Dobson Communications Corporation Certification of Records [03-11-05]; U.S. Department of Justice Subpoena for Dobson Cellular Systems, Inc. [08-18-04]; copy of letter from Lisa Morris to TFA Eric Dattilo [08-18-04]; Cell Phone records of Gary N. Sass [07-26-04 to 09-01-04]
11. Report of Text Messages [08-11-04 to 08-30-04]
12. Fourteen Photographs of Text Messages [not dated]
13. Telephonic Interview of Gary Sass, R.Ph. [not dated]
14. Notarized Statement of Gary Sass, R.Ph. [09-01-04]
15. Voided Rx for Lorcet 10/650 [08-11-04]
16. Copy of Prescription for Lorcet 10/650 [08-11-04]
17. Rx #C209734 [08-13-04]
18. Rx #C209734 Customer Receipt [08-13-04]; Photocopy of Medicine Vial for Rx C209734 [08-13-04]
19. Rx #C192495 [01-12-04]
20. Statement of John F. Steele, M.D. and Sue Connick [09-20-04]
21. Rx #C154863 [10-19-02]
22. Statement of Dr. David A. Vermeire and Dawn Roper [09-20-04]
23. Copy of Rx #588066 [04-05-04]; Customer Receipt and Duplicate Label for Rx #588066 [08-30-04]
24. Notarized Statement of Jennifer Lackner [09-08-04]; Interview of Jennifer Lackner [09-08-04]
25. Letter from Tony Depietro, R.Ph. to George Pavlich [10-06-04]
26. Indictment, State of Ohio vs. Gary Nicholas Sass, Case No. 04-CR-585, Trumbull County Common Pleas Court [09-30-04]; Finding on Guilty Plea to the Amended Indictment [09-23-05]

Respondent's Exhibits

- A. Resume of Gary Nicholas Sass [not dated]; Copy 401K Statement for Gary Sass and copy of Check No. 220601921 payable to Trumbull County Clerk of Courts [11-14-05]; Letter from CVS/Pharmacy to Gary Sass [10-16-04]; Two Letters of Support [09-26-05]; Power-Pak C.E. Exam History for Gary Sass [07-31-00 to 02-26-06]

FINDINGS 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) Records of the Board of Pharmacy indicate that Gary Sass was originally licensed by the State of Ohio as a pharmacist on June 27, 1989, pursuant to reciprocity, and that his license to practice pharmacy in Ohio was Summarily Suspended effective September 14, 2004.
- (2) Gary Sass did, on or about August 11, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gary Sass sold 30 tablets of Percocet 5/325, a Schedule II Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (3) Gary Sass did, on or about August 11, 2004, knowingly possess a false prescription, to wit: when selling Percocet 5/325, a Schedule II Controlled Substance, Gary Sass filed the document purporting to be a prescription, number 209732, in the

pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(4) Gary Sass did, on or about August 11, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gary Sass sold 30 tablets of Lorcet 10/650, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(5) Gary Sass did, on or about August 11, 2004, knowingly possess a false prescription, to wit: when selling Lorcet 10/650, a Schedule III Controlled Substance, Gary Sass filed the document purporting to be a prescription, number 209734, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(6) Gary Sass did, on or about January 12, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gary Sass sold 60 tablets of hydrocodone/APAP 10/500, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(7) Gary Sass did, on or about January 12, 2004, knowingly possess a false prescription, to wit: when selling Lorcet 10/500, a Schedule III Controlled Substance, Gary Sass filed the document purporting to be a prescription, number 192495, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(8) Gary Sass did, on or about October 19, 2002, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Gary Sass sold 100 tablets of hydrocodone/APAP 10/650, having 2 refills, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(9) Gary Sass did, on or about October 19, 2002, knowingly possess a false prescription, to wit: when selling Lorcet 10/650, a Schedule III Controlled Substance, Gary Sass filed the document purporting to be a prescription, number 154863, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

(10) Gary Sass did, on or about August 30, 2004, misbrand a drug, to wit: when Gary Sass received a refill request for Rx #588066, written for 30 Macrochantin 50 mg capsules (Nitrofurantoin MCR 50 mg), Gary Sass dispensed 30 fluvoxamine maleate 50 mg tablets, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(11) Gary Sass did, on or about September 22, 2005, plead guilty in State of Ohio vs. Gary Nicholas Sass, Case No. 04-CR-585, Trumbull County Common Pleas Court, to one (1) count of Aggravated Trafficking in Drugs, a felony of the fourth degree under Section 2925.03(A)(1)&(C)(1)(a) of the Ohio Revised Code, and one (1) count of Trafficking in Drugs, a felony of the fourth degree under Section 2925.03(A)(1)&(C)(2)(c) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (9) and (11) 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) The State Board of Pharmacy concludes that paragraphs (3), (5), (7), and (9) 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) The State Board of Pharmacy concludes that paragraphs (2) through (11) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapters 2925. and 3715. 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Gary Sass on September 14, 2004.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Gary Sass as follows:

(A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for two years the pharmacist identification card, No. 03-1-18015, held by Gary Sass and such suspension is effective as of the date of the mailing of this Order.

