

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-020619-064)

In The Matter Of:

DAVID W. WHITE, R.Ph.
431 Southview
Cincinnati, Ohio 45219
(R.Ph. No. 03-1-20502)

This Settlement Agreement is entered into by and between David W. White (hereinafter referred to as "Respondent") and the Ohio State Board of Pharmacy (hereinafter referred to as "the Board"), a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

This matter commenced on March 16, 2001, when the Board issued a Notice of Opportunity letter, pending adjudication pursuant to Chapter 119. of the Ohio Revised Code. The Board issued its final Order on November 7, 2001, wherein it indefinitely suspended respondent's license. Respondent petitioned for reinstatement and on December 2, 2002; a hearing was held pursuant to Chapter 119. The Board issued its final Order on January 9, 2003, wherein respondent's license was reinstated with conditions. Respondent appealed timely to the Franklin County Common Pleas Court. Prior to and in lieu of proceeding on the merits of the appeal, the parties have entered into this agreement to settle all issues.

David W. White voluntarily 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, the right to additional formal adjudication and court appeals on the issues contained herein. David W. White acknowledges that by entering into this agreement, he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board 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 enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, David W. White was licensed to practice pharmacy in the State of Ohio prior to, and at the time of, the commencement of these proceedings.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of additional formal hearings, David W. White knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) David W. White must be in full compliance with his current contract, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board, for five years, subject to the provision in paragraph (G) below. The contract must provide that:

- (1) Random, observed urine drug screens shall be conducted each month for the first twelve months and then once every three months for the remaining four years.
 - (a) 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.
 - (b) Tramadol must be added to the standard urine drug screen.
 - (c) Results of all drug 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 and probation.
 - (d) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.
 - (2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) David W. White must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract required above, and
 - (2) A written description of Mr. White's progress towards recovery and what he has been doing during the previous three months.
- (C) David W. White must continue to follow the treatment plan, with counseling, set forth by Michael Gureasko M.D. or another program acceptable to the Board.
- (D) David W. White's psychiatric treatment provider must submit quarterly reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation).
- (E) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that David W. White'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) David W. White may not serve as a responsible pharmacist.
 - (3) David W. White may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) David W. White must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) David W. White must not violate the drug laws of Ohio, any other state, or the federal government.
 - (6) David W. White must abide by the rules of the State Board of Pharmacy.
 - (7) David W. White must comply with the terms of this Order.
- (F) 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.
- (G) Upon the expiration of 18 months, a Chapter 119. hearing will be held. At such hearing, if David W. White presents satisfactory evidence to the Board that he is rehabilitated and has remained so, he will be released from the remainder of his term of probation.

David W. White 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; and, that he has been represented by counsel of his choosing and he is satisfied with the representation that he has received.

David W. White 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.

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 the Board President's signature below.

SIGNED AND EFFECTIVE APRIL 7, 2003

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020619-064)

In The Matter Of:

DAVID W. WHITE, R.Ph.

431 Southview

Cincinnati, Ohio 45219

(R.Ph. No. 03-1-20502)

INTRODUCTION

THE MATTER OF DAVID W. WHITE CAME FOR HEARING ON DECEMBER 2 and 3, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

DAVID W. WHITE WAS REPRESENTED BY ERIC J. PLINKE AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. David W. White, R.Ph.
2. Michael D. Quigley

State's Exhibits

1. Reinstatement Hearing Request letter from David White [06-12-02]
1A-1C. Procedurals
2. Copy of Notarized Statement of David W. White [01/10/01]
2A. Copy of CVS/Revco #6126 Pharmacist's Statement of David White [01-01-00 to 01-30-01]
3. Copy of handwritten prescription with notes; Copy of Kroger Pharmacy Log Sheet for Store #327 dated 10/21 [10/07/00 to 10-21-00]
4. Copy of Notarized Statement of James B. Raasch [01/24/01]
5. Indictment and Request for a Warrant, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court [01/23/01]
6. Entry Withdrawing Plea of Not Guilty and Entering a Plea of Guilty, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court [03-13-01]
7. Drug Court Judgement Entry/Intervention in Lieu of Conviction, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court [03/29/01]
8. Copy of State Board of Pharmacy Order in re David W. White [11/07/01]
9. Assessment Results letter from Michael A. Gureasko, M.D. [12-06-01]

Respondent's Exhibits

- A. Copy of State Board of Pharmacy Order in re David W. White [11-07-01]
- B. Copy of letter from Harris Cohen, MSW, LSW, RC [09-14-01], copy of page three of three-page letter from Michael A. Gureasko, M.D. [12-06-01], and copy of letter from Deborah Eckert MSW, LSW, CCDC III and Frederick Gensler, M.D. Psychiatrist [08-26-02]
- C. Copy of PRO Pharmacist's Recovery Contract for David White [11-28-01]
- D. Copy of letter from Janice Kellogg [12-03-02], Drug Screen Reports [12-05-01 to 11-01-02], copy of Letter from Sharon Keys LISW, CCDC III [11-27-02]
- E. Support Group Attendance Records [11-28-01 to 11-29-02]
- F. Copies of Treatment Compliance letters from Deborah Eckert MSW, LSW, CCDC III-E [11-25-02], Angela M. Averett LSW, CCDI, MSW [11-14-02], Gregory L. Isaac, M.D. [11-21-02 and 06-17-02], Chris O. Costas, M.D. [09-12-01], ADAPT Program Certificate of Graduation [05-29-02]
- G. Continuing Pharmaceutical Education Certificates [04-28-02 to 11-22-02]
- H. Five Letters of Support [11-12-02 to 11-16-02]

FINDING 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 that David W. White has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-010316-054, effective November 7, 2001.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-1-20502, held by David W. White to practice pharmacy in Ohio and places David W. White on probation for five years effective as of the date of the mailing of this Order, with the following conditions:

(A) David W. White must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted each month for the first twelve months and then once every three months for the remaining four years.

(a) 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.

(b) Tramadol must be added to the standard urine drug screen.

- (c) Results of all drug 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 and probation.
 - (d) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.
- (2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) David W. White must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract required above, and
 - (2) A written description of Mr. White's progress towards recovery and what he has been doing during the previous three months.
- (C) David W. White must continue to follow the treatment plan, with counseling, set forth by Michael Gureasko M.D. or another program acceptable to the Board.
- (D) David W. White's psychiatric treatment provider must submit quarterly reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation).
- (E) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that David W. White'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) David W. White may not serve as a responsible pharmacist.
 - (3) David W. White may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) David W. White must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.

(5) David W. White must not violate the drug laws of Ohio, any other state, or the federal government.

(6) David W. White must abide by the rules of the State Board of Pharmacy.

(7) David W. White must comply with the terms of this Order.

(F) 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.

David W. White 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-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JANUARY 9, 2003

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-010316-054)

In The Matter Of:

DAVID W. WHITE, R.Ph.
2424 Fairview #1
Cincinnati, Ohio 45219
(R.Ph. No. 03-1-20502)

INTRODUCTION

THE MATTER OF DAVID W. WHITE CAME FOR HEARING ON OCTOBER 1, 2001, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

DAVID W. WHITE WAS REPRESENTED BY HARRY PLOTNICK AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Michael Cluxton, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) David White, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated March 16, 2001.
- (2) Exhibit 1A--Hearing Request letter from David White dated March 28, 2001.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated April 9, 2001.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated May 17, 2001.
- (5) Exhibit 1D--Copy of Ohio Pharmacist Computer Record of David Wayne White, dated April 6, 2001.
- (6) Exhibit 1E-- Notice of Representation and Appearance letter from Harry B. Plotnick dated September 17, 2001.