(1) Gary Sass, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(2) Gary Sass, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his 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.

(B) Beginning two years from the effective date of this Order, the State Board of Pharmacy places Gary Sass on probation for five years. The terms of probation are as follows:

(1) The State Board of Pharmacy hereby declares that Gary Sass's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.

(2) Gary Sass may not serve as a responsible pharmacist.

- (3) Gary Sass must not violate the drug laws of Ohio, any other state, or the federal government.
- (4) Gary Sass must abide by the rules of the State Board of Pharmacy.
- (5) Gary Sass must comply with the terms of this Order.
- (6) Gary Sass's license is deemed not in good standing until successful completion of the probationary period.
- (7) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Gary Sass is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-1).
MOTION CARRIED.
SO ORDERED.

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

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

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

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: MAY 11, 2006

CERTIFIED MAIL / Return Receipt
7001 0360 0002 4139 4446

WTW/lf

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

cc: Sally Ann Steuk, Assistant Attorney General



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

September 14, 2004

Gary Sass, R.Ph.
23 Baker Avenue
Hermitage, Pennsylvania 16148

Re: Ohio Registered Pharmacist
Number 03-1-18015

Dear Mr. Sass:

In accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) Records of the Board of Pharmacy indicate that you were originally licensed in the State of Ohio on June 27, 1989, pursuant to reciprocity, and are currently licensed to practice pharmacy in the State of Ohio.
- (2) You did, on or about August 11, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you sold 30 tablets of Percocet 5/325, a Schedule II Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (3) You did, on or about August 11, 2004, knowingly possess a false prescription, to wit: when selling Percocet 5/325, a Schedule II Controlled Substance, you filed the document purporting to be a prescription, number 209732, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (4) You did, on or about August 11, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you sold 30 tablets of Lorcet 10/650, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

- (5) You did, on or about August 11, 2004, knowingly possess a false prescription, to wit: when selling Lorcet 10/650, a Schedule III Controlled Substance, you filed the document purporting to be a prescription, number 209734, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (6) You did, on or about January 12, 2004, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you sold 60 tablets of hydrocodone/APAP 10/500, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (7) You did, on or about January 12, 2004, knowingly possess a false prescription, to wit: when selling Lorcet 10/500, a Schedule III Controlled Substance, you filed the document purporting to be a prescription, number 192495, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (8) You did, on or about October 19, 2002, knowingly sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you sold 100 tablets of hydrocodone/APAP 10/650, having 2 refills, a Schedule III Controlled Substance, when not authorized by a prescriber for a legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (9) You did, on or about October 19, 2002, knowingly possess a false prescription, to wit: when selling Lorcet 10/650, a Schedule III Controlled Substance, you filed the document purporting to be a prescription, number 154863, in the pharmacy to cover for the sale of the drugs. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

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

(B) If the board under which a person has been issued a license, . . . , . . . determines that there is clear and convincing evidence that continuation of the person's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, . . . , . . . , without a prior hearing.

WHEREFORE, PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until a final adjudication order becomes effective, during which time you may not engage in the practice of pharmacy.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

- (A) The State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Ohio Revised Code for a similar offense, or in the case of a violation of a section of the Ohio Revised Code that does not bear a penalty, a monetary penalty or forfeiture of no more than five hundred dollars, if the Board finds a pharmacist or pharmacy intern:
- (1) Guilty of a felony or gross immorality;
 - (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
 - (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
 - (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
 - (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 or Chapter 2925. or 3719. of the Revised Code;
 - (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
 - (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
 - (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
 - (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;
 - (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

IF YOU REQUEST A HEARING within thirty (30) days of the time of the mailing of this notice, such will be afforded. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present

your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

YOU ARE HEREBY ADVISED that if you do not request such a hearing within thirty (30) days of the mailing of this notice, the State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

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 (10) days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

BY ORDER OF THE STATE BOARD OF PHARMACY

William T. Winsley, M.S., R.Ph.
Executive Director

WTW: (D-040914-022)

CERTIFIED MAIL/Return Receipt
7001 0360 0002 4087 3546

cc: Sally Ann Steuk, Assistant Attorney General



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ADDENDUM NOTICE

October 3, 2005

Gary Sass, R.Ph.
2048 Buckeye Drive
Sharpsville, Pennsylvania 16150

Re: Ohio Registered Pharmacist
Number 03-1-18015

Dear Mr. Sass:

YOU ARE HEREBY NOTIFIED that, in addition to the allegations stated in the September 14, 2004, Summary Suspension Order/Notice of Opportunity letter and the December 14, 2004 Addendum Notice, the following allegations will also be considered, as numbered:

(11) You did, on or about September 22, 2005, plead guilty in State of Ohio vs. Gary Nicholas Sass, Case No. 04-CR-585, Trumbull County Common Pleas Court, to one (1) count of Aggravated Trafficking in Drugs, a felony of the fourth degree under Section 2925.03(A)(1)&(C)(1)(a) of the Ohio Revised Code, and one (1) count of Trafficking in Drugs, a felony of the fourth degree under Section 2925.03(A)(1)&(C)(2)(c) of the Ohio Revised Code. Such conviction indicates that you are guilty of a felony or gross immorality within the meaning of Section 4729.16 of the Ohio Revised Code.

YOU ARE HEREBY ADVISED that Section 4729.16 of the Ohio Revised Code states in pertinent part that:

(A) The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 of the Revised Code, Chapter 2925. or 3719. of the Revised Code, or any rule adopted by the board under those provisions;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;
- (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

AS PREVIOUSLY NOTED IN THE SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY letter dated September 14, 2004 and Addendum Notice dated December 14, 2004, and with regard to your adjudication hearing scheduled for November 8, 2005, you may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

BY ORDER OF THE STATE BOARD OF PHARMACY

William T. Winsley, M.S., R.Ph.
Executive Director



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ADDENDUM NOTICE

December 14, 2004

Gary Sass, R.Ph.
23 Baker Avenue
Hermitage, Pennsylvania 16148

Re: Ohio Registered Pharmacist
Number 03-1-18015

Dear Mr. Sass:

YOU ARE HEREBY NOTIFIED that, in addition to the allegations stated in the September 14, 2004, Summary Suspension Order/Notice of Opportunity letter, the following allegations will also be considered, as numbered:

- (10) You did, on or about August 30, 2004, misbrand a drug, to wit: when you received a refill request for Rx #588066, written for 30 Macrodantin 50 mg capsules (Nitrofurantoin MCR 50 mg), you dispensed 30 fluvoxamine maleate 50 mg tablets, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code, and if proven constitutes unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

YOU ARE HEREBY ADVISED that Rule 4729-5-04 of the Ohio Administrative Code, states that:

The board of pharmacy may consider as evidence of a person not meeting the requirements provided in division (B) of section 4729.08, division (B) of section 4729.09, and sections 4729.11 and 4729.12 of the Revised Code, and may deny a person admission to the licensure examination, or may deny the issuance of a certificate of registration or an identification card to practice pharmacy as a pharmacist or intern in Ohio if such person:

- (A) Has been convicted of a felony;
- (B) Has been convicted of violating any state or federal pharmacy or drug law;
- (C) Is not of good moral character and habits;
- (D) Is addicted to or abusing liquor or drugs;

- (E) Has been disciplined by the Ohio state board of pharmacy pursuant to section 4729.16 of the Revised Code; or
- (F) Has been disciplined by any board of pharmacy.

YOU ARE FURTHER ADVISED that Section 4729.16 of the Ohio Revised Code states in pertinent part that:

(A) The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 of the Revised Code, Chapter 2925. or 3719. of the Revised Code, or any rule adopted by the board under those provisions;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;

- (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.
- (B) Any individual whose identification card is revoked, suspended, or refused, shall return the identification card and license to the offices of the state board of pharmacy within ten days after receipt of notice of such action.
- (C) As used in this section: "Unprofessional conduct in the practice of pharmacy" includes any of the following:
- (1) Advertising or displaying signs that promote dangerous drugs to the public in a manner that is false or misleading;
 - (2) Except as provided in section 4729.281 of the Revised Code, the sale of any drug for which a prescription is required, without having received a prescription for the drug;
 - (3) Knowingly dispensing medication pursuant to false or forged prescriptions;
 - (4) Knowingly failing to maintain complete and accurate records of all dangerous drugs received or dispensed in compliance with federal laws and regulations and state laws and rules;
 - (5) Obtaining any remuneration by fraud, misrepresentation, or deception.
- (D) The board may suspend a license or identification card under division (B) of section 3719.121 of the Revised Code by utilizing a telephone conference call to review the allegations and take a vote.
- (E) If, pursuant to an adjudication under Chapter 119. of the Revised Code, the board has reasonable cause to believe that a pharmacist or pharmacy intern is physically or mentally impaired, the board may require the pharmacist or pharmacy intern to submit to a physical or mental examination, or both.

AS PREVIOUSLY NOTED IN THE SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY letter dated September 14, 2004, and with regard to your adjudication hearing scheduled for March 8, 2005, you may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

If you wish to request a continuance in this matter, such request should be sent by certified mail, return receipt requested, to the offices of the Ohio State Board of Pharmacy, 77 South High Street, 1702, Columbus, Ohio 43215-6126. However, you must submit such request prior to fourteen days from the date of the scheduled hearing on March 8, 2005. The request will be presented to the Board for consideration and you will be notified as soon as practical regarding the request. If you have any questions regarding this matter, feel free to contact the Board office.

BY ORDER OF THE STATE BOARD OF PHARMACY

William T. Winsley, M.S., R.Ph.
Executive Director

CERTIFIED MAIL/Return Receipt
7003 0500 0002 4347 3631

WTW:lf (D-040914-022)

cc: Sally Ann Steuk, Assistant Attorney General
Gary R. Rich, Attorney for Respondent, 342 Mahoning Avenue NW; P.O. Box 4010;
Warren, Ohio 44482-4010