- (7) Exhibit 2--Statement of David W. White notarized January 10, 2001.
- (8) Exhibit 2A--CVS/Revco #6126 Pharmacist's Statement re David White covering January 1, 2000 through January 30, 2001 dated January 30, 2001.
- (9) Exhibit 3--Prescription No. 6735041 dated October 19, 2000, and handwritten note; Copy of Kroger Pharmacy Log Sheet, Store #327 for prescriptions dated October 7, 2000 to October 21, 2000.
- (10) Exhibit 4--Statement of James B. Raasch, Jr., R.Ph. notarized January 24, 2001.
- (11) Exhibit 5--Copy of Prosecuting Attorney's Request For Issuance of Warrant Upon Indictment and two-page Indictment, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court, dated January 23, 2001.
- (12) Exhibit 6--Two-page copy of Entry Withdrawing Plea of Not Guilty And Entering Plea of Guilty, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court, dated March 13, 2001.
- (13) Exhibit 7--Copy of Drug Court Judgement Entry Intervention In Lieu of Conviction, State of Ohio vs. David White, Case No. B0100337, Hamilton County Common Pleas Court, dated March 29, 2001.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Harris Cohen, MSW, LSW, RC dated September 14, 2001.
- (2) Exhibit B--Copy of letter from Gregory L. Isaac, M.D. dated September 6, 2001.
- (3) Exhibit C--Copy of letter from Chris O. Costas, M.D. dated September 12, 2001.

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 David Wayne White was originally licensed by the State of Ohio on November 2, 1994, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) David W. White did, on or about October, 2000, intentionally create and/or knowingly possess a false or forged prescription, to wit: David W. White set up a false patient profile and created a false prescription for 100 doses of Ultram 50mg, with refills, while practicing pharmacy at K-mart in Cudahy, Wisconsin. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (3) David W. White did, on or about October 19, 2000, by deception, procure the dispensing of a dangerous drug, to wit: after creating a false prescription and patient profile in a pharmacy in Wisconsin where David W. White had been employed as a pharmacist, and after moving to Ohio, David W. White obtained a transfer of the false prescription to an Ohio pharmacy and David W. White obtained 100 doses of Ultram 50mg by pretending to be a legitimate patient. Such conduct is in violation of Section 2925.22 of the Ohio Revised Code.

- (4) David W. White did, on or about January 2, 2001, by deception, procure the dispensing of a dangerous drug, to wit: after creating a false prescription and patient profile in a pharmacy in Wisconsin where David W. White had been employed as a pharmacist, and after moving to Ohio, David W. White obtained a transfer of the false prescription to an Ohio pharmacy. David W. White had obtained the first dispensing of 100 doses of Ultram 50mg by pretending to be a legitimate patient; on January 2, 2001, David W. White obtained a refill of the drug by telephoning the pharmacy and again posing as the fictitious patient. Such conduct is in violation of Section 2925.22 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) 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 (4) 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 (2) through (4) of the Findings of Fact constitute abusing drugs or 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.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) 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 Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-20502, held by David W. White and such suspension is effective as of the date of the mailing of this Order.

- (A) David W. White, 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.
- (B) David W. White, pursuant to Section 4729.16(B) of the Ohio Revised Code, 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.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by David W. White for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) David W. White must obtain, within sixty days after the effective date of this Order, a full psychiatric or psychological evaluation by a licensed psychiatrist or psychologist and must abide by the treatment plan as designed by that psychiatrist or psychologist. The psychiatrist or psychologist must provide an initial status report, which includes the recommended treatment plan, to the Board within ten days after completing the assessment.
- (B) David W. White must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:
 - (1) Random, observed urine drug screens shall be conducted at least once each month.
 - (a) 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.
 - (b) Tramadol must be added to the standard urine drug screen.
 - (c) Results of all drug 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.
 - (2) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (C) David W. White must demonstrate satisfactory proof to the Board that he is no longer abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (D) David W. White must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) Compliance with the licensed psychiatrist's or psychologist's recommended treatment plan;
 - (2) A report by the licensed psychiatrist or psychologist regarding David W. White's fitness for readmission into the practice of pharmacy;

- (3) Compliance with the contract required above (e.g.-proof of giving the urine sample within twelve hours of notification and copies of all drug urine screen reports, meeting attendance records, treatment program reports, etc.);
 - (4) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (5) Compliance with the terms of this Order.
- (D) If reinstatement is not accomplished within three years of the effective date of this Order, David W. White must show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

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

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE NOVEMBER 7, 2001